going to this extreme, I think it is time to have a moratorium that says: Hold it. Time out. Let us bring common sense into this process and let us find out how big the problem is.

I think this Lillie Rubin example is one more in a multitude of examples that we have heard talked about on the House floor in the last few weeks, and on this floor, talking about trying to put parameters and common sense into our regulatory framework. The EEOC's treatment of Lillie Rubin is tailor made—if I could use a pun—to show how bureaucratic intrusiveness is sapping the productivity of American business and how it is costing Americans billions of dollars every year.

I hope we can put common sense into the system. I hope this just illustrates how much we need to put common sense into the system. And I hope the EEOC will hear this put in context and retreat from such a ridiculous requirement of a women's dress store to hire male salespeople and allow them into the dressing rooms.

This is something we must stop. I hope the regulatory moratorium bill will be the first step to allow us to say: Enough is enough. This is not the way our American taxpayers expect their taxpayer dollars to be used.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The Senate continued with the consideration of the bill.

AMENDMENT NO. 331

Mr. FAIRCLOTH. Mr. President, I rise in support of the Kassebaum striker replacement amendment. I strongly support the amendment offered by the distinguished Senator from Kansas. The Executive order is one more example of the President's bypassing the legislative process to accomplish his own agenda just as he did with the Mexican bailout which has been the subject of a Banking Committee hearing this morning and it is proving to be a monetary Vietnam.

More importantly, this amendment is essential to overturn an Executive order which would unilaterally resurrect archaic labor policies that undermine our national effort to move our economy successfully into the competitive international markets of the 21st century.

The President's action places at risk the integrity of our entire system of collective bargaining which is based on a delicate balance of the rights of employees to withhold their labor and the right of management to continue business operations during a strike. The President suggests that the ban on permanent replacement workers by businesses engaged in Federal contracts will lead to the more efficient performance of such contracts. This is ridiculous and is totally wrong. I am convinced that by upsetting the balance between labor and management, the entire system of collective bargaining will break down resulting in more strikes, business bankruptcies, and fewer jobs.

While this Executive order is limited to Federal contracts, the intent of the President and the opponents of this amendment is clear. They seek to return this country to labor policies which history has rejected as proven failures over and over. This Executive order embodies a labor policy completely at odds with current realities in the international marketplace.

It is contrary to the interests of working Americans striving for success in a global economy where free trade is the order of the day. It panders to special union interests who seek to protect their own privileged position at the expense of other working people. And it is a cynical attempt to delay congressional consideration of the priorities which voters last November clearly indicated they were most interested in.

The Congress has on many occasions debated the merits of banning permanent replacement workers. The most recent occasion was during the last Congress when the administration's proposal to overturn a 60-year interpretation of the National Labor Relations Act was defeated by a Congress controlled by the President's own party.

Last week, the President actively fought against the balanced budget amendment. This week he issues an Executive order on striker replacement knowing that it will be used by supporters to halt congressional consideration of legislation which the administration opposes.

In November the voters spoke unmistakably about their expectations for the 104th Congress. In my opinion during the first 100 days of this Congress the electorate does not expect us to devote our time and energies to long-settled issues which were recently revisited and reaffirmed.

My colleague from Kansas has offered a reasonable proposal limited to this fiscal year. I believe that at some point during this Congress we should consider legislation which would permanently nullify the President's Executive order. At a later date I will welcome a full debate on striker replacement with those who support the President's action, but not at this time.

I encourage opponents of this amendment to allow the Senate to continue with our consideration of the defense supplemental appropriations and then proceed with other important issues such as the line-item veto, welfare reform, product liability reform, tort reform, and a regulatory moratorium.

These are the issues that last November voters expected us to consider at this time, I think, and it is time we get on with considering them at a rapid rate.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I welcome the opportunity this afternoon to address some of the issues in question that have been raised by the Kassebaum amendment and hopefully resolve the questions that have been raised so that we will be able to move beyond the Kassebaum amendment to address the underlying issue which is the appropriations which are necessary for our national defense and national security.

This particular proposal is not really appropriate on this particular measure. But it has been the desire of a number of our Members to continue the debate and discussion on the measure rather than consider the urgency of the underlying proposal.

So I welcome the chance to respond to a number of the questions that have been raised including the questions that have been raised by my friend from North Carolina in his own comments.

The argument we hear over and over is the President is changing the law, that Congress gave employers the rights to use permanent replacements and the President is taking away that right. Let us look a little closer at this argument.

In the first place, Congress never gave employers the right to use permanent replacements. The National Labor Relations Act never uses the term and it was not in the act of 1935, and it is not there today. What Congress did say was very different. Section 13 states very plainly:

> Nothing in this act, except as specifically provided herein, shall be construed so as to either interfere with, or impede, or in any way diminish the right to strike, or to affect the limitations or qualifications on that right.

But nevertheless it is true that employers can use permanent replacements. If they did not get that right from Congress, where did it come from? The answer, of course, is the Supreme Court's decision in the 1938 case of Mackay Radio where the Court interpreted the act to allow the use of permanent replacements despite the statute's proscription against diminishing the right to strike. But even Mackay did not give employers the right to use permanent replacements. It merely said the National Labor Relations Act does not prohibit their use.

The Court said that the powers of the National Labor Relations Board and the act's legal machinery could not be used to stop employers from using permanent replacements. Has President Clinton changed that law or attempted to change it? No, he has not. Any Senator who will take the time to read the Executive order will see that he has not. It is still legal under the National Labor Relations Act to use permanent replacements.

There is no back pay remedy in the Executive order for workers whose jobs

are taken from them. There is no power granted to the National Labor Relations Board to go to the court and get an order blocking the employer's use of permanent replacements. Those are the powers and remedies the Congress debated in the last Congress when we considered S. 55, not the President's power to administer Federal contracts. President Clinton has not given the National Labor Relations Board any of the powers that Congress debated in S. 55 nor has he given the Board any new powers at all.

So to say the Executive order is an end run around the Congress is untrue. The Congress never debated whether the President should exercise his procurement powers to prevent the kind of lengthy and bitter strikes that occur when Federal contractors use permanent replacements. We have never debated whether it makes sense, as I believe it does, for the President to prevent situations from occurring where unusually lengthy strikes led us to long periods where critical products such as fighter jet engines or missile guidance systems are produced entirely by any untrained workers brought in as permanent replacements for 20- or 30-year skilled veterans. I believe it does not make sense for the President to do that. It does make sense for the President to do what he can to protect the Government's procurement process from that sort of situation.

But no one should doubt that he has the power to do so. This power may be inherent in the Executive. But in any case, Congress has given the President this authority through the Federal Property and Administrative Services Act.

(Mr. SMITH assumed the chair.)

Mr. KENNEDY. Now, Senator KASSEBAUM might want to take that power away, but there is no end run here. Congress gave the power, gave the President the authority to oversee contracting by the Federal agencies and Executive Order 12954, is an exercise of that authority.

I hope, Mr. President, that over the period of the weekend our Members will have a chance to review the Department of Justice's legal memoranda supporting that authority.

I ask unanimous consent that that memorandum be printed in the RECORD.

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

WASHINGTON, DC, *March 9, 1995.*

Memorandum for Janet Reno, Attorney General.

From: Walter Dellinger, Assistant Attorney General.

Re: Executive Order No. 12954, entitled ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts''.

On March 6, 1995, we issued a memorandum approving as to form and legality a proposed executive order entitled, ''Ensuring the Economical and Efficient Administration of Federal Government Contracts.'' On March 8, 1995 the President signed the proposed directive, making it Executive Order No. 12954. This memorandum records the basis for our prior conclusion that the Federal Property and Administrative Services Act vests the President with authority to issue Executive Order No. 12954 in light of his finding that it will promote economy and efficiency in government procurement.

I

Executive Order No. 12954 establishes a mechanism designed to ensure economy and efficiency in government procurement involving contractors that permanently replace lawfully striking workers. After a preamble that makes and discusses various findings and ultimately concludes that Executive Order No. 12954 will promote economy and efficiency in government procurement, the order declares that ''[i]t is the policy of the Executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees.'' Exec. Order No. 12954, §1. The order makes the Secretary of Labor (''Secretary'') responsible for its enforcement. *Id.* §6. Specifically, the Secretary is authorized to investigate and hold hearings to determine whether ''an organizational unit of a federal contractor'' has permanently replaced lawfully striking employees either on the Secretary's own initiative or upon receiving ''complaints by employees'' that allege such permanent replacement. *Id.* §2.

If the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary is directed to exercise either or both of two options. First, the Secretary may make a finding that all contracts between the government and that contractor should be terminated for convenience. *Id.* §3. The Secretary's decision whether to issue such a finding is to be exercised to advance the government's economy and efficiency interests as set forth in section 1. *Id.* §1 (''All discretion under this Executive order shall be exercised consistent with this policy.'') The Secretary is then to transmit the finding to the heads of all departments and agencies that have contracts with the contractor.[1] Each such agency head is to terminate any contracts that the Secretary has designated for termination, unless the agency head formally and in writing objects to the Secretary's finding. *Id.* §3. An agency head's discretion to object is also limited to promoting the purpose of economy and efficiency as set forth in the policy articulated in section 1.

The Secretary's second option is debarment. If the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary is to place the contractor on the debarment list until the labor dispute has been resolved, unless the Secretary determines that debarment would impede economy and efficiency in procurement. The effect of this action is that no agency head may enter into a contract with a contractor on the debarment list unless the agency head finds compelling reasons for doing so. *Id.* §4.

Executive Order No. 12954, taken as a whole, sets forth a mechanism that closely ties its operative procedures—termination and debarment—to the pursuit of economy and efficiency. The President has made a finding that, as a general matter, economy and efficiency in procurement are advanced by contracting with employers that do not permanently replace lawfully striking employees. Additionally, the President has provided for a case-by-case determination that his finding is justified on the peculiar facts and circumstances of each specific case before any action to effectuate the President's finding is undertaken.

II

The Supreme Court has instructed that ''[t]he President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself.'' *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 585 (1952). The President's authority to issue Executive Order No. 12954 is statutory; specifically, the Federal Property and Administrative Services Act of 1949 (''FPASA''). That statute was enacted ''to provide for the Government an economical and efficient system for . . . procurement and supply.'' 40 U.S.C. §471. The FPASA expressly grants the President authority to effectuate this purpose, ''The President may prescribe such policies and directives, not inconsistent with the provisions of this Act, as he shall deem necessary to effectuate the provisions of said Act, which policies and directives shall govern the Administrator [of General Services] and executive agencies in carrying out their respective functions hereunder.'' *Id.* §486(a). An executive order issued pursuant to this authorization is valid if (a) ''the President acted 'to effectuate the provisions' of the FPASA,'' and (b) the President's ''action was 'not inconsistent with' any specific provision of the Act.'' *American Fed'n of Gov't Employees v. Carmen,* 669 F.2d 815, 820 (D.C. Cir. 1981) (quoting 40 U.S.C. §486(a)). We are not aware of any specific provision of the FPASA that is inconsistent with Executive Order No. 12954. Therefore, we turn to the question whether the President acted to effectuate the purposes of the FPASA.

Every court to consider the question has concluded that §486(a) grants the President a broad scope of authority. In the leading case on the subject, the United States Court of Appeals for the District of Columbia Circuit, sitting en banc, addressed the question of the scope of the President's authority under the FPASA, and §486(a) in particular. *See AFL–CIO v. Kahn,* 618 F.2d 784 (D.C. Cir.) (en banc), *cert. denied,* 443 U.S. 915 (1979). A plausible argument that the FPASA granted the President only narrowly limited authority was advanced and rejected. *See id.* at 799–800 (MacKinnon, J., dissenting). After an extensive review of the legislative history of that provision, the court held that the FPASA, through §486(a), was intended to give the President ''broad-ranging authority'' to issue orders designed to promote ''economy'' and ''efficiency'' in government procurement. *Id.* at 787–89. The court emphasized that '''[e]conomy' and 'efficiency' are not narrow terms; they encompass those factors like price, quality, suitability, and availability of goods or services that are involved in all acquisition decisions.'' *Id.* at 789; *see also* Peter E. Quint, *The Separation of Powers under Carter,* 62 Tex. L. Rev. 786, 792–93 (1984) (although §486(a) ''easily could be read as authorizing the President to do little more than issue relatively modest housekeeping regulations relating to procurement practice * * *. The *Kahn* court found congressional authorization of sweeping presidential power * * *.''); Peter Raven-Hansen, *Making Agencies Follow Orders; Judicial Review of Agency Violations of Executive Order 12,291,* 1983 Duke L.J. 285, 333, n.266; Jody S. Fink, *Notes on Presidential Foreign Policy Powers (Part II),* 11 Hofstra L. Rev. 773, 790–91 n.132 (1983) (characterizing *Kahn* as reading §486(a) to grant President ''virtually unlimited'' authority).

The court then concluded that a presidential directive issued pursuant to §486(a) is authorized as long as there is a ''sufficiently close nexus'' between the order and the criteria of economy and efficiency. *Kahn,* 618

[1] Footnotes at end of article.

F.2d at 792. Although the opinion does not include a definitive statement of what constitutes such a nexus, the best reading is that a sufficiently close nexus exists when the President's order is ''reasonably related'' to the ends of economy and efficiency. *See id.* at 793, n.49; Harold H. Bruff, *Judicial Review and the President's Statutory Powers,* 68 Va. L. Rev. 1, 51 (1982) (''in *AFL–CIO v. Kahn,* the court stated an appropriate standard for reviewing the basis of a presidential action—that it be 'reasonably related' to statutory policies'') (footnote omitted).

As one commentator has asserted, under *Kahn,* the President need not demonstrate that an order ''would infallibly promote efficiency, merely that it [is] plausible to suppose this.'' Alan Hyde, *Beyond Collective Bargaining: The Politicization of Labor Relations under Government Contract,* 1982 Wis. L. Rev. 1, 26. In our view a more exacting standard would invade the ''broad-ranging'' authority that the court held the statute was intended to confer upon the President. *See Kahn,* 618 F.2d at 787–89. In addition, a stricter standard would undermine the great deference that is due presidential factual and policy determinations that Congress has vested in the President. *See, e.g.,* Henry P. Monaghan, *Stare Decisis and Constitutional Adjudication,* 88 Colum. L. Rev. 723, 738 (1988).[2]

We have no doubt, for example, that §486(a) grants the President authority to issue a directive that prohibits executive agencies from entering into contracts with contractors who use a particular machine that the President has deemed less reliable than others that are available. Contractors that use the less reliable machines are less likely to deliver quality goods or to produce their goods in a timely manner. We see no distinction between this hypothetical order in which the President prohibits procurement from contractors that use machines that he deems unreliable and the one the President has actually issued, which would bar procurement with contractors that use labor relations techniques that the President deems to be generally unreliable, especially when the Secretary of Labor and the contracting agency head each confirm the validity of that generalization in each specific case.

