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Senate

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Lloyd John Ogilvie, D.D., offered the following prayer:

Let us pray:

Almighty God, You have told us through the prophet Isaiah that before we call, You will answer, and while we are still speaking, You will hear. We thank You that prayer begins with You. It originates in Your heart, sweeps into our hearts, and gives us the boldness to ask for what You desire to give. Lord, may the desires of our hearts be honed by Your greater desire for us. Then Lord, grant us the desires of our hearts. Enlarge our hearts until they are capable of containing the gift of Your spirit. In communion with You, surpass our human understanding with Your gift of knowledge, our inadequate judgment with Your wisdom, and our limited expectations with Your vision. May this day be one continuous conversation with You. We ask this not just for our own peace and security, but for our responsibility of leadership. You have placed us in decisionmaking positions of authority. The margin of human error is an ever-present concern. So we yield our minds, hearts, wills, and imaginations to be channels for the flow of Your divine intelligence. Without Your help, we will hit wide of the mark; with Your power, we cannot fail.

Lord, bless the women and men of this Senate with a dynamic dialog with You for the decisive decisions of the day. As You give the day, You will show the way. Grant us wisdom, grant us power for the facing of each hour.

In Your holy name. Amen.

RESERVATION OF LEADER TIME

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 889, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR Program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an Executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

The PRESIDENT pro tempore. There will now be 1 hour for debate on the Kassebaum amendment No. 331, to be equally divided between the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Massachusetts [Mr. KENNEDY].

The distinguished Senator from Kansas, Senator KASSEBAUM.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Georgia [Mr. COVERDELL].

The PRESIDENT pro tempore. The distinguished Senator from Georgia is recognized.

AMENDMENT NO. 331

Mr. COVERDELL. Mr. President, I thank my colleague, the Senator from

Kansas. I rise in support of her amendment.

I had an opportunity to speak to this issue just yesterday to several assembled journalists. I said one of the striking features about the issue that is before us is how it reminds us of a rather growing pattern of this administration to circumvent the legislative branch. If you think on it, this issue, which is very controversial, has been argued before this Senate repeatedly and the provision that the President is trying to put in place has been rejected here. It has not found acceptance in the people's branch of our Government. So now we find the President trying to accomplish by Executive fiat what the people's branch of Government would not do.

It reminds me of Somalia, of Haiti, of Mexico, and now striker replacement.

Time and time again we see the administration coming for acceptance to the legislative branch, the people's branch, for the impact and reflection of what the American people are arguing or are wishing for. And when that cannot be accomplished, he will just bypass it, circumvent it. I do not think this is going to set very well with the American people as they begin to focus on a pattern of moving around their interests.

I am always taken aback, still. I have been here going into the third year. I still am perplexed by a city that seems to feel that it and it alone can establish the relationships in the free marketplace of this great country. And every time they do it, every time they meddle, invariably the reaction is disruption in the marketplace and the very thing the sound bites suggest we are trying to do, to help workers, as a result is not what happens.

If you destabilize the playing field that has existed between labor and management for the last 50 years, if management has no recourse in terms

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



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of hiring a replacement worker if an extended strike takes place, then invariably you are going to have increased consumer costs, you are going to have business decisions to avoid this complexity, you will have businesses that decide this is not the place to build their business. And every time we add to the burden of management and how they build businesses, we make it harder and harder for people to work in their businesses. That is the outcome of this kind of interference in the workplace: less jobs, not more jobs—less jobs, not more protected jobs.

It has to be remembered, you cannot replace a striker today if it is a health-related issue or an environment-related issue. You can if there is an argument about wages that cannot be resolved. Only 3 percent of the work force in all these strikes have ever been replaced in this country.

Management does not want a strike. Management does not want to replace a worker. It is expensive, costly, time consuming, destabilizing.

I can see my time is about up, Mr. President. I support the amendment of the Senator from Kansas. I feel we are intervening in the free marketplace and it will be destabilizing to the work force of our country.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield 8 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, first of all, just so colleagues are clear before they cast this vote after listening to my colleague from Georgia—the Executive order does not resemble Somalia. It represents a lawful exercise of Presidential authority. The Federal Procurement Act, which was enacted by Congress in 1949, expressly authorizes the President to proscribe such policies and directives not consistent with the directives of this act as he shall deem necessary to effectuate the decisions of such act. And from Roosevelt to Johnson to Nixon to Carter to President Bush, we have seen such orders issued.

So let us just be clear as to what is at issue. Second of all, Mr. President, we are, of course, not talking about S. 55, which was on the floor last session. But again, for the record, for the people in the country, that piece of legislation which prohibited employers from permanently replacing striking workers was filibustered. It was blocked. So it did not pass.

This is an Executive order by the President which applies to situations where the Federal Government has a contract with an employer for over \$100,000 worth of business and that employer permanently replaces workers. This does not cover workers who were temporary replacement workers. We

are talking about permanent replacement. That is all we are focusing on. It is really a very simple proposition that we are voting on here today.

I say to my colleagues, who take another position on this issue, that I wish their characterization of labor-management relations had some relationship to reality because, if it did, I would be taking a different position in this debate. But the General Accounting Office reports that since 1985, employers have hired permanent replacements in one out of every six strikes and threatened to hire replacements in one out of every three.

Mr. President, I just simply have to tell you that all too often, what happens is either employers require major and unreasonable concessions of the union, then force people out to strike, then replace them with workers unsympathetic to the union, and then move to decertify the union. That is called union busting. And, in many ways, that is the issue that is before us because either that happens or, because the United States happens to be the only country among the advanced economic countries in the world that enables employers to carry out this practice, many other wage earners just simply are forced to live with outrageous concessions that are asked of them with sometimes very deplorable working conditions in terms of health and safety, much less wages, because they know, if they do anything about it, they will be permanently replaced.

Mr. President, the issue here is which side is the Government on? In the debate last week, while I was on the floor, I happened to remember Florence Reese, from Appalachia—which is my wife Sheila's home, in Kentucky—and her famous song, "Which Side Are You On?"

What the President's Executive order essentially says is, while many of us feel so strongly about this, if the Government is doing business with a company where the labor-management dispute causes the permanent replacement of striking workers, we ought not to use taxpayers' money to subsidize that kind of management practice.

Which side is the Government on? Are we on the side of union busting? Are we on the side of depressing wages? Are we on the side of forcing people out on strike and then permanently replacing them? Are we on the side of unsafe working conditions? Or are we on the side of working people, wage earners, and their having some leverage and ability to bargain for themselves and, yes, if necessary, to go out on strike—though no one likes to go out on strike—so that they are just not crushed?

Mr. President, that is the issue. Should the Government use taxpayers' money to support companies which permanently replace their workers in the labor-management dispute? It is that simple. That is the issue before us. That is why so many of us have taken such strong stands.

