been a single effort by any of the legislatures to repeal the line-item veto authority. In fact, it works so well that there is a consensus in the States that it should be left in place so that they might continue to provide a foundation for the financial integrity of the Nation.

Someone came to me recently and said, ''JOHN, there is a State that has changed their line-item veto. In 1990, the State of Wisconsin amended their provision.'' Well, it was interesting when I looked at what the amendment really said. It reads, and I quote: ''in approving an appropriations bill in part, the Governor may not create a new word by rejecting individual letters in a word of the enrolled bill.''

Mr. President, what the legislature said was that the Governor could not change the word ''cannot'' into ''can'' by striking out the last three letters of the word. That is not a real change in the philosophy behind the veto authority. It is simply a housekeeping detail about making the measure what it ought to be, namely, the capacity of the executive to knock those things out of spending bills which are not in the best interest of the State. So, it is important as we go to conference to understand the success that the line-item veto has enjoyed in the States.

In the end, I was encouraged by the vote last night. Sixty-nine votes in favor of the line-item veto reflected a strong understanding that we must adopt measures to restrain spending, and reduce the deficit. So we have made a significant step forward. For if the people sent us here for any purpose at all, it was to enact changes, such as this, that will fundamentally alter the way we do business.

I look forward to the time when the conference report comes back and we again have an opportunity to address this issue. It is critically important. The vote last night was encouraging. However, while the battle has been won, the war is not over. And as we work out the differences between the two bills, I hope that the end product gives us as great a promise for financial integrity as the measure we passed last night.

Mr. President, as the Senator from Indiana, you are to be commended for your role, along with Senator MCCAIN. It was your hard work that ensured we arrived at a product which could be subscribed to by such a broad majority of the Senate. I hope that this body acts on the conference report as it did last night. It was nighttime behavior, maybe somewhat reminiscent of times when we have done the wrong thing under the cover of darkness. Last night's behavior, however, was commendable in that it was in the national interest. We should seek to replicate it in the future.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. If the Senator will suspend his request. The Senator from New York.

Mr. MOYNIHAN. Mr. President, the Senator from Vermont would like 10 minutes to discuss and discourse on what was the once and possibly future national pastime. I yield those 10 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

MAJOR LEAGUE BASEBALL ANTITRUST REFORM ACT OF 1995

Mr. LEAHY. Mr. President, I thank my good friend, the distinguished senior Senator from New York and my neighbor. And like the distinguished Senator from New York, I, too, hope that we will some day actually have baseball played. I share his sense of patriotism in all things. I admire his sense of history. But I suspect he, like I, is at many, many events this time of year when our national anthem is played. We are all very proud to hear it, but we sometimes, as spring arrives, wait for the words, ''Play ball,'' right after it is played.

So the Major League Baseball Antitrust Reform Act of 1995 is being introduced, Mr. President. It is being introduced by Senators HATCH, THURMOND, and myself. I want the Senate to know why I back this.

Senator THURMOND and I introduced on February 14 an earlier version of this legislation to remove the antitrust law exemption that major league baseball has enjoyed for over 70 years. Major league baseball, unlike practically any other business in this country, has an exemption from the antitrust laws, and Senator THURMOND, Senator HATCH, and I, and others, feel that should be removed.

Actually, we are just saying that nobody should be above the law. We did this for Congress. We passed the Congressional Accountability Act, something I backed for years, which applies the same laws to Congress as apply to everybody else. We are just saying baseball should live by the same laws as everybody else.

I regret very much that the owners of major league baseball teams and major league baseball players have been unable to get through their impasse. Mediation has not been successful. Presidential entreaties could not do it. Congressional pleas for a voluntary settlement have gone for nought.

What we have always thought of as our national pastime may become a thing of the past. I am afraid that what we saw as children when we would follow games, when we would go to our Little League games and identify with various major leaguers at that time is gone. Seniors who look forward to the joys of spring training and following their favorite teams on radio, youngsters who identify with heroes in the world of baseball, this will be gone.

And let us not forget so many who make monthly mortgage payments by being vendors of everything from T-shirts to hot dogs, who park the cars, who take the tickets. These people are also out of a job.

There is a public interest in the resumption of major league baseball. I am concerned that the owners show no intent of really getting a strong commissioner who might look out for the best interest of baseball. That is what the commissioner is supposed to do—not the private interest of those who make the money from baseball, whether owners or players, but rather for the best interests of baseball itself.

Our antitrust laws are designed to protect consumers, but for over 70 years consumers have not seen these applied to baseball, on the assumption that there would be a strong commissioner and the major league would operate in the best interest of baseball. But that is not what is going on.