The preamble of Executive Order No. 12954 sets forth the President's findings that the state of labor-management relations affects the cost, quality, and timely availability of goods and services. The order also announces his finding that the government's procurement interests in cost, quality, and timely availability are best secured by contracting with those entities that have ''stable relationships with their employees'' and that ''[a]n important aspect of a stable collective bargaining relationship is the balance between allowing businesses to operate during a strike and preserving worker rights.'' The President has concluded that ''[t]his balance is disrupted when permanent replacement employees are hired.'' In establishing the policy ordinarily[3] to contract with contractors that do not hire permanent replacement workers, the President has found that he will advance the government's procurement interests in cost, quality, and timely availability of goods and services by contracting with those contractors that satisfy what he has found to be an important condition for stable labor-management relations.

The order's preamble then proceeds to set forth reasonable relation between the government's procurement interests in economy and efficiency and the order itself. Specifically, the order asserts the President's finding that ''strikes involving permanent replacement workers are longer in duration than other strikes. In addition, the use of permanent replacements can change a limited dispute into a broader, more contentious struggle, thereby exacerbating the problems that initially led to the strike. By permanently replacing its workers, an employer loses the accumulated knowledge, experience, skill, and expertise of its incumbent employees. These circumstances then adversely affect the businesses and entities, such as the Federal Government, which rely on that employer to provide high quality and reliable goods or services.'' We believe that these findings state the necessary reasonable relation between the procedures instituted by the order and achievement of the goal of economy and efficiency.

It may well be that the order will advance other permissible goals in addition to economy and efficiency. Even if the order were intended to achieve goals other than economy and efficiency, however, the order would still be authorized under the FPASA as long as one of the President's goals is the promotion of economy and efficiency in government procurement. ''We cannot agree that an exercise of section 486(a) authority becomes illegitimate if, in design and operation, the President's prescription, in addition to promoting economy and efficiency, serves other, not impermissible, ends as well.'' *Carmen,* 669 F.2d at 821; *see Rainbow Nav. Inc. v. Dep't of the Navy,* 783 F.2d 1072 (D.C. Cir. 1986); Kimberly A. Egerton, Note, *Presidential Power over Federal Contracts under the Federal Property and Administrative Services Act: The Close Nexus Test of* AFL–CIO v. Kahn, 1980 Duke L.J. 205, 218–20.

Since the adoption of the FPASA, Presidents have consistently regarded orders such as the one currently under review as being within their authority under that Act. As the court *explained* in *Kahn,* Presidents have relied on the FPASA as authority to issue a wide range of orders. 618 F.2d at 789–92 (noting the history of such orders since 1941, especially to institute ''buy American'' requirements and to prohibit discrimination in employment by government contractors). Not surprisingly this executive practice has continued since *Kahn.* For instance, President Bush issued Executive Order No. 12800, which required all government contractors to post notices declaring that their employees could not ''be required to join a union or maintain membership in a union in order to regain their jobs.'' 57 Fed. Reg. 12985 (April 13, 1992). The order was supported solely by the statement that it was issued ''in order to * * * promote harmonious relations in the workplace for purposes of ensuring the economic and efficient administration and completion of Government contracts.'' *Id.*[4] This long history of executive practice provides additional support for the President's exercise of authority in this case. *See Kahn,* 618 F.2d at 790.[5] This is especially so where, as here, the President sets forth the close nexus between the order and the statutory goals of economy and efficiency.

It may be that in individual cases, a contractor that maintains a policy of refusing to permanently replace lawfully striking workers may nevertheless have an unstable labor-management relationship while a particular contractor that has permanently replaced lawfully striking workers may have a more stable relationship. As to such situations, however, the Secretary and the contracting agency heads retain the discretion to continue to procure goods and services from contractors that have permanently replaced lawfully striking workers if that procurement will advance the federal government's economy and efficiency interests as articulated in section 1 of Executive Order No. 12954.[6] We recognize that, even with these safeguards, it could happen that a specific decision to terminate a contract for convenience or to debar a contractor pursuant to the order might not promote economy or efficiency. The courts have held that it remains well within the President's authority to determine that such occurrences are more than offset by the economy and efficiency gains associated with compliance with an order generally. *See Kahn,* 618 F.2d at 793.[7]

Similarly, it would be unavailing to contend that Executive Order No. 12954 will secure no immediate or near-term advancement of the federal government's economy and efficiency procurement interests. Section 486(a) authorizes the President to employ ''a strategy of seeking the greatest advantage to the Government, *both short- and long-term,*'' and this is ''entirely consistent with the congressional policies behind the FPASA.'' *Id.* emphasis added); *cf. Contractors Ass'n v. Secretary of Labor,* 442 F.2d 159, 170 (3d Cir.) (deciding on basis of president's constitutional rather than statutory authority), *cert. denied,* 404 U.S. 854 (1971).

The FPASA grants the President a direct and active supervisory role in the administration of that Act and endows him with broad discretion over how best ''to achieve a flexible management system capable of making sophisticated judgment in pursuit of economy and efficiency.'' *Kahn,* 618 F.2d at 788–89. As explained above, the President has set forth a sufficiently close nexus between the program to be established by the proposed order and the goals of economy and efficiency in government procurement.[8]

Finally, we do not understand the action of Congress in relation to legislation on the subject of replacement of lawfully striking workers to bear on the President's authority to issue Executive Order No. 12954. The question is whether the FPASA authorizes the President to issue the order. As set forth above, we believe that it does. Recent Congresses have considered but failed to act on the issue of whether to adopt a national, economy-wide proscription of the practice applying to all employers under the National Labor Relations Act (''NLRA'').[9] This action may not be given the effect of amending or repealing the President's statutory authority, for the enactment of such legislation requires passage by both houses of Congress *and* presentment to the President. *See Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc.,* 501 U.S. 252 (1991); *INS v. Chadha,* 462 U.S. 919 (1983). To contend that Congress's inaction on legislation to prohibit all employers from hiring replacement workers deprived the President of authority he had possessed is to contend for the validity of the legislative veto.

In *Youngstown Sheet & Tube,* it was considered relevant that Congress had considered and rejected granting the President the specific authority he had exercised. 343 U.S. 586. There, however, the President did not claim to be acting pursuant to any statutory power, but rather to inherent constitutional power. In such a case, the scope of the President's power depends upon congressional action in the field, including an express decision to deny the President any statutory authority. *Id. Youngstown Sheet & Tube* is inapposite here because the President does not rely upon inherent constitutional authority, but rather upon express statutory authority—§486(a) of the FPASA. *See Kahn,* 618 F.2d at 787 & n. 13.

Moreover, we note that Congress's action was far from a repudiation of the specific authority exercised in Executive Order No. 12954. Even if a majority of either house of Congress had voted to reject the blanket proscriptions on hiring permanent replacements for lawfully striking workers, contained in H.R. 5 and S. 55, this would denote no more than a determination that such a broad, inflexible rule applied in every labor dispute subject to the NLRA would not advance the

many interests that Congress may consider when assessing legislation. The order, by contrast, does not apply across the economy, but only in the area of government procurement. Nor does the order establish an inflexible application, rather it provides the Secretary of Labor an opportunity to review each case to determine whether debarring or terminating a contract with a particular contractor will promote economy and efficiency in government procurement and further permits any contracting agency head to override a decision to debar if he or she believes there are compelling circumstances or to reject a recommendation to terminate a contract if, in his or her independent judgment, it will not promote economy and efficiency. In sum, the congressional action alluded to above simply does not implicate the narrow context of government procurement or speak to the efficacy of a flexible case-by-case regime such as the one set forth in the order.[10]

The *Kahn* opinion fully supports this view. There the President promulgated voluntary wage and price guidelines that were applicable to the entire economy. Contractors that failed to certify compliance with the guidelines were debarred from must government contracts. *See* Exec. Order No. 12092, 43 Fed. Reg. 51,375 (1978). The order was issued in 1978 against the following legislative backdrop: In 1971 Congress passed the Economic Stabilization Act, which authorized the President to enforce economy-wide wage and price controls. In 1974, a few months after the Economic Stabilization Act expired, the Council on Wage and Price Stability Act (''COWPSA'') was enacted. COWPSA expressly provided that ''[n]othing in this Act * * * authorizes the continuation, imposition, or reimposition of any mandatory economic controls with respect to prices rents, wages, salaries, corporate dividends, or any similar transfers.'' Pub. L. No. 93–387, §3(b), 88 Stat. 750 (1974).

The court concluded that ''the standards in Executive Order 12092, which cover only wages and prices, are not as extensive as the list in Section 3(b). Consequently, we do not think the procurement compliance program falls within the coverage of Section 3(b), but rather is a halfway measure outside the contemplation of Congress in that enactment.'' *Kahn,* 618 F.2d at 795. Similarly, Executive Order No. 12954 is a measure that operates in a manner (case-by-case determination) and a realm (government procurement exclusively) that was outside the contemplation of Congress in its consideration of a broad and inflexible prohibition on the permanent replacement of lawfully striking workers.

III

Congress, in the FPASA, established that the President is to play the role of managing and directing government procurement. Congress designed this role to include ''broad-ranging authority'' to issue orders intended to achieve an economical and efficient procurement system. Executive Order No. 12954, ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts,'' represents a valid exercise of this authority.

FOOTNOTES

[1]We will refer to this class of officials generically as agency head(s).

[2]We do not mean to indicate a belief that Executive Order No. 12954 could not withstand a stricter level of scrutiny. We simply regard the employment of such a standard to be contrary to the holding of *Kahn,* as well as the view of the purposes of the FPASA and its legislative history upon which that decision expressly rests.

[3]Again, the order does not categorically bar procurement from contractors that have permanently replaced lawfully striking workers. The sanctions that the order would authorize would not go into effect if either the Secretary, with respect to either the termination or the debarment option, or the contracting agency head, with respect to the termination option, finds that the option would impede economy and efficiency in procurement.

[4]This order is also significant insofar as it demonstrates that Executive Order No. 12954 is not the first in which a president has found that more stable workplace relations promote economy and efficiency in government procurement.

[5]Of course, the President's view of his own authority under a statute is not controlling, but when that view has been acted upon over a substantial period of time without eliciting congressional removal, it is 'entitled to great respect.' . . . [t]he 'construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.''' *Kahn,* 618 F.2d at 790 (quoting *Board of Governors of the Federal Reserve Sys. v. First Lincolnwood Corp.,* 439 U.S. 234 (1978), and *Miller v. Youakim,* 440 U.S. 125, 144 n.25 (1979)).

[6]The authority of an agency head is diminished somewhat, though not eliminated entirely with respect to procuring from a contractor that the Secretary has debarred. An agency head may procure from a debarred contractor only for compelling reasons. *See* Exec. Order No. 12954, §4. Nevertheless, the Secretary has authority to refuse to place a contractor on the debarment list in the first instance if the Secretary believes that debarment would not advance economy and efficiency.

[7]''[W]e find no basis for rejecting the President's conclusion that any higher costs incurred in those transactions will be more than offset by the advantages gained in negotiated contracts and in those cases where the lowest bidder is in compliance with the voluntary standards and his bid is lower than it would have been in the absence of standards.'' *Kahn,* 618 F.2d at 793.

[8]Moreover, we note that under the Supreme Court's recent decision in *Dalton v. Specter,* 114 S. Ct. 1719 (1994), it is unlikely that the President's judgment may be subject to judicial review. It is clear that §486(a) gives the President the power to issue orders designed to promote economy and efficiency in Government procurement. *See* 40 U.S.C. §486(a); *Carmen,* 669 F.2d at 821; *Kahn,* 618 F.2d at 788–89, 792–93. The Supreme Court has recently ''distinguished between claims of constitutional violations and claims that an official has acted in excess of his statutory authority.'' *Dalton,* 114 S. Ct. at 1726. The Court held that where a claim ''concerns not a want of [presidential] power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power. This must be since, as this court has often pointed out, the judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion.''

Id. at 1727 (quoting *Dakota Central Telephone Co. v. South Dakota, ex rel, Pevne,* 250 U.S. 163, 184 (1919)); *see also Smith v. Reagan,* 844 F.2d 195, 198 (4th Cir.), *cert. denied,* 488 U.S. 954 (1988); *Colon v. Carter,* 633 F.2d 964, 966 (1st Cir. 1980); *cf. Heckler v. Chaney,* 470 U.S. 821 (1985); *Chicago Southern Air Lines Inc. v. Waterman S.S. Corp.,* 333 U.S. 103 (1948).

Judicial review is unavailable for claims that the President had erred in his judgment that the program established in the order is unlikely to promote economy and efficiency. The FPASA entrusts this determination to the President's discretion and, under *Dalton,* courts may not second-guess his conclusion. The Court made it clear that the President does not violate the Constitution simply by acting ultra vires. *See Dalton,* 114 S. Ct. at 1726–27. Judicial review is available only for contentions that the President's decision not only is outside the scope of the discretion Congress granted the President, but also that the President's action violates some free-standing provision of the Constitution.

[9]In the 102d Congress, The House of Representatives passed a bill to amend the National Labor Relations Act to make it an unfair labor practice for an employer to hire a permanent replacement for a lawfully striking employee. *See* H.R. 5, 102d Cong., 1st Sess. (1991). The House passed this legislation on a vote of 247–182. *See* Cong. Rec. H5589 (daily ed. July 17, 1991). The Senate considered legislation to the same effect. *See* S. 55, 102d Cong., 2d Sess. (1992). The legislation was not brought to the floor for a vote because supporters of the measure were only able to muster 57 votes to invoke cloture. *See* Cong. Rec. S8237–38 (daily ed. June 16, 1992).

Likewise, legislation to categorize the hiring of permanent replacement workers as an unfair labor practice was considered in the 103d Congress. The House of Representatives approved the legislation on a vote of 239–190. *See* Cong. Rec. H3568 (daily ed. June 15, 1993). Again, the Senate did not bring the bill to a vote, because its supporters were unable to attract the supermajority required to invoke cloture. *See* Cong. Rec. S8524 (daily ed. July 12, 1994) (fifty-three senators voting to invoke cloture).

[10]We have found no indication in the legislative history that those opposing the proposed amendments to the NLRA even considered the specialized context of government procurement. *See, e.g.,* S. Rep. No. 110, 103d Cong., 1st Sess. at 33–49 (1993) (stating minority views); H.R. Rep. No. 116, 103d Cong. 2d Sess., pt. 1, at 42–62 (1993) (minority views); H.R. Rep. No. 116, 103d Cong., 2d Sess., pt. 2, at 16–17 (1993) (minority views); H.R. Rep. No. 116, 103d Cong., 2d Sess., pt. 3, at 11–15 (1993) (minority views). Moreover, we note that at least some of the opposition to the legislation was based in part on concerns regarding the breadth of the legislation, *see* H.R. Rep. No. 116, pt. 1, at 45 (minority views) (emphasizing absence of ''a truly pressing societal need'' (emphasis added)), as well as its inflexibility, *see id.* at 62 (views of Rep. Roukema).

Mr. KENNEDY. I will highlight a couple of essential parts of the memorandum.

On March 6, 1995, we issued a memorandum approving as to form and legality a proposed executive order entitled, ''Ensuring the Economical and Efficient Administration of Federal Government Contracts.'' On March 8, 1995 the President signed the proposed directive, making it Executive Order No. 12954. This memorandum records the basis for our prior conclusion that the Federal Property and Administrative Services Act vests the President with authority to issue Executive Order No. 12954 in light of his finding that it will promote economy and efficiency in Government procurement.

I will come back to that issue because I think it is basic to both the rationale for the Executive order and reaches the heart of the whole debate on this issue.