Finally, Mr. President, I know my colleague from Massachusetts, Senator KENNEDY, has been eloquent, powerful on the floor, on this issue. I think right now, in the 104th Congress, that so much of the debate and so much of the agenda is too abstract. There are no faces. There are no people.

Now, we look at these decisions on the House side. And we are talking about in Minnesota the Low-Income Energy Assistance Program. Let me tell you that in a cold-weather State like Minnesota—and I imagine Massachusetts—this is cruel for the elderly poor, for children, to just cut that out; and going after the Summer Jobs Program. We have had the debate here on school lunches, school breakfasts, and child nutrition programs. But are we going to do more for loopholes, deductions, and more by way of capital gains tax for large corporations and wealthy people? People—we cut one place. And those people have the least amount of clout, those most vulnerable citizens, and then we skew it to the very top of the population.

That is why this debate on the Kassebaum amendment has a significance. It has to do with the heart and soul of this 104th Congress. It has to do with where we stand. It has to do with who we represent or who we do not represent.

I can just say to my colleagues that I have seen all too often—I said this before on the floor of the Senate—people forced out on strike. I have seen people permanently replaced. I have seen the devastation of families. I have seen the devastation in communities. We had testimony in the Labor and Human Resources Committee from ministers, from business people, and others who talked about the divisiveness of all of this.

Mr. President, I come to the floor because I feel a real commitment to people whom I represent. To me, one that stands out in my mind more than any other is C.F. Industries, where workers were forced out on strike who did not want to go out on strike. I do not think they would mind my saying that they had a real sense of trepidation. They did not want to go out on strike. They were worried what was going to happen to them. But the company's offer was something they could not accept. The concessions that were asked of them went sort of directly to their sense of dignity about themselves. So there they were, outside on a Sunday morning, I went out there with the president of the AFL-CIO in the pouring rain. Their children were there. People who had essentially been permanently replaced were devastated. I do not think that should be a part of what the United States of America is about.

This amendment which deals with this Executive order by the President just deals with an Executive order that is a significant step in the right direction.

Mr. President, I urge my colleagues to vote against this amendment. I

think, as much as I respect my colleague from Kansas, this amendment is profoundly wrong in its impact on working people and families. I think it is profoundly wrong in terms of the message that it stands for as to what we are about. I think the Government ought to be on the side of regular people, ought to be on the side of wage earners, and ought to be on the side of working families. I think that is really the large significance of this vote.

I yield the floor.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Texas [Mr. GRAMM].

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we should invoke cloture. We should pass this amendment, and we should stop the President's effort to use Executive power to do what he could not do in Congress and what, I believe, is clearly within the jurisdiction of the legislative branch of Government.

What we are debating today is nothing more than special interest politics undertaken by the President to reward a special interest group—organized labor in America. The President is giving them something that is not in the public interest through Executive order since he was unable in the last Congress to get a very similar provision adopted into law.

Let me review very briefly what the issue is. Under current law, if I do not want to work for you, I have the right to quit. If I feel that your pay or your working conditions are unfair, I have the right not only to quit, but to join with other workers to withhold our labor.

That is my fundamental right as a free American. That is a right that, so far as I know, is supported by every single Member of the U.S. Senate. But the employer, who has put up capital and who has made an investment, also has rights. Those rights basically are that if I refuse to work for you, or if I join other employees in denying my labor, you have a right to hire someone else.

I, as a worker, understand that I have my rights and you have your rights. Under the balanced system, which is the law of the land, we have not had any major labor unrest since the short period immediately after World War II. That is because every worker knows what his or her rights are, and every worker understands the employer's rights. With that balance of relative power in the marketplace, we have had negotiations, we have had settlements, we have had progress, and we have had labor stability. As a result, we have experienced economic growth and prosperity.

What is being proposed now is not really a labor issue, it is a freedom issue. Basically, what the President has tried to do by Executive order is that which we had previously rejected; that is, to tell employers that if an em-

ployee quits or, in conjunction with other employees, withholds his or her labor, you do not have the right to hire someone else permanently to replace that worker. That is a violation of the rights of Americans who have put up their capital and who have made investments.

In my opinion, this is a freedom issue. And if you believe in freedom, you ought to be for this amendment.

So there are three issues. First, the President has tried, by Executive order, to do what he could not do through the legislative process. We ought to stop him because it is a violation of the implicit principle of separation of powers.

Second, the President is trying fundamentally to change labor law in a way that is not only unfair but in a way that will clearly result in more labor unrest. As a result, we will have more strikes than we have had in the last quarter century.

Finally, we ought to stop the President's special interest power grab, because this is a freedom issue. If someone proposed on the floor of the Senate that we stop workers from exercising their legitimate right to withhold their labor, I believe that every Member of the Senate would rise to his or her feet and denounce that effort. How can it be right to denounce that abridgment of freedom and yet not denounce the abridgment of freedom that results from telling an employer, who saved and worked and put up his capital, that he cannot hire someone to take the place of a worker who voluntarily refuses to work? I think that is the issue.

I hope my colleagues will vote for cloture and vote for this amendment.

Mr. HEFLIN. Mr. President, with regards to the Kassebaum amendment concerning striker replacement issues and the Executive order to which it pertains, I oppose the amendment. When this issue has arisen in the past I have supported substantial modifications to the striker replacement bill, including mandatory arbitration. These modifications would have substantially reduced strikes. Given my reservations, I have spent a good deal of time studying the Executive order. It is important to note that the provisions established by this order are much narrower in scope than striker replacement proposals made in the past and very limited in the number of businesses that would be affected.

From the outset and before I go any further, let me point out that the Kassebaum amendment violates the rules of the Senate which prohibit legislating on an appropriations bill. The procedure in the Senate is to pass legislative authorization or prohibition legislation and to deal with the matter of appropriations separately. The Kassebaum amendment clearly violates these rules.

Next, the underlying issue before the Senate is a supplemental defense appropriations bill. I do not think that

bill ought to be jeopardized by a non-germane issue that can be brought up through the regular legislative process.

In reference to the Executive order, there are two points that I think should be made. The first is that the order in question does not require that Federal contractors who permanently replace workers be barred from holding contracts with the Federal Government. The order only gives the Secretary of Labor permission to consider terminating contracts with companies who permanently fire lawfully striking employees. Even if the Secretary does decide to terminate the contractor on this basis, it takes only an objection from the head of the involved Government agency to have the contract reinstated.

There is also the issue of cost to the Government and ultimately to the taxpayers. We should realize that it is expensive for companies to hire replacement workers. For a business to change employees quickly costs a great deal of money. Considering how often we have seen some companies overcharge the Government in the past, it is completely reasonable to expect that the costs of hiring these replacement workers will be passed on to the Government and ultimately the taxpayers.

Mr. MOYNIHAN. Mr. President, the fundamental right of American workers to strike was guaranteed over a half century ago with the enactment of the National Labor Relations Act of 1935. Section 13 of the NLRA states:

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.