In Vermont, where I grew up, virtually everybody was a Red Sox fan. Now there is divided loyalty between the Red Sox and the Montreal Expos, and there is also the minor league team, the Vermont Expos.

We also have jobs in the State of Vermont that rely on baseball. There is a company called Moot Wood Turnings in Northfield Falls, VT. ''Turnings'' is wood turnings. They make the souvenir, replica baseball bats, the little bats that have been passed out for 40 years on bat day at baseball games. They had to drop a third of their 24-person work force because of the strike last summer. That is just one small company. These are not people who make a great deal of money. They make $5 and $6 an hour, and they were out of work because a small group of people cannot figure out how to divide up $2 billion. It makes absolutely no sense.

We had a chance last year to right this situation when we were considering a bill to repeal baseball's antitrust exemption, but we decided to hold off in the Senate, thinking that maybe everybody would work it out. Right after that, negotiations between the major league baseball owners and players disintegrated. We saw a preemptive strike, the unilateral imposition of a salary cap, failed efforts at mediation, the loss of one season and likely obliteration of a second, and pleas from all corners to get it going again.

I think if we had repealed this out-of-date, judicially proclaimed immunity from the antitrust laws, this matter would not still be festering. No other business, professional or amateur sport, has this exemption from law that major league baseball has enjoyed and, Mr. President, has abused.

In fact, one of the players who testified at the Judiciary Committee hearing this year asked a very perceptive question. He said, let us suppose that baseball did not have an antitrust exemption and let us suppose they were in the sorry state they are in today and then let us suppose baseball came to Congress and said, ''Oh, by the way, we cannot clean up this mess we have, but would you kindly give us an antitrust

exemption? Would you pass a special law to exempt us from the antitrust laws''—something nobody else has. Mr. President, they would get laughed off Capitol Hill. There would be no antitrust exemption passed for them.

So the question is, if we would not enact it today, why do we allow them to have it? Why do we not just end it? It is something that should be done.

I am concerned about the interest of the public. I am concerned particularly about the interest of baseball fans. I am not here to speak on behalf of the baseball owners or the players. Former commissioner Fay Vincent said:

> Baseball is more than ownership of an ordinary business. Owners have a duty to take into consideration that they own a part of America's national pastime—in trust. This trust sometimes requires putting self-interest second.

I am also concerned about some of the answers I got from some of major league baseball's representatives. In fact, I should note here on the floor that the answers that they sent, their written answers, are in severe variance with their hearing testimony on several points. In other words, they said one thing at the hearing and they said something else after, in their answers. I think the public should look at what they did, because either they are grossly mistaken on one point or they are not telling the truth on another.

For example, I asked the acting commissioner whether fans who reject replacement players and replacement games would retain season tickets when the strike ended and major league players return? He testified unequivocally and without hesitation, ''Yes, sir.'' But in his written response to the same question, he did not confirm his testimony. Instead, he responded that policies with regard to season tickets and priority seating are handled by the clubs individually.

Well, he has given two answers. One has to be honest, and one contradicts the other. At the hearing, I asked whether major league baseball owners, who benefit from a special antitrust exemption in order to be able to join together with regard to sports broadcasting, would make an unqualified commitment that major league baseball playoff and World Series games would continue to be broadcast over free television through the year 2010.

The acting commissioner responded in the affirmative. But when he got away from the TV lights and cameras and the hearing, he answers that ''it is not possible to make an unqualified commitment that far into the future.''

I think the public is being shortchanged by the policies and practices of major league baseball and by such disregard for the interests of the fans as evidenced from the hearing record.

They ought to have a little bit of competition. If we withdraw the antitrust exemption, they will have it. There is no joy here in Washington as we continue these proceedings—just a sense of loss, lost opportunities, lost innocence, and lost stature for a game that once symbolized America like no other.

I commend our chairmen, Senators HATCH and THURMOND, for taking up this challenge. We will move forward on it.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MOYNIHAN. Mr. President, in the spirit of bipartisan harmony I would like to yield 5 minutes, or such time as he requires, to the distinguished senior Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I want to express my sincere appreciation to my good friend, the senior Senator from New York. We have worked together on many important projects.

This is a measure before the Senate today that is very important to small business people all across this country. Today, the person who operates a small business has many problems. There is nothing so glaring as the failure of the code, as it now stands, to give any deduction for the payment of health insurance for the business owner or that owner's family.