Executive Order No. 12954 establishes a mechanism designed to ensure economy and efficiency in Government procurement involving contractors that permanently replace lawful striking workers.

Executive Order No. 12954, taken as a whole, sets forth a mechanism that closely

ties its operative procedures—termination and debarment—to the pursuit of economy and efficiency. The President has made a finding that, as a general matter, economy and efficiency in procurement are advanced by contracting with employers that do not permanently replace lawfully striking employees. Additionally, the President has provided for a case-by-case determination that his finding is justified on the peculiar facts and circumstances of each specific case before any action to effectuate the President's finding is undertaken.

The rest of the memorandum goes on with citations in support for this President's authority in a very, I find, persuasive and convincing way.

What did the President base his Executive order on? He based it, effectively, on the pursuit of economy and efficiency. Procurements are advanced by contracting with employers that do not permanently replace lawfully striking employees.

So it seems to be appropriate that we give some consideration to what has been happening over the period of recent years with regard to various disputes involving the permanent replacement of striking workers per year.

This chart shows some, I think, very powerful and persuasive evidence justifying the Executive order. What we see in this chart is the rather dramatic increase in the numbers of strikes in which permanent replacements have been used over the period from 1935 all the way to 1991. What you do see, particularly, is that in the last 2 or 3 years the numbers have been going up dramatically.

Since we find out that they have been going up dramatically, we can ask ourselves, what has been the result? This chart reflects the average number of strikes involving permanent replacements per year by decade. So it is the concern of the President in connection with Government purchasing to take notice of the number of strikes that have been taking place in which permanent replacement strikers have been used. This is interesting in reflecting the increased numbers of replacement workers.

We have to ask ourselves, why is that important? Why should we take notice of this dramatic increase in permanent replacement strikes? Well, it is interesting for this reason, Mr. President. With the dramatic increase, we take note that strikes involving permanent replacement workers are substantially longer in duration than other strikes. One study done at the University of Notre Dame indicates that strikes involving permanent replacements last seven times longer than strikes that do not involve permanent replacements.

Other evidence suggests that the mere threat to use permanent replacement workers is associated with the longer strikes. So we have this phenomenon, increasing numbers of strikes, which are utilizing the permanent replacements, increasing powerful evidence that the strikes themselves last dramatically longer than other labor disputes.

Clearly, the President has an important responsibility, primarily in the area of our national defense, to make sure that we are going to be able to have our weapons systems and procurement be done in a way that is going to meet his responsibilities, to make sure that we are going to get good product, good quality, good performance, top-skilled people that are going to be working on the various systems which are so important to our fighting men.

Well, not only are the strikes longer involving permanent strikes, but there is another phenomenon, and that is what has happened to productivity in the areas of where the permanent replacements have taken place. We now know that the number of strikes in which permanent strikers are used has been increasing dramatically, and the strikes themselves last longer. But we can also ask ourselves what has been happening in terms of the productivity in those companies, where they have made the judgment to select permanent replacements.

Mr. President, I will just quote part of the findings from research by Prof. Julius Getman, professor of law at the University of Texas Law School to be included in a forthcoming book,

> The data that I have collected in my study of the Paper Workers strike in Jay, Maine from 1987 to 1988 is strongly supportive of the conclusion that hiring permanent replacement workers is harmful to productivity. This is true not only because the replacement workers are almost certain to lack the experience and know-how of the workers they replace, but because permanent replacement is totally inconsistent with the goal of the labor-management cooperation necessary for improving quality and productivity.
>
> * * * In any large enterprise, because of the Laidlaw doctrine, in the period after the strike terminates, significant numbers of former strikers will return.
>
> * * * The anger among the groups will inevitably effect productivity. It will make employees suspicious of cooperation and unwilling to take part in new approaches to productivity.
>
> * * * Managers, who are aware they will be required to rehire a former striker whenever a replacement worker either quits or is fired, will be loath to impose discipline on the replacement workers or crossovers. If they treat the strikers differently, they commit an unfair labor practice. At the Androscoggin mill all sides agree that the lack of discipline was harmful to productivity.

Then it continues in the study of the Androscoggin mill, pointing out the difference in atmosphere, the difference in productivity that existed prior to the time of the striker replacements. And drawing the conclusion that, on the issue of productivity, there had been a very significant diminution in the productivity of those companies that use the striker replacements.

So, Mr. President, I make the point which is the obvious one that the President has noted, that there are an increasing number of strikes, increasing number of permanent replacement workers, that productivity in those areas deteriorates. And, obviously, the President does have the authority and the power to issue such an Executive order as has been summarized in the Attornrey General's memorandum.

Mr. President, we have been asked earlier about the precedents. Is this Executive order unprecedented? I have an interesting memorandum here, Mr. President, that I have developed that reviews the recent Executive orders that have been done under the Republican Presidents and also this one to put it in some proportion. I think in any fair evaluation you would find that there is far more excessive use of executive authority, particularly by President Bush in his Executive order basically on the prehire issue, which is basically in conflict with the law itself prohibiting the prehiring agreements, even though the National Labor Relations Act itself specifically permits the prehiring agreements.

Several Senators from the other side of the aisle took to the Senate floor yesterday to suggest that President Clinton's Executive order prohibiting Federal contractors from permanently replacing lawfully striking workers is completely unprecedented. They stated on this floor, as though it were an undeniable fact, that there has never before been an Executive order that has prohibited Federal contractors from undertaking an otherwise legal act.

Mr. President, these Senators are simply and plainly wrong. And Mr. President, we do not have to go back very far in our history to prove that they are wrong.

In late October 1992 President Bush issued Executive Order No. 12818 prohibiting Federal contractors from entering into pre-hire agreements. The agreements are also sometimes called project agreements. Project agreements are collective-bargaining agreements commonly used in the construction industry. They establish labor standards, the terms and conditions of employment for workers on construction sites before any of the workers are hired. President Bush's Executive order prohibited any Federal contractor working on a construction project from entering into a project agreement with a union.

President Bush justified this Executive order in many ways. He argued that he wanted to open up the bidding process. He wanted to reduce costs. Some of us took note that he made his announcement just a few days before the Presidential election in 1992 and the fact that immediately after he issued the Executive order he was endorsed by the Associated Builders & Contractors, a well-known lobbying group for nonunion and antiunion construction contractors.

Regardless of his reasons, President Bush and his allies in this body never tried to suggest that it was unlawful for construction employers and unions to enter into project agreements.

There is good reason for that, Mr. President. The National Labor Relations Act specifically and expressly permits construction employer and construction unions to enter into project agreements or pre-hire agreements. Permit me to read the relevant section of the National Labor Relations Act, section 8(f).

(f) [Agreements covering employees in the building and construction industry] It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [section 159 of this title] prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer in the industry or in the particular geographical area: *Provided,* That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act [subsection (a)(3) of this section]: *Provided further,* That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e) [section 159(c) or 159(e) of this title].

In sum, President Bush's Executive Order No. 12818 not only prohibited an otherwise legal practice. It prohibited a practice specifically and expressly protected by the National Labor Relations Act.

Let us contrast that decision by President Bush with this decision by President Clinton. This Executive order would prohibit Federal contractors from permanently replacing lawfully striking employees. Nowhere in the National Labor Relations Act is there any express language that gives employers a right to permanently replace lawful strikers.

Further, Congress has never spoken on this issue. My distinguished colleague from Texas stated on the floor of this Body yesterday that the Senate had rejected legislation that would have prohibited the use of permanent replacements. Once again, the Senator is simply and plainly wrong.

This body never got the chance to vote on the striker replacement legislation. A majority of Senators were ready to enact a bill that prohibited all employers from using permanent replacements. But a handful of Senators from the other side of the aisle filibustered that legislation. They never permitted it to come to a vote. Mr. President, that happened not once, but twice.

So, Mr. President, the fact is that there is a precedent for this Executive order. The fact is that this Executive order is well within the President's authority—an authority that Congress has specifically delegated to the President in our procurement laws. The fact is that this amendment interferes with the President's ability to serve as our Federal Government's Chief Executive Officer and in that role to assure that the taxpayers get the quality goods and services they deserve in a timely way from reliable Federal contractors.

So here we had an action by a former President trying to effectively override the existing statute with an Executive order and we did not hear really the complaint at that time about the use of the executive powers compared to issuing of the Executive order at the present time which takes into consideration the very substantial and I find overwhelming evidence as to what is happening in contracting in our country with the use of the permanent striker replacements and the real danger that that presents to the administration or to the taxpayers in terms of both the quality and the on-time delivery and the efficiency of the various products.

I think, when you examine that, you will see the justification, the legal justification and I think the commonsense justification, for the issuing of that particular proposal.

Mr. President, we heard during the course of the debate yesterday another point that was made, those points being made about why are we doing this; why are we taking this action? Are we really not looking out after some special interests when the President issues this particular order?

I took the time to review some of the stories where the permanent striker replacements have been actually used and put in place to try and get some context for the issuing of this order and what it really is all about in human terms.

What I have just put in the RECORD is the memorandum from the Justice Department that details the legality of this action, looking at statutes and legal precedents. I have also included memoranda and studies that have been done in analyzing what has happened at a number of companies that have used permanent striker replacements and I have referred to other studies.

But I think it is appropriate, Mr. President, to really take a look at who these people are that are being affected, whose lives are being affected and families are being affected by the permanent striker replacements.

I would like to just take a moment or two to discuss different situations where permanent striker replacements have been used and quote from some letters from some of those individuals so we get some idea as to what we are talking about here this afternoon, who is really being benefited, whose lives will be affected and whose will not by this action.

Mr. President, there has been a bitter strike going on in California that illustrates many of the points that we have been making about the effects of an employer's decision to permanently replace its strikers. The strike at Diamond Walnut pitted a small group of determined women, many working at or near the minimum wage, struggling for dignity against an employer that sought to cut their wages and eliminate their jobs.

When these workers went out on strike, the company permanently replaced them. The workers' lives were ruined in many cases, and their families suffered without money, without health insurance, without the certainty of knowing when they would next have a steady, reliable source of income.

If this Executive order had been in effect, Mr. President, Diamond Walnut would not have been able to make this ruthless decision to discard workers—many of whom had worked for the company for 10 or 20 years—without itself suffering the threat of losing millions of dollars in contracts with the Federal Government.

The Federal Government had contracts with this company in terms of helping and assisting in the export of millions and millions of dollars of its products overseas.

Here we have the American taxpayers' funds being used to help and assist this company that has been exploiting its workers.

And that is really the issue. It is whether the Federal Government will halt the additional kinds of benefits that it is going to give to various companies that are committed toward the hiring of the permanent striker replacements. If they are not—even the majority of the other companies, they are not going to be affected or impacted—but we have to ask ourselves if they are going to do that, whether we ought to be benefiting them through various kinds of Federal contracts.

Permit me to tell some of the stories of the workers and their families that have been devastated by Diamond Walnut's decision to permanently replace these strikers. These are the people President Clinton promised to stand up for.

Benny Pacheko was with Diamond for 5 years as a mechanic. Since the strike, he has been going financially backward. He is terribly afraid of losing everything, having to sell all of his assets because he cannot afford insurance premiums.

He writes, ''The mental stress is horrendous. I feel I can't maintain what I have. All I have worked and saved for is going down the drain.''

Benny is on disability due to an industrial accident while working for Diamond. He cannot get a job because of the effects of the accident.

''Thanks,'' he writes, ''from the bottom of my heart for being considerate and understanding of the situation.''

And he talks about how difficult it is to face life every single day.

Dorothy Granger was a lift driver for 13 years. This is not a traditional job for women. It is not easy finding work when you are over 30 and the work you do is usually done by men. Companies would rather hire a man for the job. It is what they are used to. Of course, they will not tell you that.

The strike is really affecting me financially. Bills are piling up and there's no money to pay them. I need my job. My husband and I are without medical insurance and I pray that nothing goes wrong.

Here is Gladys White, 47 years old. She started at Diamond in 1973 as a production worker. After 7 years, she begged to be moved to another area. The solvents Diamond used had burned her lungs and had given her headaches constantly. She got her transfer, although she was upbraided for having an active imagination. The chemicals could not possibly have caused her to fall ill, or so her supervisors and company nurses said.

But her health continued to deteriorate and in 1989 she was diagnosed with sarcodosis, fibrosis, and tuberculosis. She went out on disability.

The strike caused her to lose her health benefits. She has to be on medication which costs $100 per month. She has been denied Social Security disability.

My children try to help me, but it is a hardship for them. I am living with them as I cannot afford to live alone.

And she wants to thank those that are interested in her case.

This is another worker named Rachael.

I was a production worker with Diamond Walnut for 13 years. I have always worked hard and am self-supporting. I have tried looking for another job, but my age is holding me back. People don't want to hire those of us over 40.

Being on strike is so stressful. It takes a terrible toll on a person, both mentally and physically. I do not know what will happen from day to day. Without medical insurance I am frightened all the time that I will get sick and have no way to pay for medical treatment and end up losing everything to the State.

Here is another fellow.

Raul, a single father who was with Diamond Walnut for 11 years. He was counting on accrued time to turn into a nice retirement in another 8 to 10 years.

''I'm starting over,'' he says, ''and I'm too old to start over. I'm an electrician and there are lots of openings for electricians out there. But when they come up it is only for one or two positions, and there are hundreds of applications. My age hasn't seemed to be a problem, but then that isn't something they'd tell me to my face.''

Meanwhile, he has cashed in his life insurance and his savings bonds. His son was working but has been laid off. His daughter, still in high school, is working as many hours as possible. Her dreams of going to college are on the shelf now.

That is what hurts the most. I wanted so much to be able to help her through school. Now, even if she goes to State-funded community college, I can't afford to buy her books. But we're doing okay. We take each day as it comes. We have each other.

Ray Barbaza, a lift driver, worked his way up to that position over a period of 12 years. Sole supporter of his family.

The loss of benefits hit us hard. One time this last year we were all sick. I had to apply for MedCal. That was embarrassing enough, but my son requires special medication and I had to go through every department they could find and get their ''seal of approval.'' They made me feel like trash. Now I know how the homeless feel, having to throw dignity away and picking up the food basket. People should be productive and have pride in their ability, and take care of their own, but when you need help you swallow your humiliation and do what you have to do.

The stories go on, Mr. President. This was a plant where these workers took reduction of their pay when the company was facing a difficult circumstance. Profits then went up dramatically. They tried to get some recovery in terms of their wages and were permanently replaced. The Federal Government comes and helps to assist the companies. They are making dramatic profits. What has happened effectively is most of the workers have been replaced, and those that had been working over a lifetime for those companies are now facing a very grim future indeed.

Mr. President, I have some letters here that have been sent to our Secretary of Labor, who has been so involved in this issue, as well as in the minimum wage issues and other issues affecting working men and women in this country. He will go down in history, I think, as one of the really extraordinary Secretaries of Labor.

He has received a number of letters from men and women, because they understand how committed he is to their well-being. Secretary Reich has been kind enough to share three letters that tell the stories of three families that have suffered because a Federal contractor has used the taxpayers' money to permanently replace its striking workers.

This is on the Bridgestone/Firestone issue. Here is a letter to Mr. Reich, from Steve Barber.