As a former Assistant of Labor under Presidents Kennedy and Johnson, I am disappointed that we find ourselves having to debate this issue at all. The amendment of the Senator from Kansas would prohibit the use of appropriated funds for implementation of President Clinton's Executive Order 12954, which provides simply that the Federal Government will not do business with contractors that hire permanent replacement workers.

Yet the hiring of permanent replacement workers directly contravenes the right to strike. A worker does not have any meaningful right to withhold his or her labor if his or her employer hires a permanent replacement worker.

The President issued a lawful Executive order on March 8. The legal authority for this order has been fully documented in a careful memorandum of law written by Assistant Attorney General Walter Dellinger. The memorandum has already been discussed on the floor during this debate, and was made part of the RECORD by the Senator from Massachusetts.

We ought not be in the business of gutting this Executive order through an amendment to an appropriations

bill. It is regrettable that this amendment has not been withdrawn. Its proponents failed to invoke cloture earlier today, and it is time we move on.

The opponents of the amendment have no desire to prolong debate on the DOD supplemental appropriations bill. We would prefer that the amendment be withdrawn so that the Senate can complete its work on the underlying legislation.

But it should be remembered that the antistriker replacement legislation, of which I have been a cosponsor since 1990, was repeatedly the subject of filibusters by our colleagues on the other side of the aisle. S. 55, the Metzenbaum antistriker replacement bill in the 103d Congress, got 53 votes for cloture last year. The Senate would have passed the bill last year had an up or down vote been permitted.

Fortunately, we still have Members in this Senate who can be counted on to fight for the rights of the American worker. The ranking member of the Labor and Human Resources Committee, Senator KENNEDY, deserves thanks and congratulations for his outstanding leadership on this issue. He has been on the floor for many hours, making his argument eloquently and forcefully—as only the Senator from Massachusetts can. I join him in opposing the amendment of the Senator from Kansas.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. COVERDELL). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

Mr. President, many of us here in the U.S. Senate that are opposed to the amendment of the Senator from Kansas believe that we ought to be working on the defense appropriations bill rather than on this amendment. I think it is important to understand who is really delaying the U.S. Senate from taking action.

Many of us who are opposed to this amendment feel that the national interest and national security would be served by moving forward on the defense appropriations bill. But our Republican colleagues do not apparently share that view and that is why we are where we are today.

Last week, the President issued an Executive order barring the award of Federal contracts to companies that permanently replace striking workers. The ink was not even dry on the Executive order and the effort was made here in the U.S. Senate to block the Executive order. And that is why we are where we are today, instead of completing action on the defense appropriations bill. Those of us on this side of the aisle are prepared, even though we are required to go through a cloture motion, to go on to the underlying measure and see that it is acted on and acted on expeditiously.

I was interested a moment ago when my colleague from Texas said that what the amendment we are debating

is about is the issue of freedom. I thought we disposed of that argument during the debate last week with the very profound and eloquent words of our friend and colleague from West Virginia, who talking about what real life is all about for working people—not the technicalities of Presidential power to issue Executive orders, but what real workers were facing at an important time in history, in terms of the mines of West Virginia.

I can still remember those words he recalled being told to the miners: "Clean up your place or you are going to lose your job." Sure, you had freedom not to have that job. You also had freedom not to feed your child; you had freedom not to pay your mortgage; you had freedom not to live in a home. You had that freedom because if you did not clean up your place at the end of a hard day's work, you had somebody else that was prepared to fill in. That is what we are talking about here. We are talking about the real experiences of working people.

I want to take a couple of minutes of the time of the Senate to talk about who we are protecting here today—the people who my colleague from Texas described as special interests. These are the kind of people that we on this side of the aisle are interested in protecting and that I am glad to stand with.

We are protecting Joyce Moore, who is married with three children. She worked at a laundry and also as a nurse's aide in a nursing home in Cincinnati, OH, for 13 years and was forced out on strike and subsequently permanently replaced. She was making \$6.77 an hour. As she said,

It ain't about money; basically, it is about respect. There is a lack of respect in there. I hate that we are all on strike because I enjoy getting up every morning and going to my job. I enjoy being around the residents, taking care of them. But we want a 3-year contract and a better health plan and a pension plan. Folks get sick and they need a health plan. When you have been there as long as I have, you deserve a pension plan.

But when Joyce Moore went on strike to get that respect, she was permanently replaced. That special interest was making \$6.77 an hour. We are interested in protecting her from being permanently replaced, so that she can provide for a family.

Jenette Hillman, 52 years old, worked at the nursing home as a rehabilitation aide for 25 years, and was making \$7.25 an hour before she was forced out on strike February 22 and permanently replaced 3 weeks later. She raised six sons. Now she is surviving only because one of those sons has moved back in with the family.

Bernadette Marion, making \$5.30 an hour as a nursing assistant, barely enough to take care of her four daughters, after being out on strike—she was permanently replaced and is living on a dwindling savings and a tax refund check.

These are the real people that are being affected the unfair employer tac-

tic of permanently replacing workers who exercise their legal right to strike.

Make no mistake about it, this is the opening skirmish in a larger battle that is now unfolding in the Congress over the rights of working men and women across the country. What is at stake in this battle is nothing less than the standard of living for working families.

Our Republican friends aim their opening salvo at a measure that is about simple justice for American workers. Under our national labor laws, it is illegal to fire a worker for exercising the right to strike. But because of a court-created loophole—not a legislatively created loophole; the loophole was not enacted by the Congress of the United States; it was a footnote on a court decision—because of the court-created loophole, workers who strike can be permanently replaced, which amounts to the same thing.

President Clinton was right to act to close that unfair loophole. And I am proud to stand with him in defense of that action.

Working families, Mr. President, are hurting. They have suffered a 20-year decline in real wages. Hourly pay is falling compared to other countries. The gap between the top 10 percent of wage earners and bottom 10 percent is wider in our country than in any other industrial nation. Yet, the new Republican majority, through this amendment and numerous other measures that are working their way through Congress, are advancing an agenda that is, in effect, an assault on working families. This attempt to block the Executive order on striker replacement is just one example of how this assault is being carried out, but it is an important one. So I want to take a few moments to talk about that this morning.

It is not just accidental, Mr. President, that what we have seen over the period of the past weeks—and it was illustrated in the excellent article in the Washington Post today by Mr. OBEY—is an attack on the legitimate interests and rights of working men and women to be able to protect their wages and to try and advance the interests of themselves and their families.

We have the actions which are being taken by the House of Representatives to basically undermine the School Lunch Program where working families' children go to school, to undermine the college assistance programs and loan programs by which working families are able to have their children go to the fine colleges and universities that exist in all of our States. Sixty-seven percent of the young people in my State of Massachusetts need some kind of help and assistance to go on to college. But what is the Republican leadership in the House of Representatives saying? We are to cut student aid programs and make hard-working families spend more to finance the cost of a college education.