I wrote you a letter a few months ago when my URW local 713 went out on strike after negotiations with Bridgestone/Firestone failed. Since then I have been permanently replaced by replacement workers. I have a wife and four children; two children are still at home, we support a daughter in her first year away at college, and our oldest son is serving his country in the U.S. Army.

At age 45, after almost 23 years at Bridgestone/Firestone, everything I've worked for is gone. As I walked picket this cold Superbowl night, I saw many young people leaving the plant. They now have my job. My advice to them: Do not start a family, do not get a 30-year mortgage on a home, do not count on retirement or a long-range future with that company. For someday, possibly sooner than in my case, for one reason or another, you, too, will be used and discarded like a paper plate, your youth spent entirely for nothing.

I was discarded because I believed I had a legal right to strike in this land of the free and the home of the brave. I was discarded because I belong to a labor union and don't believe in giving up my hard won rights, and I won't cross over into what is now a non-union plant.

The past 7 months I have hoped and prayed this dispute would be fairly resolved. I appreciate the support you, President Clinton and the many other Senators and Congresspeople have given us in trying to find a just solution to this situation. All I ask in closing is that you and President Clinton use any and all the powers at your disposal to end this senseless disruption that has changed and ruined the lives of my family, my fellow workers and my community.

And here is a second letter:

DEAR MR. REICH: I am writing to you regarding the Bridgestone/Firestone strike that has been ongoing for the past 6 months. My father is employed by the company, and he is a good father who has always been there for his children. However, he is a very proud man who would find it difficult to ask for help. I, on the other hand, am more than willing to do so.

The recent development of Bridgestone/Firestone threatening to fire all of the striking employees and permanently replace them has hit our entire family extremely hard. Although I and my brother and sister are grown and on our own, my father is nearing retirement and greatly needs to know that he will be financially secure in his golden years.

We are of the working class and do not have the luxury of worrying about such things as capital gains tax cuts or upper-class frills.

Needless to say how appropriate this letter is to read, today, after what we saw the House Ways and Means Committee do yesterday in terms of proposing the special consideration for capital gains, the benefits for which will go to the wealthiest individuals in this country. It is interesting we are debating this issue here that involves men and women who are workers trying to make a go of it to bring up their children, to pay their taxes, and to work, and here we are on the other side of the building where we meet this afternoon, just 24 hours ago, seeing proposed very substantial, effectively giveaways, to some of the more fortunate wealthiest individuals in our country.

Now, I get back to the letter.

Needless to say, we will not receive tax credits for laptop computers. My mother, my siblings, and myself are all teachers with a strong work ethic.

This is what this whole issue is about. This is about teachers. It is about workers, workers' families, about their children. It is about people that want to be a part of the whole American system.

However, I now fear all that my father has worked for during the largest portion of his life will be ripped away from him.

I know you are aware of this problem as I heard you explain on television that the Government cannot force Bridgestone/Firestone to settle with the union; however, I do feel there is much that can be done. The Government does not have to take a strictly hands off policy as they did not do this with either the Chrysler or savings and loan bailouts. In this case, economic pressures would certainly be a good motivator. Neither our Government nor its citizens should do business with a company who would permanently replace its legally striking work force, nor should they be legally allowed to do so.

There it is, Mr. President. This company wanted to go out and get the permanent striker replacements, so be it. All that the Executive order is saying is that they are not going to get additional business. We are not going to use additional kinds of taxpayers' funds to help assist this company. It has made that judgment. That is what this issue is all about, in order that we will protect the outcomes of the products that are being purchased by the Federal Government, and make sure that they will be top of the line, good products, made by a well-trained and well-disciplined work force.

The letter continues:

I am pleading with you to assist us in our fight which may now seem hopeless in the wake of the November elections. On the other hand, my father always says, ''You can't gain anything worthwhile without a struggle—this country was born in a struggle!'' I urge you to aid us in our struggle until a resolution to this strike is reached and until a law is passed that will protect all striking workers in the future from being replaced. After all, union members should not be persecuted for standing up for what they believe in and going out on a legal strike. Striking is one of the few acts of leverage that union members have to be heard.

That is from Marilana Hurst.

Here is just one other item to the Secretary, a short letter:

The American factory worker desperately needs help.

I need your help.

After 26-plus years, I have been permanently replaced by Bridgestone/Firestone at the Decatur, Illinois facility, for no apparent reason.

I have a factory-related permanent injury but it in no way affected my position as mold change/cleaner setup person.

Since Bridgestone bought our plant we have given scores of concessions, including * * *.

And he mentions some of the health plan givebacks.

Our total efforts as union members at 3 of the Bridgestone/Firestone plants have made them some of Bridgestone's most profitable plants, with Decatur, Illinois, Firestone Tire the most profitable tire plant Bridgestone had in the world in 1993 according to their own books.

These are companies that have had enormous success, incredible profits. This is what we are talking about, the extraordinary phenomenon that has taken place in this country over the period of these last several years where we have had record profits from so many of the companies, for the companies and for individuals. Yet, the people who have not participated in that kind of enhancement of our economy are the men and women who are out there working on the frontline.

They are the ones who, in many instances, have given their lives to companies and plants and factories and then are being discarded. There are two kind of employers, as we all understand. There are those who believe that the workers are an asset, that they should be trained, respected, and be a part of an enterprise with the idea that they are going to commit themselves to that enterprise and that enterprise is going to grow and expand.

This morning at a forum we held on increasing the minimum wage, we heard the extraordinary story of Mr. Curry, who owns three hardware stores on the south shore of Massachusetts, and is able to compete with the biggest operations in the country. He starts his people off at $10 an hour for a minimum wage with decent benefits. He does not have the turnover; he does not have to expend the money to train more people. He has good workers. He does not have absenteeism. He does not have the sick days that other companies have, and he provides a savings incentive also.

A number of those people who have worked there 5 and 6 years now have savings of $3,000, $4,000, $5,000, which they never imagined in the past. They are good workers. He has virtually no turnover, and had a 38-percent increase in sales last year, is able to do a job, and respects every one of the workers. He is not discarding them, throwing them out after a lifetime of dedication and commitment and work.

All we are saying is, if you are going to do that, Mr. Corporation, if you are going to do that, Mr. Executive, if you are going to treat your people like that, we do not want to support that with American taxpayers' money. We do not want to do it, not just because we do not want to, but because what we see when we do is more disruption, poor quality, poor productivity, and poor turnout on many of these items. That is what is unacceptable.

I welcome the fact that the President is looking out after the issues of quality and productivity and output, particularly with regard to the areas of greatest need, and that is in the area of national security and defense.

As I mentioned yesterday, we produce in my own State of Massachusetts at General Electric the engines for the F–15's, F–16's, F–18's, the advance fighter, and many of the best helicopter engines, as well. We want to make sure that the servicemen and women who are flying those planes are going to have the best in terms of the skills of workers who know how to build those engines, not permanent replacements for a few bucks cheaper an hour. I want to make sure that those men and women who are going to be flying in those planes and using weapons to defend their lives are going to have the very best. I am not prepared to take chances on it. That is what this is all about.

The letter I read was from Glen Buckner of Decatur, IL.

Mr. President, I will have other letters as well, but the point, I think, has been made, and that is that what we are basically talking about are the interests of working families. We hear so easily bantered around, ''Well, this is special-interest legislation for special-interest groups.'' You have heard who these people are. They are the men and women who are on Main Street, USA, who are the backbone of this country, and have built this Nation and made it the industrial power that it is. They are the ones committed and dedicated and loyal to their companies and to their corporations and who are trying, after they have tightened their belts and worked with company officials in order that the companies survive, to be able to participate in the expansion of the market—oh, no; oh, no; that is not possible.

That has been the record across this country. That has been the record across this country over the period of the last 12 or 15 years. That is something that has been a new phenomenon, and that is why it is important as well that we have this particular action.

Finally, Mr. President, having addressed both the legality of the President's position and the rationale for the issuance of this Executive order, I reviewed briefly today, along with my colleagues, Senator SIMON, Senator HARKIN yesterday, Senator MOSELEY-BRAUN, and many others who have talked, the citizens who are really affected by it. We now hopefully know who are the ones being impacted, and they are the families across this country, hard-working men and women. These are workers. They are the ones who are prepared to work the 40 hours a week, the 52 weeks of the year. These are the ones who are trying to educate their kids, trying to make sure their parents are going to live in some peace, some respect, and some dignity, and are facing the various pressures from all sides, particularly in these past weeks, I might add, that are threatening their lives or their families' lives.

That is why I think it is really extraordinary, as I mentioned yesterday, why it is that after we in this Congress spent a number of weeks debating the unfunded mandates issue, which we should and we did, and reached a conclusion on that, and then debated for a series of weeks the whole issue on the balanced budget and the changes in the Constitution and we have debated that and we reached some judgment and decisions, extremely important measures that we have been focusing on and addressing. There may be Members who agree and differ, but nonetheless the level and the nature of that debate and discussion was clearly motivated by individuals who were pursuing a national interest.

The next measure—the next measure—that we are debating on the floor of the U.S. Senate is not how we are going to enhance the quality of life of

working families in this country; not what we are going to do about the children in this Nation, the increased numbers living in poverty; not what we are going to do about those young teenagers, not about how we are going to enhance their possibilities in schools and education; not about the children of working families trying to work their way through college; we are not even talking this afternoon about the security in the communities of these working families; we are not talking about the air they breathe; we are not talking about the water they drink; we are not talking about the quality of life of their parents. No, what we are talking about this afternoon is how we are going to diminish their economic power in being able to fight for a decent wage to provide for their families.

That is what we are debating here. We debated it yesterday, and we are debating it today. We are going to be debating it on Monday. We are going to have a cloture vote on that to see how we can jam, how we can squeeze, how we can pressure down the economic rights of working men and women. That is what we are debating here.

As I mentioned the other day, at the end of the debate today, who among us is going to go on back to their house and say, ''Look, I did something in the U.S. Senate today that is going to give a little more hope to children, to a mother in terms of a day-care program. We are not going to be able to do all the things we want, but we are going to do a little something. It is going to be better tomorrow or the next day.'' Or, ''I am going to do something to strengthen the quality of education.'' Who is going to leave here tonight believing that? Or, ''I am going to do something that is going to mean greater economic good for the workers of the country.'' Who is going to do it? No one is going to do it.

What we are going to do, some of us, is go back and say that we tried to work for working men and women against an overwhelming onslaught that somehow believes we are out of skew in terms of the power of the working people.

I am on the Human Resources Committee. What have we been facing over the period of the last week? Repeal of the Davis-Bacon Act. Let us go ahead and repeal that act. Who benefits from the Davis-Bacon Act? The average income for working families is $27,000 a year for some of the toughest work in this country, working in construction—$27,000 a year.

What in the world have we got against working families that are making $27,000 a year? Is that what is ringing across this country, we have to undermine their ability to make that amount of money? Is that what people are crying about? Not in my State of Massachusetts.

We are trying to diminish their ability by the changing of just the prevailing wages. Maybe there are suggestions and ideas of how to make it more efficient. Maybe it has to be adjusted to eliminate paperwork. That is fine. We have had hours of hearings on that.

We have had hours of hearings about what they call the 8(a)(2) provisions of Taft-Hartley. What effectively that means is let us eliminate the real essence of the Taft-Hartley Act so we can eliminate company unions. Why? Because of the power, the power that is out there in the trade union movement?

I have difficulty, in reading my mail, seeing that that is something of a burning, passionate interest to the people of our State. What they want is decent jobs with good benefits and a good future and doing something about violence in the community and strengthening education.

But, oh, no, here we are trying to do something to undermine workers under Davis-Bacon. We are trying to do something about changing Taft-Hartley laws, about the power, the power of workers, trying to represent economic interests of working people.

What are we saying? It is all out there. That is part of the things we have been doing in January and February. And then in the meantime what are we doing about the children of these working families? Well, I will tell you what we are doing. We are cutting back on giving any kind of day care support to families. We are cutting right back on that. The families that are trying to make it, both parents trying to work, needing a little day care, we are cutting back on that program.

And then we have a son or daughter that we would like to be able to help, because we live in a major city, to make sure that kid over the course of the summer, for those parents who are working hard to keep them in school, make sure you try to keep them out of trouble. Oh, no, we are cutting all the summer jobs programs, not only for this summer but the summer beyond that. We cannot wait to do that. Cut that out, too. Cut that out, too.

So now we have done that. And just by the way, if you happen to have a child, because you are out there working, who happens to get into a good community college or State college, you have, as in my State, the highest public college tuition in the country under my Governor. We had an excellent university system. In those budget cuts, we are sticking it in Massachusetts to college students with higher fees and higher tuition. So we are No. 3 in the country in terms of the costs going up.

But we are not satisfied at what has happened up there. We are going to say that anyone who borrows the money is going to have to also pay the interest for that borrowing while they are in school. And in the meantime, you might have the idea you want to work while you are in school in a work-study program. Who qualifies for work-study programs? Middle-income working families. We are going to eliminate that as well. You are going to have to pay more, and we are going to deny you the opportunity to work while you are going to school.

Mr. President, you have to ask yourself what has happened out there, what has happened across our society, that we are declaring war? That is what this is. We will have seen battlegrounds in countries that have been at war that will be not as adversely impacted as what we are doing to working families, to their children, the very small.

I have not even mentioned cutting back on the WIC programs. I have not even mentioned cutting back on the school lunch programs, cutting back in terms of special education for economically disadvantaged, cutting back on their teachers. We have not even talked about that out here.

So not only are we diminishing the power of those who are attempting to work and want to work—two members of that family—we are after their children, the very small, the most vulnerable, those in their early teens who may need that opportunity to begin working when they are 13, 14, and 15 in programs that bring together the public and private sectors in extraordinarily cooperative ways as they have done in Boston, MA, the great, great cooperation in the public and private sector, as they have in education with the Boston compact that basically says to any kid that is able to gain entrance into college, they are prepared to raise the funds to augment and supplement that program so that kid can go on into school and college, the public and private sector working together. We are drawing that right on back. We are unraveling it, pulling the threads on those kinds of agreements and contracts.

On a Friday afternoon, with the American public as concerned as they are about the state of our economy, with more hopeful news today as we have seen unemployment go down across our Nation with some 350,000 new jobs which have been created, we are out here now talking about how we are going to undermine the working families.

Mr. President, I have not even mentioned the suggestions that have been made, as I look over and see my friend and colleague from West Virginia, who has been such an advocate on the health care issue, I have not even mentioned the kind of concern that must be out there for all of our senior citizens when they read the articles in the newspaper by our friend and colleague, the chairman of the Finance Committee, talking about the hundreds of billions of dollars in Medicare cuts that they are going to pursue in the period of this Congress that are going to impact our senior citizens.

And the other side of that, Mr. President, is to do what with them? Give tax advantages to the wealthiest companies and corporations and individuals. Now, that is the view that many working men and women must look at in

terms of where we are in the Congress. It is not a hopeful picture.

Mr. President, I am sure they are asking why, what did they ever do, trying to provide for their families, what did they ever do to deserve that kind of a threat? It is difficult enough, difficult enough, if you are looking at the real incomes of working families, the working poor, the lower—the four-fifths effectively, most dramatically in the three-fifths of our various tax filings, but almost four-fifths that have been constantly going down, constantly falling further behind.