It is an assault on the children who are going to the high schools, it is an assault on the teenagers who are trying to go to college, and it is a continued assault—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield myself 3 more minutes.

It is a continued assault by those who refuse to give a living wage to people who are trying to work.

That is what this is about. You can talk about the scope of Presidential power to issue this Executive order—and we have put into the RECORD the Justice Department's justification for it, which is well supported—and you can talk about whether the President is really right to do this as a matter of social policy.

But I will tell you, those arguments would have a lot more credibility if those on the other side were prepared to say we are willing to support an increase in the minimum wage for workers in this country who are prepared to work 40 hours a week, 52 weeks a year. But, no, they say, we are opposed to that too. Come on. Come on, Mr. President. What is this battle all about? Come on. You have to be honest when you are talking to the American people. You have to be straightforward about what this is about.

My Republican colleagues say you are wrong Senator, this is just an issue about whether the President had the proper legal authority to issue this Executive order. But at the same time they are saying,

No, Senator, we are not for enacting an increase in the minimum wage. No, no. You are quite right, we are for cutting back on school lunch programs for kids that are going to high school. Yes, we want to raise the cost of sending your children to the college and university. But we are not really assaulting working families. On, no, we are really for working families. Why do you get so excited out here on the floor of the U.S. Senate?

And only yesterday, in the Ways and Means Committee, they give tax breaks to the wealthiest individuals and corporations in the country by voting to lower the capital gains tax and effectively eliminating the minimum tax on corporations.

"No," they say, "it is just a coincidence that we are providing all these breaks and benefits to the rich at the same time we are making all these cuts in programs for working families."

Come on, Mr. President. This is the first major issue we have dealt with on the floor in the U.S. Senate this year that directly affects the working families of this country, and we are not going to be rolled over and stampeded on it. We are not going to be rolled over and stampeded on it.

The President is right to do this. He is right to issue this Executive order, not just from a fairness point of view and a social compact point of view, he is right to do it in terms of his responsibility as the Chief Executive to ensure that we are going to get good

quality products for the Defense Department, that we are going to make sure that those plane engines that are going into the F-15's, F-16's, and F-18's are good engines, made in my own State at General Electric by workers who have worked there for 25 and 30 years. We are not going to have to take the chance of having some replacement workers in there trying to fulfill a contract and not being able to produce a good, quality product. We are going to make sure that those runways that are being built are going to be good runways for those planes. We are going to ensure that the housing that is going to house our personnel in the military is going to be of good quality.

I do not know what is the reason for this assault on all these people making barely above the minimum wage. If that isn't bad enough, the Republicans are saying "We have other good news for you, Senator, in terms of those construction workers. We are going to take away the Davis-Bacon Act, that guarantees prevailing wages on federally funded construction projects." We are talking about men and women in the construction industry making an average of \$27,000 a year—\$27,000 a year. One of the first priorities of the Contract With America is to undermine their ability to make prevailing wages in one of the most dangerous occupations in this country, and that is construction work.

The PRESIDING OFFICER. The Chair advises the Senator that his time has expired.

Mr. KENNEDY. I yield myself 2 more minutes.

And we are going to repeal the Davis-Bacon Act and diminish their ability to provide for their families.

What is it about working families that Republicans have it in for them? Why is it that our Republican leadership in the House of Representatives and here today on the floor of the U.S. Senate, virtually in lockstep, wants to deprive them of some legitimate rights? What is it about these working families? What is it about their children? What is it about their children that we want to cut back in terms of Medicaid? What in the world have they done, except be the backbone of this country?

Make no mistake about it, this is the first battle, Mr. President, and we are not going to let this stampede that may have gone over in the House of Representatives run roughshod here in the U.S. Senate.

Mr. President, I withhold the remainder of my time.

How much time do I have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Mississippi [Mr. LOTT].

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Thank you, Mr. President. And I thank the Senator from Kansas for yielding me this time.

I think it is time, maybe, we calmed down a little bit, stopped shouting, and talk about what is really involved here.

This is not about—

Mr. KENNEDY. Will the Senator yield?

Mr. LOTT. I will not yield. I have been sitting here listening to the Senator, and I have a chance here now to correct the RECORD a little bit.

This is not about the Contract With America. This is not about Davis-Bacon. This is not about all the other extraneous matters we are talking about.

What we are talking about here is an opportunity for the Senators to vote to stop the filibuster so that we can talk about the substance of the amendment of the Senator from Kansas, Senator KASSEBAUM. So I urge the Senators to vote to invoke cloture.

Last Thursday, 57 Senators voted to stop President Clinton from unlawfully usurping congressional authority to regulate labor-management relations. The week before that, the President issued an Executive order which sought to overturn congressional and judicial policies that have stood for nearly 60 years. In so doing, the President claimed authority to defy Congress and the Constitution by rewriting Federal labor laws. The vast majority of the Senate has rejected this unlawful exercise of power, and has affirmed that the Executive order is bad policy and bad law.

Despite Thursday's vote, a handful of Senators from the other side of the aisle is filibustering this bill in an attempt to protect President Clinton's Executive order. The other side of the aisle has even objected to temporarily setting aside the Kassebaum amendment, so the Senate might proceed on other amendments to the defense supplemental appropriations bill.

I point out that the defense supplemental appropriations bill, requested by the administration, has now been on the floor of the Senate for 5 days. And so the routine continues, Mr. President. We spent weeks on the balanced budget amendment. We spent weeks on the uncontroversial unfunded mandates bill. We spent several days on congressional coverage. Everything is to be dragged out in the Senate; everything is to be slowed down. Sooner or later, the Senate is going to have to face up to taking action on the legislation that is pending before it.

And now a minority of Democratic Senators is so committed to giving away congressional authority to the President that they are willing to halt Senate action on an emergency bill the administration has requested the Senate to pass immediately.

And what is this filibuster being used to do? Is it being used to defend the ability of Congress to regulate labor-

management relations? No, that is not happening. Is it being used to implement a Supreme Court ruling? No, Mr. President, this filibuster is being undertaken to protect an Executive action that contravenes the will of both Congress and the Courts.

President Clinton's Executive order would bar Federal contractors from hiring permanent replacements for striking workers. Under the order, the Secretary of Labor will determine whether "an organizational unit of a Federal contractor" has "permanently replaced lawfully striking workers." He may then instruct Federal agencies to cancel existing contracts. The contractor can also be debarred from future contracts for the duration of the labor dispute. This Executive order, effective immediately, applies to companies with Federal contracts in excess of \$100,000.

This Executive order is seriously flawed on both policy and legal grounds, and it is a direct challenge to congressional authority.

Several times, Congress has tried to act in this area without success. And so now, they have gone to the Executive order to get done what the Congress would not approve and get action in an area where the Supreme Court does not even agree with their action.