Here we are out on the floor of the Senate with a proposal which says that if the company is going to have permanent strike replacements, we are not going to give them additional kinds of Federal largesse. And we have those who are so antiworker they are prepared to hold up the defense appropriations bill and to have us spending days here, which I welcome the opportunity to do, to speak for the working families. But we take up the time of the Senate to do it.

Mr. President, it just is unwise to attempt to tamper with the justification, legality, or public policy purpose for the President's Executive order. I will look forward to having more to say about it later in the debate.

I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I just listened, as I always do, very closely to my friend, the senior Senator from Massachusetts, and not only identify myself with what he says but the compassion with which he says it, and the persistence. He never quits. There is no Senator in this body or in the recent history of this body who ever fought so hard for so many things so constantly, whatever the hour, the day or the night, than the senior Senator from Massachusetts.

He has been talking a lot because not enough of us have come down to the floor to help him. You can hear the hoarseness in his voice. I have heard cracks in his voice, and they have been when he has spoken at the funerals of, most recently, his mother, and to mourn the death of his two brothers, Robert and John. I heard cracks in his voice then. He did his best to prevent that, and then, at the end, could not quite avoid it. And I think we all sort of wanted that to happen so we could share in his grief.

But if you hear cracks in his voice now it is because he is fighting just for what they would fight for. But he is tired. His voice is tired, but his spirit is not. I respect him.

There is a fellow sitting next to him by the name of Nick Littlefield who ought to be a Senator in this body from somewhere. He is Senator KENNEDY's chief of staff and he is everywhere where he needs to be. His optimism and his fighting spirit is matched, obviously, by the man with whom he works. But there is not any good cause or battle that Nick Littlefield will stay away from. So with the two of them on this floor all by themselves except for the junior Senator from West Virginia, I am proud to be down here this afternoon.

That is not to say I do not have a great deal of respect for the Presiding Officer who, I expect if he wanted to mix it up, would do pretty well, too. Although I suspect we might be on different sides on this particular issue.

Mr. President, everything he said is true, I might say to the senior Senator from Massachusetts. I hope that come next Sunday he will see 1,000 children bused in from all over this country, being fed by Members of the Congress—dinner, lunch—and then joining hands with Members of Congress, literally surrounding the Capitol. Literally hands around the Capitol—little children and children not so young—but all children who are about to have their hot lunches taken away or their breakfasts taken away or something else taken away from them by the zeal that exists around here to cut back on what is necessary for some people in our country to survive and to live while finding ways to increase the wealth of some of us who, frankly, do not need a whole lot more.

It is all very perplexing to me. I grew up in one party, the Republican Party. I became a Democrat at the time that President John F. Kennedy was President because I worked in the Peace Corps. Then I worked for the State Department, then VISTA. But over these past couple of months, this period of time alone has made me understand—not that I had to—why I did what I did and became a Democrat.

Because we are talking about lives at stake in the matter of this Kassebaum amendment. We are talking about situations where I myself have seen families torn apart.

Probably one of the most famous examples of strikers being replaced—at least in the recent years, and maybe not the most famous, but the most famous to me—took place in West Virginia, at a place called Ravenswood Aluminum. It lasted a year and a half. It was terribly bitter. It was terribly dangerous. It was so dangerous that people wanted to stay away from the area.

The Ravenswood story is about people of West Virginia who are not necessarily born with a silver spoon when they are born. They have to work. So when Ravenswood locked out its own workers, and replaced them with something called permanent replacements, we literally saw situations in families with a striker-replacer brother and a striking brother; or brother/sister, in the same household. Husband/wife; brother/sister; uncle/nephew. Those scars still exist, and the anger and what it did to that community have not yet fully healed.

I gave a speech there not long ago. That community has not yet recovered. That is what they still talk about and the crisis was several years ago.

So I associate myself with what my friend from Massachusetts has said. I also want to note the irony, which I think he perhaps raised before but I did not hear it, and that is the irony that the Kassebaum amendment is holding up a package before us to reduce the deficit and supplement the Defense Department.

Let me start by emphasizing that this question posed by Senator Kassebaum's amendment is clearly stalling the passage of a bill which has enormously broad support for very obvious reasons. The Kassebaum amendment has slowed down a bill that would cut the Federal deficit by $1.5 billion as soon as it is signed into law. I do not know how long it takes to print up a bill and send it over to the White House, but I expect it could be by Monday or Tuesday. The President would sign it and the deficit would go down $1.5 billion as a result.

We have been here for the last several weeks and month or more debating deficit reduction. How to do it, by an amendment to the U.S. Constitution? Or by human endeavor?

The Kassebaum amendment has slowed down a bill that will make our military forces more capable of dealing with national security emergencies or dangers, which is something not only folks on this side of the aisle talk about, but almost to a person the folks on that side talk about constantly. This will not happen for as long as this amendment prevents it from happening.

So let us be very sure that the American people understand what is in fact going on, on this floor. A week and 1 day ago, 28 Senators put together this bill, to both replenish critical parts of the budget for the Defense Department and cut Government spending in order to reduce the deficit. We could have passed that bill yesterday. Everybody was here. It is hard to do that today because very few people are here. We could have appointed Senate negotiators to work out the final details with the House. They could have met over the weekend. I expect they would have met over the weekend. They would have been meeting today. They probably could have reached an agreement today—and seen the Federal deficit come down as a result, after the President's pen struck the bill and signed his name.

But instead we have an effort to strengthen our military forces and to cut Government spending being held up by this amendment that has absolutely nothing to do with either of these critical objectives.

I find that ironic, I have to say. I just find that ironic. It is incredible to me to see this impasse over a deficit reduction bill after every single Senator on the other side of the aisle, except for one lone voice, who some want to drive from his party, spent more than a

month demanding the passage of a constitutional amendment because they felt so clearly that there could be no other way to reduce the deficit.

The fervor on the other side of the aisle over the balanced budget debate was remarkable. There was an awesome display of unity and singlemindedness. Once again, we are seeing proof that the balanced budget amendment is a very different matter than actually cutting Government waste. It is one thing to talk about it. It is another thing to do it—it's another thing to actually take tangible, real steps to cut that budget deficit. We are ready to do it. So if my colleagues on the other side of the aisle are so determined to really deal with the deficit, then why are they throwing up roadblocks to this amendment, which is an Executive order of substantial simplicity, which I will get into in a moment?

The Senate, although I suspect we could convince very few Americans of it, particularly when we do things like this, is not a political convention. It is supposed to be the place where we use our powers, our brains, our judgment, our convictions to get important work done.

I thought we had agreed on the need for this bill before us. In fact, 28 Senators last week, by a unanimous vote in the Appropriations Committee, did agree on that. That is where I understand 28 Senators to be—Republicans and Democrats—unanimous in their support for this bill. All the Senators who voted for this bill agreed that military readiness and deficit reduction should take priority over everything else that could take place during the course of this week. Nothing transcended that in importance, a proper judgment by both political parties.

But I guess that is not the case with some of our colleagues. I guess I am wrong. Instead, we have to burn up time talking about an amendment that tries to stop the President from doing something that is quite simple, that deserves support from both business and working families.

The President's Executive order, which this amendment attacks and seeks to defeat, is an effort to impose a basic condition on Federal contracts that by definition are financed by American taxpayers. We are not even talking about totally private arrangements. The condition in the Executive order says that businesses that want Federal contracts—and there is no law saying that a business has to seek Federal contracts—should not be ones that deal with valid, legal labor disputes by hiring workers to permanently replace their own employees.

The President's Executive order does not take away a business' ability to hire temporary replacements when dealing with a dispute. I repeat: If there is a labor dispute or a strike, a business can hire temporary workers for the duration of the dispute or the strike. And, therefore, this order does not expect a business to stop production. This order does not expect to close one iota of anybody's operations down or do anything to lose one dime of business. It simply upholds the principle that when the law—that is, the Federal law—gives workers a right to collectively bargain, or the right to protest conditions or practices, then employers do not have the right to punish those workers by eliminating their jobs for good.

That is not very complicated. I do not think that is particularly difficult to swallow. In fact, it was something that was fairly broadly accepted in the business community until all of a sudden it suddenly became an issue because some people wanted to make it one, and it has been one ever since.

So we have these votes more or less on an annual basis. We have a Federal law that gives workers the right to collectively bargain. That is established fact in this country. Some people like that. Some people do not like that. But that is the law. And it is available to anyone who collectively bargains.

They have the right to protest conditions. Well, I work in a State, and so do the rest of us, where conditions are not what they ought to be in a few places. Since all of us here in the collective body politic tend to get around our States a great deal, visiting plants and facilities, we see situations like this unless we close our eyes. We see situations like this. It is not very often, but we do see them and we do know that in our hearts. We know that.

So if workers lawfully and legitimately protest unsafe conditions or practices, then employers do not have the right to punish those workers by permanently eliminating their jobs. Replace the workers while the dispute is going on, that is permissible. Operations do not cease. Profits do not cease.

If you come to West Virginia and you have 100 job offers—at a Rite-Aid Drugstore or somewhere else—you will get 1,000 to 1,500 applicants, Mr. President. I suspect in some parts of the State of the Presiding Officer, that is true, too. It is uplifting in one way. It is just incredibly sad in another. People are so hungry to work that 1,500 people turn out for 50 jobs, jobs that often do not offer any health benefits. But they are jobs and they are better than not having jobs, and people want to work in both the State of Pennsylvania and the State of West Virginia. So people turn up.

This Executive order does not and cannot prohibit permanent replacements in all labor disputes. It simply says to businesses that, if you want to benefit from Federal contracts paid for by the taxpayers, you need to uphold certain standards, standards long established, long followed, long not disputed, accepted until all of a sudden they became an issue. The American people are constantly telling us they want Congress to get their money's worth when taxes are spent on Government programs and contracts and benefits.

Mr. President, I would argue that the Executive order is designed to do exactly that. Look at the research. It is a fact. Strikes involving permanent replacements last seven times longer than strikes that do not involve permanent replacements. So that is seven times more grief and economic and personal and family and community agony that need not be. Those are the facts.

If there are permanent replacements, the strikes, the worker disputes, the worker-management disputes will go on seven times longer. Strikes involving permanent replacement workers tend to be much more hostile, much more painful for both sides, and often turn what could be a fairly brief period of disagreement and negotiation into a much longer and often, I am sorry to say, violent impasse: gunshots, attacks on the roads, baseball bats, intimidation from both sides.

Permanently replacing striking employees can mean trading in experienced, skilled workers for inexperienced men and women. It does not have to mean that. It does not always mean that. But it can mean that. That is not to the advantage of anyone either, particularly if the business wants to continue to make a profit, to do well, and to compete on an international basis.

Mr. President, asking businesses that want Federal contracts to resist dealing with labor-management disputes in ways that are more costly, in ways that are more contentious and contrary to the principle of collective bargaining and cooperation, is not something that should be holding up a deficit reduction and military readiness bill, in this Senator's opinion.

I suggest to all of my colleagues that it is not in anybody's interest to struggle over the issue of replacement workers with so much blustering conflict amongst ourselves. Congress should be encouraging cooperation and doing everything we can. That is what all of the study groups on competitiveness tell us to do. We should encourage cooperation between both management and labor and between business and workers. We should treat the idea of collective bargaining as a friendly and, frankly, a very American concept.

There is nothing wrong, Mr. President, with collective bargaining. It is the way that people improve their conditions. It has a stark pattern. I remember going to South Korea 10 years ago. They did not really have any labor unions in South Korea 10 years ago. As of about 2 or 3 years ago, they had over 3,000. What has happened? Yes, there have been some incidents, some strikes, and that is natural as a labor union and a company try to come to terms with each other. Wages have started to increase, conditions have started to improve. The national wealth of South Korea is now growing enormously. Japan went through this. I spent 3 years as a university student in Japan, at a time when labor was not

strong, and then it became strong and now Japan has a higher industrial wage than the United States. The average worker makes more money there than they do here. And Japan is not particularly known as a country that is hard to do business with, if you get along with the Japanese. If you are an American company it could be harder, but amongst themselves, they do well.

So we should not treat the idea of collective bargaining as some kind of bizarre concept. It is inherent to the roots of this country and, quite frankly, I do not know where we would be without it. If half of this body really wants to encourage employers to resist problem solving and dispute resolution by hiring permanent replacements, then that is encouraging more conflict in the workplace and in our communities. Again, strikes are seven times longer where permanent replacements become the issue.

As I indicated before, I have great, painful knowledge about what happens in these situations. If you go to the community of Ravenswood, WV, a beautiful community in Jackson County, right by the Ohio river, employers were deciding whether to lock out their own workers, 1,700 of them—that is an enormous work force in that part of West Virginia—with permanent replacements. They made that decision. Everybody in West Virginia, including this Senator, watched the hurt that this labor dispute caused; it was genuine hurt—this is not a political speech. It was a genuine hurt within families. Families were just torn apart because, on the one hand, the need to work, and on the other hand, the need to play fair. This tore families asunder, and it was real. Families still do not speak to each other because of this issue. We watched this for over a year and a half in West Virginia, a State that can ill afford to have 1,700 people not working because an employer had the ability to punish its workers this way, and this employer tried very hard to punish his workers that way. It was violent and it was scary, and it hurt the image of West Virginia badly. We will never know how many families might have been saved from financial ruin, if the employer would have simply dealt with the labor dispute and gotten it resolved quickly.

Mr. President, I truly do not believe Republicans in the Senate need to take up the cause of businesses that want the power to punish workers with something called permanent replacements. We are talking about a relatively few number of businesses—the relatively few who, in a strike, will decide to punish in this extreme manner. Sometimes an employer will take this action during the course of the dispute and sometimes that will be the purpose of the dispute from the very beginning—to break the union, or something else. But it is the few. It is not many. But when it happens, it is awful. So we are not talking about a typical situation; we are talking about a very untypical situation. That excessive power simply is not necessary. The Executive order under attack by the Kassebaum amendment would still retain any business' lawful ability to bring in temporary workers, while a labor dispute or strike is getting resolved. But the point is that we should encourage cooperation, we should encourage resolutions to conflicts.

The Presiding Officer and I both come from States where there is a lot of coal mining. I can remember the days when, in my State, there were constant things called ''temporary restraining orders'' going before judges. Every time there was a dispute at the face of a mine between a worker and management over some little issue, or some big issue, the first thing they did—and the parallel is in the tort reform bill, where I expect the Presiding Officer and I will be on the same side—the first thing they did was call a lawyer and go to court. Then, of course, everybody got hostile and anxious, and the dispute went on forever, and no coal got mined and people did not make money and people could not put food on the table. The temporary restraining order—whatever happened in court—would be appealed.

Finally, management and workers decided in the coal industry in our State to simply say this is ridiculous, we are both losing. They sat down and worked out a way of working out their disagreements, which was to say that when a dispute occurred over a working condition or some rule or something at the face of a mine, which is underground where the wall of coal is, that the worker and the foreman at that area simply talked and worked it out right there. They agreed, workers and management, that this would be the system. I may have to fault my memory on this, but I think for 8 or 10 years, we had no temporary restraining orders whatsoever. Mining employers and workers simply decided that they were going to improve labor-management relations and they wanted it to work better. They wanted to be able to export coal which meant Japan, South Korea, and Canada had to depend upon the coal coming. Therefore, there had to be dependability and consistency that was in the interest of both workers and management. So they settled their disputes. I am talking about nothing different here.