This Executive order seeks to assert that as a matter of law, the hiring of permanent replacements adversely affects the Federal Government. Specifically, it states that the use of replacements lengthens strikes, broadens disputes, and shifts the balance in the collective bargaining relationship. As the lengthy debates in the House and Senate have shown, quite the contrary is true:

The Executive order will result in more strikes, inflationary wage settlements and a shift in the balance of power in favor of unions.

This was the conclusion of the Carter administration in 1977, when it rejected a limited ban on permanent replacements as part of labor law reform. Indeed, the Canadian Province of Quebec has experienced more strikes and longer strikes since it outlawed the use of any striker replacements—temporary or permanent.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LOTT. Mr. President, I ask unanimous consent for an additional minute.

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

Mr. LOTT. The President has delegated to the Secretary of Labor the decision of how far this order really goes. That is one of the things that really worries me.

This employer right is essential to maintaining balance in labor relations.

The right has always been recognized as the necessary counterweight to the unrestrained right to strike guaranteed by this Nation's labor laws. Because the risks are high if either side engages in economic warfare against the other,

neither side exercises its rights and powers except over major issues. The Executive order abolishes this congressionally and judicially crafted balance.

LEGAL CONSIDERATIONS

The fact that many, many days have been devoted to the issue in recent years should leave no doubt that this is a legislative issue. Any Executive order that touches on this same issue is an infringement on the separation of powers. This order goes far beyond mere procurement policy and regulates private labor relations and restricts private rights guaranteed under the laws crafted by Congress.

It is argued that other Presidents have regulated labor relations through Executive orders. None of those orders, however, amount to the usurpation of congressional authority as does this action of President Clinton. President Reagan's order firing the striking air traffic controllers was based upon his constitutional duty to enforce the law. President Bush's order requiring their Beck rights simply required that workers be informed of their rights under the law. Finally, the Bush Executive order barring union-only agreements on Federal construction projects was consistent with the procurement authority of the Government as consistent with the procurement authority of the Government as declared in the Supreme Court's Boston Harbor decision. It should be noted, however, that this Executive order was never challenged in court.

Not merely the authority of the President is at issue. The Executive order raises numerous practical issues which would embroil the executive branch in legal quagmires for years. Consider the following:

The President has delegated to the Secretary of Labor the decision of how far this order really goes.

Robert Reich and his successors would decide whether "an organizational unit of a Federal contractor" has used permanent replacements. He is empowered in section 11 to define this term in regulations. At this point, we do not know whether the ban applies to employees working exclusively on Government projects, plants, or site-wide, to all operations whether a division or subsidiary. This vagueness should render the order void on its face.

The Department of Labor is unqualified to make determinations as to the legality of actions under the Federal labor statutes.

That expertise is housed in the National Labor Relations Board and the National Mediation Board. Using the procurement power of the President, the Secretary is empowered to address such legal issues as what is a lawful strike and who are unit employees. The Labor Department has had absolutely no involvement until now in interpreting these laws.

The order applies to all lawful work stoppages, whether or not a union is involved.

Two or more nonunion workers are free to walk off the job, giving little or no reason except to say that they are protesting terms or conditions of employment. Under current law, nonunion protests of this nature are relatively infrequent because of the countervailing employer right to hire permanent replacements. Federal contractors which exercise their legal right to use replacements in the face of such extortionist tactics do so at their peril.

CONCLUSION

So, Mr. President, it is clear that President Clinton's Executive order is bad policy and bad law which usurps congressional power and contravenes our Nation's courts.

In conclusion, I think that what we are really talking about here, Mr. President, is jobs, and what will happen if these strikes go on indefinitely and the companies do not have an opportunity to get replacement workers. What option will the company have if they cannot reach a negotiated agreement? What will happen is, they will wind up going out of business and the people will lose their jobs, and other people who would like to have those jobs would not have them either. We clearly should vote to invoke cloture and allow a full debate to occur on the Kassebaum amendment.

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

The PRESIDING OFFICER. Just over 11 minutes on your side.

Mr. KENNEDY. Mr. President, I yield 6 minutes to the Senator from Iowa.

Mr. HARKIN. I find the argument just made by the minority whip most intriguing. He is talking about a filibuster.

Mr. President, something is wrong here. It was the Republican side, for the last two Congresses, that filibustered the striker replacement bill. What is going on here? Surely, the Senator from Mississippi understands that it was their side that filibustered in the last two Congresses the striker replacement bill. That legislation passed the House, came to the Senate, and it was the Republicans who filibustered the bill, not the Democrats. We are not filibustering this bill.

We will have a vote on the underlying bill. For the last two Congresses, the Republicans would not permit the striker replacement bill to come up for a vote, and in both of those Congresses we had the majority votes to pass it. One Congress we had 57 votes; last year we had 53 votes. It was the Republicans who filibustered, not the Democrats. I want to set that record straight. The Senator from Mississippi is playing loose with the history of this bill. I see him smiling over there, and he knows exactly what I am talking about.

Mr. President, another Senator from the other side, the Senator from Texas [Mr. GRAMM] spoke on this issue. He equated workers exercising their legal right to strike to quitting. He says this issue is about people having a right to

quit and employers having a right to hire people to replace them.

The Senator from Texas apparently believes good labor-management relations consist of workers taking what they are given, and not complaining. If the workers' salary and benefits and paid holidays are cut, because that means investors could make a nickel more dividend, and if they then go out on strike, that company can consider those workers as having quit, and permanently replace them.

But in reality, Mr. President, good labor-management relations means both sides are willing to talk. When we have a company like Bridgestone/Firestone, a wholly owned Japanese company operating in this country that refuses to sit down and negotiate in good faith with the workers, leaving them no other option but to go out on strike, then it cannot be the workers' fault. They are willing to negotiate.

This issue shows some fundamental differences between Senators on each side of the aisle. First, to listen to the Senator from Texas [Mr. GRAMM] and perhaps the Senator from Mississippi, they would just as soon see no unions. I think they would be happy to abolish unions if they could.

Second, they really believe that if a person works for someone they have to take what they get, no questions asked. If you produce more, and you then ask for higher wages, an employer can dismiss you at any time—you can work 20 years, and if they want, they get rid of you and throw you out the door.

I think that Senator KENNEDY is right. What this is about is whether or not we will have decent management-worker relationships in this country, or whether we will take the path the Republicans want to take, and tell workers they do not count for anything, that a worker in this country is like a piece of machinery. Use them up, depreciate them down, and they throw them out the back door when they can get another worker cheaper.

Mr. President, sometimes I wish that the Republican side would just quit messing around, and just go out and propose a law to ban strikes entirely? Better than that, they could ban negotiations, ban collective bargaining, because we really do not have collective bargaining any longer. The only thing that a worker can bring to the table in collective bargaining is his or her labor. And if they have no right to withhold that labor then the cards are stacked against them. Then only the employers have the power.