But even if there is a situation where there is a labor dispute, still a company can bring in replacement workers until the dispute is resolved. The point is, we should encourage the cooperation and resolutions to conflicts. We should try to prevent painful, costly, divisive situations that break out—in Ravenswood and the other communities that have been discussed on the floor over the past day or so.

Again, I cannot understand why the President of the United States should not be allowed to condition Federal contracts on practices that would make us more sure that taxpayers' money would be spent efficiently. The logic of that, again, is where you do not have permanent replacements you have much shorter labor disputes by a factor of 7 and, therefore, money is saved for the taxpayers.

There is a lot of talk on this floor about playing by the rules. This Senator does some of it and a lot of Senators do some of it. Should not the President of the United States be able to suggest that businesses that want Federal contracts play by the rules as well? I mean, is that not reasonable? It is very obvious from statistics that workers and their families do not want to resort to strikes. When has there been a strike that has not been destructive of workers' interests, and especially in the short term?

People, generally, in this country want to work hard and make a good income and support their families. People have no choice but to work hard. But when the rare dispute breaks out, they should not have to fear the elimination of their jobs just because of a disagreement over wages or health benefits or safety standards. And I believe that deeply.

The Kassebaum amendment should be defeated on many grounds. It is a disruption to the first time this year that this body has finally been able to do something real about the Federal deficit and Government spending. The amendment is an effort to take the President's ability away to set some practical standards on how Federal contracts are given out. And this amendment will only encourage more labor-management conflict and strife, and everybody here knows that. If this amendment prevails there will be more of it which is not in anyone's interest.

I urge my colleagues to put aside the divisive tactics over issues that have to do with workplace and with relations between business and workers. Ask the families in Ravenswood, WV, what happened when an employer is allowed to respond to a labor dispute with permanent replacements. The answer is pain. The answer is suffering. And it is all totally unnecessary.

Everyone in the Senate should take a fresh, objective look at this issue, which is very hard for people to do. The lines are so set on it. Too many people here stopped actually thinking about this issue long ago and took positions. And in this case, I think that those who oppose this would do well to take a fresh look and not think about who is on the side of business and who is on the side of organized labor and what kind of points can we build up. That is irrelevant. All 100 of us should be on the side of cooperation. All 100 of us should be working to uphold the law that grants workers the right to collectively bargain. All 100 of us should insist that we get on with the job that the bill before us is about, which is called reducing the Federal deficit and increasing our national security.

I feel a special sense of obligation, I say to the Presiding Officer, because I

voted against the balanced budget amendment. I feel a special sense of obligation to get about the business of deficit reduction. I mean, there will be some areas where I will disagree with the majority, but there will be many areas where I will agree. I feel an obligation. Reducing the deficit helps the people of my State, too, in terms of future generations. Just as I think it was wise not to include, hopefully not to include, Social Security in any budget balancing effort, because people have a right to retire with dignity and confidence.

So I hope this amendment will be defeated. I think that is important. This issue comes up every year and I know it is treated sort of automatically by both sides. But it is not an automatic issue. It is an extremely real and personal one. It has to do with the fundamental rights of people. It is not something which happens that often. We create more havoc in taking up this fight every year than if we let the President simply go out and do what Presidents ought to be able to do in the interest of business and working people.

I thank the Presiding Officer and yield the floor.

Mr. HATCH. Mr. President, I rise today in strong support of the Kassebaum amendment.

I must admit, Mr. President, that in listening to some of the debate today, I have felt like I am in a time warp. Congress has had this debate last year, the year before last. We have been here before. And, in earlier debates on legislation that would have prevented employers from using permanent replacements during an economic strike, that legislation did not pass.

Notwithstanding Congress' failure to pass this legislation, it's back. The President has gone ahead on his own and by Executive order unilaterally imposed a major overhaul of labor law on Federal contractors.

I know there has been discussion on the floor on Executive orders issued by Republican administrations, but there cannot be any doubt that the current effort is unprecedented: This Executive order does not uphold existing law—it voids it.

I would urge my colleagues on both sides of labor issues to think twice about the type of precedent that this creates. This Executive order relies on the fact that use of replacements purportedly lengthens labor disputes. Does that mean that our next President can come along and by Executive order outlaw the right to strike by employees of Federal contractors?

The Executive order issued this week does not uphold rights guaranteed under law; it abrogates them. And the President's striker replacement policy is not merely an exercise of procurement prerogative, it regulates private labor relations and restricts private rights guaranteed under law.

I urge all of my colleagues to support Senator KASSEBAUM's amendment to withhold funds for this Executive order's implementation and enforcement.

Mr. DASCHLE. The practice of permanently replacing workers who are exercising their right to strike, as guaranteed by longstanding Federal labor law, is wrong. It is wrong to punish striking workers for exercising their rights, and it is wrong to use replacement workers to disrupt the collective bargaining process.

Since 1935, the National Labor Relations Act has expressly protected the right of workers to strike over economic conditions. Moreover, the act promises workers that they cannot be discharged by their employer for exercising this right.

Under current interpretations of the law, employers are not violating the National Labor Relations Act when they hire replacement workers during a strike and promise to make those positions permanent. Rather, these employers are taking advantage of a true anomaly in Federal labor law, one which sets out a dubious distinction between firing a striking worker and permanently replacing that worker.

To the worker, however, it is of little comfort to know that he or she has been permanently replaced rather than fired. The result in both cases is the same, and the right to strike becomes a right to lose your job.

I believe strongly that the Congress must pass legislation to get rid of this anomaly in Federal labor law. Unfortunately, a minority of the Senate was able to block passage of such a bill last year.

Having said that, however, I must emphasize that the President is not attempting to do by Executive order what Congress was prevented from doing last year.

There can be no disagreement that our Founding Fathers entrusted Congress with the power to adopt the laws of the land. To the executive branch, they assigned the duty of implementing those laws.

If the Executive order issued by President Clinton upset this balance of power, I would strongly oppose it. But it does not.

Rather than usurping the policymaking role of the Congress, this Executive order sets out the terms under which the executive branch will fulfill its own constitutional role.

Implementing the laws passed by Congress involves the procurement of goods and services by the Federal Government. To do this, the Federal Government enters into contracts with suppliers, as any business would do.

In these dealings, the Government wants the same things that businesses want: a quality product, a reasonable price, dependable service. And like any business, the Federal Government selects the suppliers it believes are best able to meet these objectives.

Indeed, with precious taxpayer dollars at stake, I'm sure most Americans want the Government to do business with only the most stable and reliable companies.

Are companies that replace their workers during a lawful labor dispute the most stable and reliable suppliers for the executive branch? The President—the CEO of the executive branch—has determined that they are not.

The use or threatened use of permanent replacement workers makes strained labor-management relations even more contentious. In fact, disputes involving replacement workers last seven times longer than disputes that do not.

A company that replaces its workers during an ongoing dispute is trading in its experienced employees for inexperienced ones. This necessarily raises questions about the timeliness of delivery and quality of product these replacement workers will produce.

Should the Federal Government take a gamble on products that might not be up to snuff? The President has determined that it should not.

let's not forget that NASA and the Defense Department spend a large percentage of the Federal Government's total procurement dollars. When it comes to space and defense programs, it is critical that these dollars go to contractors of the highest caliber.

On the other hand, it must be noted that this Executive order will not prevent the Defense Department or any other Federal agency from contracting with the supplier that best fits its needs.

In fact, the order specifically guarantees the flexibility of an agency to enter into contracts with companies that have been debarred by the Secretary of Labor if a compelling reason can be shown.

My Republican colleagues are suggesting that President Clinton has taken an extraordinary step by issuing this Executive order. On the contrary, Executive orders have been used throughout the years by Democratic and Republican Presidents alike to set forth important policies of the Federal Government.

And addressing the issue of labor-management relations in an Executive order is not new, either. President Reagan did it in 1981 when he permanently banned the striking PATCO members from returning to their jobs as air traffic controllers.

And President Bush did it twice in 1992 when he issued Executive orders to prohibit the use of prehire agreements on Federal construction contracts and to require Federal contractors to post notices with regard to union membership.

What it comes down to, then, is this: President Clinton has revised the executive branch's procurement policy—nothing more. And he has done it in a way that will help ensure that the Federal Government obtains the best goods and services it possibly can from its suppliers.

If the chairwoman of the Senate Labor Committee disagrees with this policy, she should introduce legislation to overturn it.

That bill should be the subject of hearings by her committee and considered through the normal legislative process, not tacked on to a supplemental appropriations bill.

The chairwoman is attempting her own end run around the legislative process. I urge my colleagues to reject this effort and to get down to business with what is a very important measure to our national defense.

IMPACT OF RESCISSION ON DOE CLEANUP PROGRAM

Mr. GLENN. Mr. President, I rise today to express my strong concerns about the impact this rescission will have on DOE's nuclear weapons cleanup effort. The bill we have on the floor today reduces current year money for the cleanup program by $100 million. Other amendments being discussed may add to this cut. And we see where the House energy and water appropriations bill will reduce this year's funds for the program by an additional $45 million.

Quite simply, if this trend continues one outcome can be guaranteed. The cost to the taxpayer to complete the DOE cleanup—over the life of the program—will increase dramatically. By dragging our heels and refusing to adequately fund this program, we stretch out the time it will take and will increase the overall cost—not to mention the increased risks to workers and the public who may be exposed to radiation as a result of these delays.

Mr. President, I think it is important to discuss up front what the DOE cleanup budget is and is not. The majority of DOE's cleanup budget is dedicated to simply maintaining millions of tons of radioactive waste and scrap and thousands of contaminated facilities in a temporarily safe and secure condition while we try to figure out what to do with this material over the long haul.

Let me repeat that. The majority of the DOE cleanup budget doesn't actually pay for anything to be cleaned up. The majority of DOE's cleanup budget pays for things like waste management and nuclear materials and facilities stabilization. While there are most certainly ways to reduce these so-called landlord costs—and DOE, under Secretary O'Leary and Assistant Secretary Grumbly are actively seeking ways to do just that—these costs simply cannot be wished away, nor reduced entirely. Only about one-quarter of the cleanup budget pays for environmental restoration, or actual cleanup.

Mr. President, some of my colleagues may be interested in learning what the fastest growing part of DOE's environmental budget actually is. I can tell them what it is not. It is not environmental restoration. In fact the fastest growing portion of DOE's cleanup budget is the category of nuclear materials and facilities stabilization. This category represents costs to maintain closed nuclear weapons production facilities in a stable mode until their final decontamination. These costs are often referred to as landlord costs. They represent administrative costs, utility costs, and unique safety related costs that are absolutely necessary to maintain whether the facility is operating or shutdown. These costs only go off the books when the facility is finally decommissioned.

Over the last several years, as policy decisions have been made to shut down these production facilities, these landlord costs have been transferred to the Environmental Management Program from the Defense Program within DOE. DOE's fiscal year 1996 budget request illustrates this process issue vividly. The fiscal year 1996 budget request for the Environmental Management program includes $843 million to manage former defense facilities at Savannah River, Mound, and Pinellas which no longer have a production mission. Prior to this year's budget, these costs were born by DOE's Defense programs office. Budget cutters should keep this fact in mind when examining the Environmental Management budget. The scope of work—the number of facilities, people, and inventory which must be managed—within the EM program has expanded dramatically over the past several years.

Mr. President, as many of my colleague may know, my legislative and oversight work in environment, safety and health issues grew out of my concern about the condition of our country's nuclear weapon production complex. Ohio happens to be the location of 3 of the 17 major facilities in the United States which, over the past 45 years, produced the U.S. nuclear weapons arsenal. These 17 facilities are the ones we usually hear about when we talk about the DOE cleanup program—places like Fernald, Hanford, Savannah River, Rocky Flats, Los Alamos. However, many of my colleagues will be interested to find out that there are literally scores of sites around the country that fall under DOE's cleanup program. Most of these are associated in some way with the nuclear weapons program; however, some are associated with the nuclear navy program and others with energy research activities.

Mr. President, I ask unanimous consent that a list of the Department of Energy's cleanup sites—some 137 sites located in 34 states—be printed in the RECORD.

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

DOE EM SITES

ST #	Location	Installation/Site	*
AK–1	Amchitka Island	Amchitka Island Test Site	
AK–2	Cape Thompson	Project Chariot	C
AZ–1	Tuba City	Tuba City	U/C
AZ–2	Monument Valley	Monument Valley	U
CA–1	Berkeley	Lawrence Berkeley Laboratory	
CA–2	Berkeley	University of California	F/C
CA–3	Livermore	Lawrence Livermore National Laboratory	
CA–3	Livermore	Sandia National Laboratories—Livermore	
CA–5	Vallecitos	G E Vallecitos Nuclear Center	
CA–6	Canoga Park (L.A.)	Atomics International	
CA–7	San Diego	General Atomics	
CA–8	Palo Alto	Stanford Linear Accelerator Center	
CA–9	Oxnard	Oxnard	
CA–9	Santa Susana	Santa Susana Field Laboratory	
CA–9	Santa Susana	Energy Technology Engineering Center	
CA–10	Davis	Laboratory for Energy-Related Health Research at U.C. Davis	
CA–11	Imperial County	Salton Sea Test Base	
CO–1	Grand Valley	Project Rulison Site	
CO–1	Rifle	Old Rifle	U
CO–1	Rifle	New Rifle	U
CO–1	Rifle	Project Rio Blanco Site	
CO–2	Gunnison	Gunnison	U
CO–3	Jefferson County	Rocky Flats	
CO–4	Durango	Durango	U/C
CO–5	Grand Junction	Grand Junction Projects Office Site	
CO–5	Grand Junction	Climax Mill Site	U/C
CO–6	Maybell	Maybell	U
CO–7	Naturita	Naturita	U
CO–8	Slick Rock	Union Carbide	U
CO–8	Slick Rock	Old North Continent	U
CT–1	Seymour	Seymour Specialty Wire	F/C
CT–2	Windsor	Combustion Engineering Site	F
FL–1	St. Petersburg	Pinellas Plant	
FL–1	St. Petersburg	4.5 Acre Site	
FL–1	Largo	Peak Oil Petroleum Refining Plant	
HI–1	Kauai	Kauai Test Facility	
IA–1	Ames	Ames Laboratory	
ID–1	Lowman	Lowman	U/C

DOE EM SITES—Continued

ST #	Location	Installation/Site	*
ID–2	Idaho Falls	Idaho National Engineering Laboratory	
ID–2	Idaho Falls	Argonne National Laboratory—West	
IL–1	Chicago	University of Chicago	F/C
IL–1	Chicago	National Guard Armory	F/C
IL–2	Cook County	Site A/Plot M, Palos Forest Preserve	
IL–2	Batavia	Fermi National Accelerator Laboratory	
IL–2	Lemont	Argonne National Laboratory—East	
IL–3	Granite City	Granite City Steel	F/C
IL–4	Madison	Madison	F
KY–1	Hillsboro	Maxey Flats Disposal Site	
KY–2	Paducah	Paducah Gaseous Diffusion Plant	
MA–1	Norton	Shpack Landfill	F
MA–2	Beverly	Ventron	F
MA–3	Indian Orchard	Chapman Valve	F
MD–1	Curtis Bay	W.R. Grace & Co.	F
MI–1	Adrian	General Motors	F
MO–1	Kansas City	Kansas City Plant	
MO–2	Hazelwood	Latty Avenue Properties	F
MO–2	St. Charles County	Weldon Spring Site	
MO–2	St. Louis County	St. Louis Airport Vicinity Properties	F
MO–2	St. Louis County	St. Louis Airport Storage Site	F
MO–2	St. Louis	St. Louis Downtown Site	F
MS–1	Hattiesburg	Salmon Test Site	
MT–1	Butte	Western Environmental Technology Office (WETO)	
ND–1	Bowman	Bowman	U
ND–2	Belfield	Belfield	U
NE–1	Lincoln	Hallam Nuclear Power Facility	C
NJ–1	Jersey City	Kellex/Pierpont	F/C
NJ–2	Maywood	Maywood Chemical Works	F
NJ–3	Princeton	Princeton Plasma Physics Laboratory	
NJ–4	Middlesex	Middlesex Municipal Landfill	F/C
NJ–5	Middlesex	Middlesex Sampling Plant	F
NJ–5	New Brunswick	New Brunswick Laboratory	F
NJ–6	Wayne	Wayne	F
NJ–7	Deepwater	Du Pont & Company	F
NM–1	Albuquerque	South Valley Site	
NM–1	Albuquerque	Sandia National Laboratories—Albuquerque	
NM–1	Albuquerque	Inhalation Toxicology Research Institute	
NM–1	Albuquerque	Holloman Air Force Base	
NM–1	Los Lunas	Pagano Salvage Yard	
NM–2	White Sands MR	Chupadera Mesa	F/C
NM–3	Carlsbad	Project Gnome-Coach Site	
NM–3	Carlsbad	Waste Isolation Pilot Plant	
NM–4	Ambrosia Lake	Ambrosia Lake	U
NM–5	Farmington	Project Gasbuggy Site	
NM–6	Shiprock	Shiprock	U/C
NM–7	Los Alamos	Los Alamos National Laboratory	
NM–8	Los Alamos	Bayo Canyon	F/C
NM–8	Los Alamos	Acid/Pueblo Canyon	F/C
NV–1	Fallon	Project Shoal Site	
NV–2	Tonopah	Central Nevada Test Area	
NV–2	Nellis AFB	Tonopah Test Range	
NV–2	Mercury	Nevada Test Site	
NY–1	Buffalo	B&L Steel	F
NY–2	West Valley	West Valley Demonstration Project	
NY–3	Tonawanda	Seaway Industrial Park	F
NY–3	Tonawanda	Ashland Oil #1	F
NY–3	Tonawanda	Ashland Oil #2	F
NY–3	Tonawanda	Linde Air Products	F
NY–4	Lewiston	Niagara Falls Storage Site Vicinity Property	F/C
NY–5	Niagara Falls	Niagara Falls Storage Site	F/C
NY–6	Colonie	Colonie	F
NY–6	Schenectady	Knolls Atomic Power Laboratory	
NY–7	Manhattan	Baker & Williams Warehouse	F/C
NY–8	Upton, LI	Brookhaven National Laboratory	
OH–1	Columbus	Battelle Columbus Laboratories	
OH–1	Columbus	B&T Metals	F
OH–2	Fernald	Fernald Environmental Management Project	
OH–3	Ashtabula	Reactive Metals Inc./Fields Brook Site	
OH–4	Oxford	Alba Craft	F
OH–4	Fairfield	Associated Aircraft Tool & Manufacturing	F
OH–4	Hamilton	HHM Safe Site	F
OH–5	Painesville	Painesville	F
OH–6	Piqua	Piqua Nuclear Power Facility	C
OH–7	Miamisburg	Mound Plant	
OH–8	Portsmouth	Portsmouth Gaseous Diffusion Plant	
OH–9	Luckey	Luckey	F
OH–9	Toledo	Baker Brothers	F
OR–1	Lakeview	Lakeview	U/C
OR–2	Albany	Albany Metallurgical Research Center	F/C
PA–1	Aliquippa	Aliquippa Forge	F/C
PA–2	Canonsburg	Canonsburg	U/C
PA–3	Shippingport	Shippingport Atomic Power Station	C
PA–4	Springdale	C.H. Schnoor	F/C
PA–4	West Mifflin	Bettis Atomic Power Laboratory	
PR–1	Mayaguez	Center for Energy & Environmental Research	
SC–1	Aiken	Savannah River Site	
SD–1	Edgemont	Edgemont Vicinity Properties	C
TN–1	Oak Ridge	Elza Gate	F/C
TN–2	Oak Ridge	Y–12 Plant	
TN–2	Oak Ridge	Oak Ridge K–25 Site	
TN–2	Oak Ridge	Oak Ridge National Laboratory	
TX–1	Falls City	Falls City	U/C
TX–2	Amarillo	Pantex Plant	
UT–1	Green River	Green River	U/C
UT–2	Salt Lake City	Salt Lake City	U/C
UT–3	Mexican Hat	Mexican Hat	U
UT–3	Monticello	Monticello Millsite and Vicinity Properties	
WA–1	Richland	Hanford Site	
WY–1	Spook	Spook	U/C
WY–2	Riverton	Riverton	U/C

* U=UMTRA; F = FUSRAP; C = COMPLETED

Mr. GLENN. Mr. President, in the early 1980's I chaired hearings which revealed serious worker safety and health problems at DOE's uranium Enrichment facility in Portsmouth, OH, as well at the Fernald uranium foundry outside of Cincinnati. These hearings were among the first public examinations of the nuclear weapon complex. Due in part to decades of secrecy and

the cold war urgency to produce nuclear weapons at any cost, little attention was historically given to worker safety or the environment. After becoming chair of the Governmental Affairs Committee in 1986, I significantly increased the number of oversight hearings of this heretofore neglected program.

As problems were uncovered at Ohio's facilities, I began asking whether similar problems existed at DOE's other sites around the country, including Savannah River, Hanford, Rocky Flats, and our national labs. Often utilizing the auditors and investigators of the General Accounting Office, the answer which all-too-often came back was, ''Yes, in spades.'' One example shows how massive the nuclear weapons cleanup has become. In 1985, I asked GAO to estimate the cost of cleaning up DOE's facilities. Their answer was $8–12 billion, a significant sum. By 1988, that figure had risen to $100 billion. Now, in 1995 GAO's best guess is over $300 billion, with the caveat that much of the technology does not yet exist to do the job. Over the past several years, the fastest growing program within DOE has been the cleanup program. We are currently spending over $6 billion every year to address the very real environmental problems at these sites.

However like any other government program which grows exponentially in a short time, the growth of DOE's cleanup program has resulted in waste and inefficiency. My investigations into the DOE weapon complex have focused on exposing the serious environment safety and health problems which exist there, but also on the Department's ability to address and manage these problems efficiently. One particular problem has been DOE's contract management practices, which were all-too-often inadequate and failed to properly account for or track literally billions of dollars of taxpayer funds. Governmental Affairs Committee investigations into DOE's contracting practices have resulted in taxpayer savings in a variety of ways, from reducing the cost of drilling wells at Hanford, to controlling affiliate contracting relationships at Savannah River to implementing improved planning and management tools for estimating and tracking program costs at all sites.

I am pleased to say that the Department, under Secretary O'Leary's leadership has made a number of very real efforts to get waste and mismanagement problems under control. First and foremost Secretary O'Leary has agreed to reduce the DOE budget by $10.6 billion over the next 5 years. Within this reduction, the cleanup program has agreed to reduce its spending by $4.4 billion over the same timeframe. The DOE contract reform initiative and reorganization efforts also will strengthen the Department's ability to do more with less.

As the magnitude of the nuclear weapon cleanup becomes clearer, many people are beginning to suggest that we back away from our obligation to remediate these sites, saying that it is simply too expensive. ''After all,'' these critics say, ''these sites are remote and few people live there. Aren't there more cost-effective ways we can spend taxpayer dollars?'' I simply do not agree with the premise that we can back off of this cleanup effort. While it is true that many of the most contaminated sites—like Hanford and Savannah River—are remote, they are unfortunately situated near major drinking water supplies. If little is done now, it is likely that our children or grandchildren—even those living far from these sites—will have to contend with severely contaminated water. And for every site that is remotely located, the Department has sites like Rocky Flats, outside of Denver, or Fernald, outside of Cincinnati, which are located near major population centers.

I am convinced that the answer to cleaning up these facilities will not be found by putting off to future generations the responsibility of dealing with these problems. I intend to continue to exercise broad and vigorous oversight in this area during the 104th Congress.

Mr. President, I will have more to say about this program as we proceed through this year's budgeting process. I would close by encouraging my colleagues to review information which describes the Department's fiscal year 1996 cleanup budget in greater detail. I ask unanimous consent that this material be printed in the RECORD.

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

WHAT HAVE WE DONE?—ENVIRONMENTAL MANAGEMENT ACCOMPLISHMENTS, 1989–1994

Cleanup of 16 former nuclear weapons and industrial sites (FUSRAP).

Cleanup of 14 Uranium Mills Tailings Remedial Action (UMTRA) sites.

Remediation of 5,000 public and private properties contaminated with uranium tailings.

Completed 119 Remedial Actions.

100 Facilities have been decommissioned.

9 Site-Specific Advisory Boards have been established.

30.4 million square meters of soil and uranium tailings removed.

16 million pounds of scrap metal recycled.

2.4 billion gallons of ground water and 1.8 billion gallons of surface water treated.

500 tanks removed or replaced.

55,000 pounds of shrapnel and ordnance removed.

2,200 acres of land stabilized.

488,000 drum equivalent of stored waste shipped offsite.

Disposed of 50,000 m^3 of low-level waste.

ENVIRONMENTAL MANAGEMENT PROGRAM

[Fiscal year 1996 Congressional Budget Request]

	Fiscal year—		Change
	1995	1996	
Waste Management	2,916.1	2,707.7	−208.4
Environmental Restorations	1,768.5	1,993.7	+225.2
Nuclear Mat. & Facilities Stabilization	838.9	1,679.7	+840.8
Technology Development	417.4	390.5	−26.9
Uranium Enrichment D&D	301.3	288.8	−12.5
Analysis, Education & Risk Mgt	84.9	157.0	+72.1
Corrective Activities	27.2	8.8	−18.4
Transportation Management	20.7	16.2	−4.5
Compliance & Program Coord	0.0	81.3	+81.3
Subtotls	6,374.0	7,323.7	+948.7
Use of Prior Year Balances	(257.5)	(300.0)	(+42.5)
SR Pension Funds	(0.0)	(37.0)	(+37.0)
D&D Fund Deposit Offsets	(133.7)	(350.0)	(+216.3)
D&D Fund Foreign Fee	(0.0)	(45.0)	(+45.0)
Totals	5,983.8	6,591.7	+608

Over 2,400 facilities will be transferred to EM from other DOE programs in 1995, adding an additional $843 million in site management responsibilities to the FY 1996 EM budget.

In December 1995 the Savannah River Site will begin removing High-Level Waste from storage tanks and ''vitrifying'' it into a safer glass form at the Defense Waste Processing Facility.

A minimum of 24 new or improved technologies will be made available for transfer to private industry for implementation and 50 technologies will be pilot-, bench-, or full-scale demonstrated in FY 1996.

Remedial action has been completed on 17 of 45 Formerly Utilized Sites Remedial Action Project (FUSRAP) and on 13 of 24 Uranium Mills Tailing Remedial Action sites.

16 Remedial Actions, 78 Assessments and 12 Decontamination and Decommissioning projects will be completed in FY 1995.

FISCAL YEAR 1996 CONGRESSIONAL BUDGET—OUTYEAR PROFILES

[Dollars in millions]

	1996	1997	1998	1999	2000	Total
	Budget authority					
Base	$6,592	$6,973	7,042	$7,115	$7,181	$34,903
Savings		(700)	(1,510)	(1,597)	(1,665)	(5,472)
Budget authority	6,592	6,273	5,532	5,518	5,516	29,431
	Outlays					
Base	$6,144	$6,686	$6,966	$7,070	$7,145	$34,011
Savings		(350)	(1,000)	(1,432)	(1,618)	(4,400)
Outlays	6,144	6,336	5,966	5,638	5,527	29,611

Mr. SMITH addressed the Chair.

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

Mr. SMITH. I thank the Chair.

(The remarks of Mr. SMITH and Mr. CHAFEE pertaining to the introduction of S. 534 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we had a good debate and discussion on the Kassebaum amendment earlier with a number of our colleagues. I would just like to make some concluding comments about where I think we are in this debate and discussion.

Earlier in the course of the afternoon, I talked in some detail about the legitimacy of the Executive order. I included in the RECORD the legal justification for the order and then summarized the policy considerations for the Executive order and responded to some of the questions that have been raised over the period of the last couple of days about whether the President exceeded his authority and responsibility in terms of issuing it.

Hopefully, for those Members who are interested, they will at least have an opportunity to read through the Attorney General's memorandum and some of the other material which I think spell out very clearly the responsibility that the President had for undertaking the Executive order, the legal justification for that order.

Just a few moments ago, I tried to put this proposal in the context of the discussions that we are having in the Senate of the United States and in the House of Representatives under the general rubric of the Contract With America. I think, quite frankly, Mr. President, it is appropriate to make these comments at this time because the amendment of the Senator from Kansas, in trying to undermine the President's authority and power, particularly the policy reasons for it, I think really helps put into sharper relief exactly what some of the public policy matters are that have been raised during the period of these past weeks and what I think the American people, particularly working families, should be very much aware of and I should think very much concerned about. I would like to take a few moments of the Senate's time this afternoon to address that broader issue.

The pending Republican amendment on permanent striker replacements is a skirmish in a much larger battle that is now unfolding in Congress in full view of the American people. Each day's developments under the new Republican majority in the Senate and House of Representatives raises increasing concern. The Republican's so-called Contract With America is being unmasked for what it is. It is not a Contract With America at all but a declaration of war on working families throughout America.

There is a fundamental hypocrisy behind many Republican positions in the current national debate. They do not mind Government stepping in with a generous helping hand for business; they think tax cuts for the rich and corporate welfare in the form of lavish Government subsidies for businesses are fine, but our Republican friends get upset when Government steps in to offer a helping hand to working families, to the elderly, to children and to those in need.

Democrats are proud to be the defenders of Social Security and Medicare for senior citizens, a fair minimum wage for workers, aid for college education, hot lunches for children in their schools. Democrats are proud to be on the side of all these individuals and families across America struggling to make ends meet, and we are proud to oppose any Contract With America that endangers all of these worthwhile programs.

President Clinton had it right when he said the Nation wants Government to be lean not mean. But wherever we turn in Congress today, we see mean-spirited assaults on programs that help people, and I would like to discuss a few of these basic priorities today issue by issue.

We know that education is a key building block of the American dream. While college costs rise to over $8,000 a year at many State universities and over $20,000 a year at many private colleges, a college education is too often an impossible dream for working families. We know that students and their families are struggling hard to find the finances needed to pursue the education and the training they need.

Yet, Republicans are proposing the largest cuts in student aid in the Nation's history. The proposals in the Contract With America would slash $20 billion from student aid over the next 5 years; an additional $20 billion that students and working families would have to come up with from their own pockets.