So I wish the Republicans would just go ahead and offer a law, an amendment to ban strikes and to ban collective bargaining. It would be honest, anyway, on their part. It would not be this sham that we are operating under now: A right to strike today is only a right to be permanently replaced. A right to be permanently replaced means you have no power in collective bargaining, and thus collective bar-

gaining in this country is indeed a sham.

Every cutthroat employer knows they can break a union if they are willing to play hardball and ruin the lives of people who have made their company what it is. Unfortunately, the small minority of union busters drag down the rest of their industries in order to compete. Even responsible companies have to follow suit in the race to cut costs and salaries and cut workers' dignities.

I mentioned Bridgestone/Firestone. Other tire companies in this country—Goodyear, Dunlop, and Uniroyal—reached agreements. They had negotiations. Some of them went out on strike, but then they negotiated. They reached an agreement. But this one company, Bridgestone/Firestone, refused to negotiate even after the workers had increased their productivity to all-time record highs, even after the workers agreed in the 1980's to take over \$7 an hour in wage and benefit cuts, and yet when it came time for collective bargaining to renew the contract, the company said, "Nope, you take what we offer or that is the end of it."

So, the workers went out on strike. Now, Bridgestone can win this, if they can bust the union and they hire permanent replacements. They have actually said it in letters, "You are permanently replaced."

If they can do that, then that will drag down Goodyear because the board of directors will say, "How can we let them undercut us? We have to compete." And so will Dunlop, and so will Uniroyal, and it drags down the whole industry.

So what the Republicans are proposing to do with this amendment offered—

The PRESIDING OFFICER. The Senator's time is expired.

Mr. KENNEDY. Mr. President, I yield 1 minute.

Mr. HARKIN. What they are proposing to do on the Republican side is to reward the worst companies: Those companies that will not negotiate in good faith and bargain with their workers; those companies that will drag down the other companies. That is the effect of their amendment.

This amendment is counterproductive. We need more organized labor, not less, to compete in international markets. We are the most productive country in the world, and it is because we have had good labor-management relations working together, to increase productivity on the world market. Unions boosted productivity from 17 to 22 percent in construction, and a study of 20 manufacturing industries showed that unionized workers were from one-fifth to nearly one-quarter more productive than their non-union counterparts.

When I hear the statements coming from the other side of the aisle—and what I hear is, "Let's break down this labor-management relations we have

had, let's break down collective bargaining"—the next thing I expect to hear is, "Let's reintroduce child labor, if you want to compete with other countries that employ child labor." Well, why not?

Workers have no more rights in this country. Workers have no rights to stick up for their dignity, to demand better wages, hours, and conditions of employment. I hope that the Senate will speak loudly and clearly. The President has acted correctly, and he acted within the confines of the law, in issuing that Executive order. We ought to uphold it for the good of America.

Mrs. KASSEBAUM. Mr. President, I would like to yield 5 minutes to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, first I wish to compliment the Senator from Kansas for her amendment. I hope that my colleagues will vote with her on this amendment. I think it is important.

I note at the conclusion of the statement of my friend from Iowa that the President acted within the confines of law. Let me just state the facts. President Clinton issued an Executive order because he could not pass a law. President Clinton introduces a bill, that has been introduced a couple of times—I guess both years since he has been President—trying to get it passed, but he has not been successful. He has tried but he did not get a bill to become law. And so the President is trying to do by Executive order what he could not do legislatively. Even in spite of the fact that he had a Democrat-controlled House and Senate, he was not successful because Congress did not agree.

I think Congress is right in not agreeing. Now I am looking at the Executive order, and very clearly, if one reads this Executive order—and I know it has been put into the RECORD; if it has not, I will ask unanimous consent to put it in the RECORD—but one needs to read this to find out this is law. This is an Executive order where the President is trying to legislate.

I read in the Constitution—it is interesting, we have had a lot of discussion on the Constitution lately—but very clearly in article I, section 1, it says:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

We did not elect the President to be issuing Executive orders in defiance of Congress. Congress did not pass this bill. Congress did not pass it because we did not think it was right. I happen to agree within Congress' decision. I think this is a mistake.

I look at the power that he has vested in the Secretary of Labor: The Secretary of Labor shall determine everything. The Secretary of Labor gets to determine the bargaining, he can object to a termination of a contract, he may debar the contractor. We are giving the Secretary of Labor the right to debar a contractor. Take, for example,

the Senator from Georgia, or the Senator from Virginia, if you take a big contractor—maybe it is Newport News—building aircraft carriers, and maybe there is a small strike with a little union that is upset with one particular division which may affect less than 1 percent of their employees. But if there is a strike, is Newport News and their owner, I guess Tenneco, debarred from all Federal contracts? I asked that question before, and really that is to be determined by the Secretary of Labor.

This Executive order is written with a blank check: "The meaning of the term organizational unit of the Federal contractors shall be defined in regulations that shall be issued by the Secretary of Labor." My point being, this is terrible legislation, and the President does not have a right to legislate. He does not have the right. He is exceeding his powers. I am confident that if we do not succeed on the Kassebaum—

Mr. HARKIN. Will the Senator yield?

Mr. NICKLES. No. Let me finish my statement. I have limited time.

The President exceeded his power. I will state I am very confident that, if we are not successful with this amendment, it will be tested in court and this Executive order will be thrown out on constitutional grounds. I am very confident of that fact. But we should stop it now. The President is playing politics. He is trying to appease a special interest group. I think it is unfortunate.

What about the substance of it? I heard my colleague make the statement, "Well, the people who are pushing this amendment are just against organized labor." That is not true. I think the people should have the right to organize. If people want to strike, if they do not want to work, they should have that right as well.

Likewise, employers have to have the right to hire replacement workers. If they cannot do that, they cannot keep the doors open. In many cases, you might be a critical subassembly of a particular part that has to happen to make this entire unit come together on time and on budget, and if an employer cannot hire replacement workers to make that happen, then they could be in violation of the original terms of that contract. They could lose the whole contract. The entire country, if you are talking about a Government contract, could end up paying an enormous amount for not being on time and complying with the terms of the contract.

This is enormous power the President is trying to delegate to the Secretary of Labor. It is a mistake. Congress has refused to do this. Congress has refused to pass it, I believe correctly so. The President in trying to circumvent Congress, I think, greatly exceeds his authority, his power, and I hope my colleagues will agree with Senator KASSEBAUM and vote for cloture.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will just take leader time and not take any time reserved for the distinguished Senator from Massachusetts.

Let me make four very important, but simple, points.