The contract proposes to eliminate the interest on student loans the Government now pays while students are in school. Under current law, interest does not build up on student loans until students graduate and can start paying back their loans. Slashing this interest subsidy will save the Federal Government $12 billion over 5 years, but at what price? By deeper indebtedness for students, as much as 20 to 50 percent deeper.

For a student who borrows the maximum amount to pay for 4 years in college, the Republicans' cut would add $3,000 in extra interest payments. Instead of $17,000 in loans to pay off college, the student would owe $20,000. And that is not all. Republicans are also calling for the elimination of the campus-based grant and loan programs that help students pay their way through college. That is another $7 billion in cuts that will hurt the Nation's students.

Republicans extol the virtue of work, yet they propose to eliminate the highly successful work-study program that enables students to work at jobs on campus and in their communities to earn part of their financial aid. And the only ones that are eligible for those are, again, working families, the sons and daughters of working families. There is a sliding scale and it gets up to maybe $62,000, $64,000 for three members of a family in school.

You are talking about a program that is targeted, again, to provide working families' students to be able to gain additional resources as a result of working at jobs on campuses and in the communities as part of a financial aid package.

It is not as if the States will pick up the slack. In Massachusetts, State financial aid for students has been cut by almost a third since 1988. Tuitions and fees charged to students at the State university have doubled. If the Republican cuts go through, Massachusetts students will lose $70 million in Federal student aid a year, more than the total amount the State spends on student aid.

Republicans claim they want to balance the budget so as not to bury the next generation in debt, but they are more than willing to bury the Nation's students in debt. In fact, Republicans are proposing at the same time to add to the deficit in order to protect the banks at the expense of students. And I want the attention of the Members on this particular issue affecting students in their own States.

Last Friday, Senator KASSEBAUM introduced a bill to cap the new Federal direct lending program for college students. That program began in 1993 under the leadership of President Clinton and Democrats in Congress but also with the support of Senator Durenberger, Senator JEFFORDS, and other Republicans. That particular program has cut college student loan fees in half and lowered interest rates on their loans. It has eliminated the huge and confusing bureaucracy that makes it difficult for students to receive their loans on time and even harder for them to pay back their loans.

Under the direct lending and current law, students will save $2.2 billion over 5 years and taxpayers will save $4.3 billion. But banks do not like the new program because it reduces the profits they were making at students' expense. The Republicans want to stop the direct lending in its tracks, even though stopping it will add to the deficit in the long run.

The Republican priorities are clear. The Democrats put students and education first; Republicans put the banks first, even ahead of reducing the deficit.

The economy, the Treasury and the families across America will suffer if the next generation of students have to start their working lives under a

mountain of debt and cannot afford the education and training they need to be productive workers. Slamming the door of college in the face of the Nation's students is not a Contract With America, it is an insult to America.

The next issue is health care. Few things are more important to the security of working families than affordable quality health care. Few things are more important to senior citizens than Medicare. But for the new Republican majority, the tax cuts for the wealthy and the protection of corporate profits are more important than the health care of American workers and their families and Medicare for our senior citizens.

Today, no working family is guaranteed affordable health care. Thirty million members of working families have no health insurance at all. The breadwinners in these families work hard—40 hours a week, 52 weeks a year. But all their hard work does not free them from concern about their health security. They cannot afford to buy health insurance on their own and their employers will not contribute to the cost.

Even families that have health insurance are not secure. No family can be sure that the insurance that protects them today will be there for them tomorrow when serious illness strikes. Lose your job and you can lose your coverage. Change jobs and you can lose your coverage. Your employer can decide your coverage is too expensive and drop it altogether. And your insurance company can decide you are a bad risk and cancel your current policy. More than 2 million Americans lose their health insurance every month.

The skyrocketing cost of health care is depriving workers of the wage increases they deserve. It is keeping real income stagnant, even as the economy grows and strengthens.

Last year, the Republicans drew a line in the sand against the simple and sensible idea that every employer should be expected to contribute to the costs of health insurance for their employees, even though most employers do so voluntarily today.

Last year, as their alternative the Republicans proposed reforms in the insurance market, to try to make health insurance more available. They offered subsidies to workers whose employers did not provide health insurance. But this year, this year the Republicans have backed away from even this minimalist approach. Health care is not even in the Republican contract. It is not in the agenda for the first 100 days. And the two Republican bills introduced to date provide not a single dollar to help working families afford health insurance.

The problem has not gone away. Despite the economic recovery, the number of uninsured rose by more than a million last year. Workers who still have their insurance are less secure than they were a year ago. Health care costs continue to rise at twice the rate of general inflation. But for the Republicans, now that there is no threat of new responsibilities on business, they feel no responsibility to address the needs of workers.

Families need a reliable system of health security for their retirement years as well. Older Americans are the most vulnerable to costly illnesses. The cost of health care in retirement threatens not only the security of retired workers but the security of their children and grandchildren as well, who will contribute everything they have to keep their parents from destitution.

For three decades, Medicare has provided health security for senior citizens. But today, the security of Medicare is in danger, and the Republican program threatens to destroy it. The Republican Speaker of the House of Representatives has said that Medicare should be rethought from top to bottom and that every decision on it must be made in the light of a balanced budget. The Republican chairman of the Finance Committee has projected $300 billion in Medicare cuts over the next 7 years. Independent estimates of the cost of the Republican contract project cuts in Medicare of an almost unthinkable 31 percent of projected program costs.

Because of current program gaps and out-of-control health care costs, the protection that Medicare provides is already inadequate. Last year, senior citizens spent an average of $2,800 out of their pockets for health care—four times what nonelderly Americans spent.

Just 8 years ago, in 1987, senior citizens spent 15 percent of their income for medical care—and that was too much. Today, that number has soared to 23 percent—almost $1 in every $4 taken from limited incomes that are already stretched to pay for food, housing, heat, clothing, and other essential expenses of daily living. If the medical costs of senior citizens in nursing homes and other institutions are included, the percentages would be even higher. I say senior citizens should be paying less for medical care, not more.

The damage done by reductions of scale contemplated in the Republican contract go beyond the increase of out-of-pocket costs. They would turn senior citizens into second-class citizens in health care. They would significantly boost the already excessive insurance premiums paid by working families. They would damage key health care institutions. They would be achieved by forcing senior citizens into managed care programs and denying them the opportunity to go to the doctor and the hospital they choose.

President Clinton has taken a strong stance on this issue—no Medicare cuts unless they are part of overall health care reform that protects senior citizens, working families, and health care institutions.

Democrats support these principles, but our Republican friends take a different view. Billions of dollars in tax cuts for the wealthy, paid for by billions of dollars in Medicare cuts for senior citizens.

Other important aspects of health security are protection from unsafe and ineffective prescription drugs, reasonable access to the physicians and other health professionals, especially for those who live in rural and underserved urban areas, and safe workplaces and a safe environment.

What is the Republican program? Hamstring the FDA so that drug companies can have higher profits, even though the American people will have worse protection. Cut the National Health Service Corps, so that people who live in rural communities and inner cities will have to go without care when they need to see a doctor. Roll back the rules that require businesses to provide a safe workplace for employees. Undermine the environmental protections that bring clean air and clean water.

In each of these areas, the Republican prescription for health care is a healthier bottom line for special interests and the wealthy, and greater risk of illness for American families. That is the kind of cost-benefit analysis we are getting these days. It is the wrong analysis, because it looks at the wrong costs and the wrong benefits.

Yesterday, the Republican chairman of the House Ways and Means Committee outlined a 5-year tax cut proposal as part of the Republican contract. It is a lavish tax break for the rich, that will inevitably be paid for out of the pockets of working families. It is an antifamily, antiwork, antichildren tax cut, and it does not deserve to pass.

It will cost the Treasury $700 billion over the next decade. It will drive up the deficit to levels unheard of even during the Reagan and Bush administrations.

Is it just coincidence that the total amount of the nutrition cuts recently proposed by the House Republicans—in WIC, school breakfasts, school lunches—will provide just enough to pay for the capital gains tax cut for families earning over $100,000? This is an affront to working American families, because it takes the most from those who have the least.

The current capital gains tax cut will be cut in half; 75 percent of the tax benefit from this cut will go to those making more than $100,000 a year—the top 9 percent of income; 50 percent of the benefit will go to the wealthiest 1 percent of the population.

The tax cut proposal also calls for accelerated depreciation deductions for business. A similar tax break was included in the Reagan tax cut in 1981. It was rightfully curtailed in the 1986 Tax Reform Act and it should not be expanded now.

The poor and the middle class have no resources for these types of investments. They would get no benefit from this provision. But it would provide $90 billion in tax breaks for the wealthiest corporations in America.

The Republican tax cut would also repeal the alternative minimum tax which now keeps major corporations from avoiding taxes altogether. If it is repealed, it will put $60 billion into the pockets of wealthy corporations and let many of them go entirely tax free.

In the unkindest cut of all, the Republican proposal would deny any tax relief to the lowest income families.

The original Contract With America made the $500 tax credit for children refundable, which means the tax relief would have been available to all families including those at the lowest income levels who need help the most. By deleting the refundable features of this tax cut the Republican plan will deny $13 billion in tax relief for these families.

Millionaires will get their tax cut in full, but to save money our Republican friends now offer no relief at all to the millions of families at the other end of the income scale. The plan makes a mockery of any sense of tax fairness and tax justice, and it must not be permitted to stand.

I can cite many other ways in which the so-called Contract With America declares war on working families and average citizens across the country. In the weeks to come we will have an opportunity in the Senate to debate all of these issues in full and I am confident that when we do, a fairer contract will be written. The real casualties of this war will be the worst provisions of the contract, not the people of America.

The PRESIDING OFFICER (Mr. JEFFORDS). The Senator from Utah.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. HATCH. Mr. President, I do not intend to be long but I would like to say a few words about the balanced budget amendment.

Mr. President, the international financial markets and the Chairman of the Federal Reserve Board have passed judgment on America's future economic power in the wake of the Senate's failure to adopt a balanced budget amendment. Their reaction paints a bleak picture of the future of our country, and does not suggest we will leave a legacy to our children we can be proud of. I ask those colleagues who once supported this amendment and who changed their votes this year to rethink their position again in light of this judgment.

Mr. President, the balanced budget amendment vote suggested to the world that the success of President Clinton and the Senate Democratic leadership in blocking the amendment signaled the triumph of business-as-usual and a continuation of the big-spending practices of the past. The markets reacted swiftly and strongly, and, I think, justly. The dollar dropped precipitously to record low exchange rate levels against the Japanese yen and the German mark.

Fed Chairman Greenspan, in testimony before the House Budget Committee on Wednesday, attributed the precipitous fall of the dollar in large part to the failure of this body to adopt the balanced budget amendment. The Wall Street Journal, the New York Times, and the Washington Times all reported that Chairman Greenspan agreed with those who pointed to the Senate's rejection of the balanced budget amendment—and its implication of continued fiscal irresponsibility—as the cause of the dollar's drop.

Chairman Greenspan reportedly opined that ''in futures markets—an important indicator that doesn't reflect current ups and downs in the economy—the dollar didn't begin to fall significantly until the Senate rejected the balanced budget amendment. * * *'' (Wall Street Journal, Mar. 9, 1995) He was quoted as saying, ''[t]here was apparent concern in the international financial markets that something significant was happening to our resolve with respect to coming to grips with the balanced-budget issue.'' (Id.)

He further noted that to continue on the path of $200 billion deficits—and I would add that that is precisely the path President Clinton has laid out for this country in his proposed budget—''would be unwise and probably impossible. * * * Indeed, given the weakness in the foreign exchange value of the dollar, world capital markets may be sending us just that message.'' (Washington Times, Mar. 9, 1995, p. 1)

In his testimony, Chairman Greenspan also pointed out the benefits of a balanced budget, which would be obtained through passage of a balanced budget amendment: a stronger dollar, lower interest rates, and a stronger economy.

Mr. President, I think the message is clear. The victory of President Clinton and a few of the Democrats who want to keep this country on a path of increasing debt and the business-as-usual spend and borrow policies was a defeat for the American economy and for the American people.

As we have said throughout the balanced budget amendment debate, the benefits of passing the amendment begin immediately and keep improving as Congress returns to a more rational fiscal regime. Failure to adopt the amendment means not just a continuation of the weakness of the past, but a worsening picture.

This Nation's fiscal freedom is at risk if we continue on President Clinton's path of irresponsible spending. If we wish to remain the power that we have been, we need to rekindle the values of thrift and responsibility in this Congress. And we should lock those values in place with a constitutional amendment to require a balanced budget.

The Senate should learn from its mistake—a mistake heralded as a serious economic mistake by world financial markets—and adopt the balanced budget amendment, and get on with balancing the budget. If we do this we can have the benefits Alan Greenspan pointed to: a stronger dollar, lower interest rates, and a stronger economy. And I would add to those benefits a more responsive and more responsible Government. All these things can be the legacy we leave our children. The alternative legacy is not one I would be proud to leave. We must pass the balanced budget amendment.

I believe that the time is this year. So I hope our colleagues will reconsider. I hope we can pass it.

I ask unanimous consent a number of articles from the various newspapers be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 9, 1995]

FED CHAIRMAN BLAMES DEFICIT FOR DOLLAR'S FALL

GREENSPAN ALSO CITES DEFEAT OF BUDGET AMENDMENT, BACKING GOP CHARGES

(By Lucinda Harper and David Wessel)

WASHINGTON.—Federal Reserve Chairman Alan Greenspan blamed the weak dollar on a persistent U.S. government fiscal deficit and failure of Congress to pass a constitutional amendment to force a balanced budget.

Calling the dollar's fall ''overdone . . . unwelcome and troublesome,'' Mr. Greenspan told the House Budget Committee that it ''adds to potential inflation pressures in our economy.''

The dollar rebounded yesterday for the first time in days. The rise, which began before Mr. Greenspan's testimony, took the dollar to 91.35 yen from 90.05 yen the day before and to 1.3940 marks from 1.3688 marks. Several European nations yesterday raised interest rates to try to boost their currencies against the German mark.

Mr. Greenspan said nothing yesterday to suggest he contemplates raising U.S. interest rates to help the dollar. Indeed, he repeatedly said the best way to help it is to reduce the budget deficit. But in his testimony, he avoided the word ''ease''; his use of that word in earlier testimony, when referring to U.S. interest rates, has been cited by some analysts as one factor contributing to the weak dollar.

In his most detailed commentary since the dollar began plunging, Mr. Greenspan said the U.S. currency began to get weaker ''as the economy started to give evidence of slowing down'' and interest rates on one- and two-year maturities fell. Lower U.S. interest rates make the dollar less attractive to global investors.

But in futures markets—an important indicator that doesn't reflect current ups and downs of the economy—the dollar didn't begin to fall significantly until the Senate rejected the balanced-budget amendment, Mr. Greenspan said. The Fed chairman opposed the amendment, but said that with its rejection. ''There was apparent concern in the international financial markets that something significant was happening to our resolve with respect to coming to grips with the balanced-budget issue.''

Mr. Greenspan's analysis lent support to Republican charges that defeat of the amendment caused the dollar's collapse. ''The dollar has been sliding against the yen and the mark ever since the amendment went down,'' House Speaker Newt Gingrich said yesterday.

Although Clinton administration officials remained publicly silent on the dollar, the