First of all, the President has every right to issue this Executive order. The precedent set by virtually every one of his predecessors makes that point loudly and clearly. President Bush, President Carter, President Nixon, President Johnson, President Truman, President Roosevelt—they all issued Executive orders having to do with important national priorities, and they did so without anyone challenging their right to make those choices. Obviously, they may have been in significant disagreement, but the fact is they made those Executive orders with the clear understanding that it was within their constitutional right to do so.

That is what this President is doing as well. The President is simply saying, "Look, if you want to do business with the Federal Government, you simply cannot replace striking workers who are conducting a legitimate strike with replacement workers." That is all he is saying.

I do not think that is too much to ask. Obviously, given the extraordinary difficulty working families are having today, the need to assure balance in the workplace is all this issue is about. Giving workers the right to strike, the right to maintain balance in a working relationship with their employers, has been something guaranteed under the National Labor Relations Act for 60 years.

The second point is that this is simply an issue of fairness. The right to strike—the right to ensure that your grievances can be heard in a meaningful way—is a longstanding right of workers, and one which must be protected. They must continue to have the right to strike, and this Executive order simply says that we are going to have that guarantee in writing, at least as far as Government contracts are concerned. The President has made it very clear that working families are a priority in this country.

My third point, Mr. President, is this: as the distinguished Senator from Massachusetts has said, this is the first in what will be a series of very critical votes this Congress that directly affect working families. What happens on this vote will send a clear message about what the Congress is going to do and the position it will take with regard to a number of these issues in the future.

If they lose the longstanding balance that has existed between labor and management, if they lose a fundamental right guaranteed all workers, I do not know that it bodes very well for other issues that will be pending. There are those who suggest we eliminate the minimum wage. There are those who suggest we eliminate the Davis-Bacon Act. They have suggested a number of

attacks on the rights of working families, and certainly this is the first opportunity we have to defend those rights. I hope that everyone understands the critical nature of this vote. It goes beyond simply a question of filibusters. It goes beyond a question of procedure on the Senate floor. It goes to the very heart of why we are here defending the rights of workers at times as important as this.

The fourth point, Mr. President, is one that I hope everyone can appreciate. As we go through the final moments of this debate, we must remember that the question of whether or not the rights that have been reaffirmed in this Executive order are respected is of fundamental importance to our relationship with the President.

The President must make decisions with regard to executive branch policy. He has made a very important decision to respect the rights of working families. I think it is imperative that we respect his authority to do so. That is all we are saying here, that this President, as other Presidents have done, has made a decision with regard to working families that, in our view, ought to be upheld and ought to be respected.

So, Mr. President, in a couple of minutes, we are going to be casting a vote that goes beyond procedure, a vote that goes beyond simply a motion to invoke cloture. It goes to the very heart of whether working families are going to have the right to maintain the balance in the workplace that we all recognize is important to them and to this country.

So I hope we can sustain the necessary votes to defeat cloture this morning and send a clear message to working families that the Senate is on the side of families, on the side of working people, on the side of maintaining the balance between labor and management that we have recognized for the last 60 years.

I yield the floor.

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

Mrs. KASSEBAUM. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Just over 9 minutes on the Senator's side.

Mrs. KASSEBAUM. I would like to yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, if I may just restate what this amendment is about. It is an amendment which would bar any Federal funds from being spent to implement the Executive order that was issued by the President last week.

That Executive order would effectively prohibit Federal contractors from exercising their legal right to hire permanent replacement workers—a right that has been the law of the land for 60 years.

Mr. President, we have heard a lot about this debate being one thing or

another—an assault on working families, an assault on children. I believe, Mr. President, and perhaps I am naive in thinking so, that this vote should not be viewed as a test of the President's leadership, nor should it be viewed as a test of Republican clout. I hope that it would not be viewed as a vote for labor or a vote for business.

I wish that this amendment would be taken for what it is. No one wants to see workers dismissed gratuitously and replaced by permanent replacement workers. That is not what is at issue either. This is not the beginning of a series of assaults on working class families. This is a debate on an Executive order issued by the President which effectively changes labor law in a significant way.

What this debate is all about, in my mind—and I think it is an important point—is the separation of powers between Congress and the executive branch. It is about whether our national labor policy should be determined by the President rather than by an act of Congress.

The question at stake is whether we are prepared to allow the President to overturn 60 years of established labor law with the stroke of a pen.

We can debate this issue at another time. We have debated it before, and I am sure we will again. There are those who suggest we may be able to find some compromises that can bring all sides together. But what the current law has done in over 60 years is to provide the balance to which the Democratic leader spoke. It has provided a balance between labor and management, and that should be preserved.

It has been mentioned that there were other Executive orders which were undertaken, and we have debated this before. Just to reiterate, however, no previous Executive order by President Bush or President Reagan went this far in contradicting both the law and the will of Congress.

President Reagan's order banned illegally striking air traffic controllers from Federal employment. This was well within his rights and was not contrary to existing law. President Bush's order on Beck was merely enforcing existing law. President Bush's order on prehire contracts was not preceded by extensive debate and defeat by Congress, as has been the case with striker replacement legislation. He may well have exceeded his authority on that Executive order on prehire contracts, but it was never an order that was challenged by the courts or challenged in Congress.

I think we are seeing here that under this Executive order Federal contractors will effectively be barred from exercising a longstanding legal right—just as labor has the right to strike—that all other companies are permitted to do under existing labor law.

Regardless of which side we might take on the issue of striker replacements, we should all be concerned, Mr. President, about the precedent this Ex-

ecutive order would set for future Presidents.

What if a new administration decided to debar any contractor whose workers decided to go on strike? Would we feel the same way about an Executive order that infringed on the equally longstanding right to strike?

It has also been argued that this Executive order will have only a limited impact, that perhaps only a dozen companies would be affected. Mr. President, the Federal Government contracts for close to 180 billion dollars' worth of goods and services. Many defense contractors would be affected, and that is why it is fitting this is added as a debate to the defense supplemental bill. This order will potentially affect tens of thousands of companies.

The PRESIDING OFFICER. The Senator's 5 minutes has expired.

Mrs. KASSEBAUM. I yield myself 2 additional minutes.

The Defense Department alone has contracts of value greater than \$100,000 with over 20,000 different companies. This Executive order would cover Federal construction projects, potentially colleges and universities with Federal research contracts, hospitals and health care providers that contract with the Federal Government. It is very unclear as to what exactly this Executive order might apply. As was pointed out by the Senator from Mississippi and the Senator from Oklahoma, the Secretary of Labor has a great deal of discretion under this Executive order to decide when it may or may not apply.

Over 30 years ago, the Supreme Court overturned President Truman's attempt to seize control of the steel mills by Executive order. I believe Justice Black's opinion in the Youngstown case is relevant here. He said:

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

I believe the President has exceeded his authority here by attempting to make the law, dictating the terms of our national labor policy, by means of the Executive order in direct contravention of current law.

Congress makes the law, not the President, and we should not relinquish our role in setting national labor policy by allowing this Executive order to stand. I urge my colleagues to support cloture in order to reassert the authority of the Congress and to bring this debate to a close.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. I yield to the Senator from Massachusetts.

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. Just over 4 minutes.

Mr. KENNEDY. I yield myself 3 minutes and then whatever time I will yield back, to let the majority leader have the final word.

Mr. President, I thank the Senator from Kansas for both her explanation and the justification for her amendment. Over the period of the last several days, we have tried to go through the circumstances of the Youngstown case and distinguish the executive authority that President Truman attempted to assert in that case and the executive authority that President Clinton is exercising with regard to this order, and I think we have made that case in a very compelling way. I think anyone who reads through the RECORD would find the analysis persuasive. I respect the fact that Senator KASSEBAUM does not believe this is really about broader public policy issues. But I must take issue with her in that conclusion.

We are not debating on the floor of the Senate the issue of what we are going to do about increasing the minimum wage.

My Republican colleague have not proposed even a sense-of-the-Senate resolution to say, for instance, that working families are falling further and further behind; that we think work ought to be adequately compensated; that we think work ought to be recognized; that we think any American who works 40 hours a week 52 a weeks a year ought to receive a decent wage. Not even a sense-of-the-Senate resolution to say perhaps we are not going to address this on this particular bill, but we are prepared to work to protect the future of working families; we are prepared to work to protect their interests in terms of their children who might need a summer job or their small children who might need a school lunch; we are prepared to speak up about the needs of working families. Nothing to say we differ with you on this Executive order, but we are for working families. And that is what this debate is really about.

What we are voting on takes place against the background of what has happened to family incomes since 1980, and the fact that the only real growth in family incomes that has taken place is among the families at the top—the wealthiest individuals in this country.

That is the background of what has happened to the income of working families over the past 20 years, and now we are debating against this background a measure that is going to further attack the legitimate rights of working people who are hard-working, who are trying to make it, but whose incomes have been held down over the last two decades. Those are the people who are going to be affected by the President's Executive order which my Republican colleagues are trying to block.

We have illustrated in the course of this debate the kinds of people who will be adversely impacted if the Senator's amendment is adopted.

The PRESIDING OFFICER. The Chair advises the Senator his 3 minutes have expired.

Mr. KENNEDY. Mr. President, therefore, it is my hope that the motion to invoke cloture would not pass, that the amendment itself would be withdrawn and that we would go back to further consideration of the very important underlying defense appropriations bill.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Just over 2 minutes.

Mr. DOLE. Mr. President, let me just lay it out cold. This is all about politics. It has nothing to do with workers or anybody else.

Last week, President Clinton kicked off his 1996 reelection campaign by signing an Executive order that would prohibit Federal contractors from hiring permanent replacement workers during economic strikes.

Despite all the talk about fostering fairness in the Federal workplace, the Executive order is a transparent effort on the President's part to shore up a political base that he believes is vital to his own reelection chances.

During the past several years, Congress has considered, and repeatedly rejected, the so-called striker-replacement bill. That is why the President is setting a dangerous precedent if he believes he can revive this defeated legislation simply by issuing an executive order.

It is the responsibility of Congress, not the administration, to write the laws governing labor-management relations in this country.

So, Mr. President, I urge my colleagues to support this motion to invoke cloture. The amendment offered by my friend and colleague from Kansas, Senator KASSEBAUM, will help restore the careful balance—that is what we want—a careful balance between labor and management that has been the hallmark of our system of collective bargaining for more than 60 years.

The President's misguided directive is a politically inspired attempt to do an end run around the legislative process. I do not believe it should go unchallenged.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on amend-

ment No. 331 to the committee amendment to H.R. 889, the supplemental appropriations bill:

Hank Brown, Nancy Landon Kassebaum, John Ashcroft, John Kyl, Lauch Faircloth, Don Nickles, Strom Thurmond, Dan Coats, Judd Gregg, Slade Gorton, Bob Dole, Chuck Grassley, Craig Thomas, Conrad Burns, Trent Lott, Mike DeWine, Pete Domenici.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Kassebaum amendment No. 331 shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. PELL. Mr. President, on this vote, I have a pair with the distinguished Senator from Washington [Mrs. MURRAY]. If she were present and voting, she would vote "nay." If I were at liberty to vote, I would vote "aye." Therefore, I withhold my vote.

Mr. LOTT. I announce that the Senator from Vermont [Mr. JEFFORDS] is necessarily absent.

Mr. FORD. I announce that the Senator from Washington [Mrs. MURRAY] is necessarily absent.

On this vote, the Senator from Rhode Island [Mr. PELL] is paired with the Senator from Washington [Mrs. MURRAY].

If present and voting, the Senator from Washington would vote "nay" and the Senator from Rhode Island would vote "aye."

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

The yeas and nays resulted—yeas 58, nays 39, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—58

Abraham	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Nunn
Bond	Grams	Packwood
Brown	Grassley	Pressler
Bumpers	Gregg	Pryor
Burns	Hatch	Roth
Campbell	Hatfield	Santorum
Chafee	Helms	Shelby
Coats	Hollings	Simpson
Cochran	Hutchison	Smith
Cohen	Inhofe	Snowe
Coverdell	Kassebaum	Specter
Craig	Kempthorne	Stevens
D'Amato	Kyl	Thomas
DeWine	Lott	Thompson
Dole	Lugar	Thurmond
Domenici	Mack	Warner
Exon	McCain	
Faircloth	McConnell	

NAYS—39

Akaka	Bryan	Feinstein
Baucus	Byrd	Ford
Biden	Conrad	Glenn
Bingaman	Daschle	Graham
Boxer	Dodd	Harkin
Bradley	Dorgan	Heflin
Breaux	Feingold	Inouye

Johnston	Leahy	Reid
Kennedy	Levin	Robb
Kerrey	Lieberman	Rockefeller
Kerry	Mikulski	Sarbanes
Kohl	Moseley-Braun	Simon
Lautenberg	Moynihan	Wellstone

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Pell, for

NOT VOTING—2

Jeffords

Murray

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now vote on the conference report accompanying S. 1, which the clerk will report.

The bill clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The Senate resumed consideration of the conference report.

SECTION 105

Mr. KOHL. Mr. President, I invite the chairman of the Budget Committee to engage in a colloquy with me on section 105 of the conference report on S. 1, the Unfunded Mandates Reform Act of 1995.

During consideration of S. 1 before the full Senate, I offered an amendment which makes clear that nothing in this legislation denies Federal funding to States, local, or tribal governments because they are already complying with all or part of a Federal mandate. That amendment is now section 105 of the bill.

The conferees modified my language by stating that my amendment made reference to any mandates that are funded pursuant to section 425(a)(2) of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101 of this act.

However, the report language accompanying S. 1 refers to section 425(b)(2).

I ask the distinguished Senator from New Mexico, is this reference in the conference report incorrect?