This 25-percent deduction level, as we all know, expired December 31, 1993. According to the Treasury Department, approximately 3.2 million self-employed taxpayers cannot currently deduct any of their health insurance premiums, unless this is corrected. The 3.2 million taxpayers represent approximately 30 percent of the unincorporated business owners in America today.

We had hoped last year, and we talked a great deal in health reform, about the need to put the small business owner on the same footing as the employee of a large corporation who can receive, essentially, 100 percent deductions for the cost of health care premiums.

Large corporations already are able to exclude these costs, and their employees do not have to report them on their tax returns. We are putting entrepreneurs at a very, very serious disadvantage. This problem afflicts small business owners who are farmers, who are ranchers, who are truck drivers. These people deserve fair tax credit treatment.

One of the biggest concerns that we have today is that without this deduction many families are left without health insurance because of its already high cost. We think this is a terrible impact on the families. It is very hard to imagine a more difficult problem for them to face. Nearly one-quarter or 23 percent of the self-employed are uninsured today. About 4 million of those who do not carry health insurance are in families headed by a self-employed worker.

This deduction makes insurance more affordable and helps to get the families the health insurance that they need and deserve to get. Whether these are small businesses in the town or the city, or farmers, or truck drivers, as I said, or ranchers, these people deserve to have the same kind of tax treatment.

The bill provides for a permanent extension of the deduction, which I think is long overdue, and would provide retroactive deduction for the 1994 returns. These returns are due April 17.

We must act swiftly so that those people who have paid the health insurance claims last year will be able to deduct them. Unfortunately, we were not able to act in time for farmers' returns, which were due on March 1.

If we delay this bill further and are not able to get it to the President on time, even more people who are eligible for the deduction will have to file amended returns.

This is going to burden the IRS with paperwork, not to mention what is even more important, the burdens on the people who have to refile. Mr. President, it is tough enough to have to file an income tax return one time. It is certainly no pleasure to have to file one again.

I think it is also very, very important—and I commend the managers of the bill and the sponsors of the legislation—that we are making this measure permanent. For years the self-employed have been subjected to the uncertainty of not knowing whether the extension would be granted for the deduction. I think it has made it very difficult for those people to plan. This should take that problem away.

I am concerned about the fiscal pressures and the need for deficit reduction, but this is not an area where we ought to economize. Small business, farmers, ranchers, truck drivers—they and their families need to have the health care that this will encourage them to have.

I would like to go further. If we have an opportunity, if the money its available, count me in on seeing if we cannot get the deduction to a par with those people who work for large corporations. But I am very pleased we are moving on this. I commend the managers of the bill, the chairman and ranking member of the committee as well as the sponsors. This will have important impacts on the health of many, many people, many of those who are in small businesses and their families.

I thank the distinguished Senator from New York for yielding the time and I urge my colleagues to support this very important measure.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. COCHRAN). The Senator from New York.

Mr. MOYNIHAN. Mr. President, I know I speak for the distinguished

chairman when I thank the senior Senator from Missouri for his incisive remarks.

I am pleased to see on the floor our colleague from the Committee on Finance, the distinguished Senator from Illinois. I yield her 10 minutes, as she evidently desires, but in fact as much time as she requires for her statement, which I look forward to.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I thank the Senator from New York, and the chairman of our committee. I stand to speak with regard to H.R. 831.

I am a strong supporter of the provision that is at the heart of H.R. 831, the permanent extension and increase of the deduction of health insurance costs for the self-employed. There is no question that the health insurance expenses of millions of self-employed individuals around this country should be treated more like taxpayers who work for larger businesses.

Corporations that provide health insurance coverage for their employees get 100-percent deductibility for the portion of the health insurance costs of their employees that they pay. The employees of those companies use after-tax dollars only for that portion of health insurance costs not paid for by their employers.

Most businesses in this country provide health insurance coverage for their employees, as does the Federal Government, and State and local government. Employer-provided health insurance is at the heart of this country's system of health insurance coverage, and the tax deductibility of employer-financed health insurance costs encourages employers to provide that insurance.

However, millions of Americans do not work for large corporations and do not have access to the kind of group health insurance plans that large corporations often provide. Because they are self-employed, these Americans usually have to pay more for their health insurance. Because they are self-employed, there is no 100-percent tax deduction for the employer-provided portion of health insurance costs.

Congress has attempted to at least partially remedy this serious inequity by providing a 25-percent deduction of the health insurance costs of the self-employed. This provision of the Tax Code, however, was only temporary, and expired at the end of 1993. What that means is that, unless this Congress acts—now—all of the self-employed Americans across this country will face a serious tax increase when they file their 1994 tax returns next month.

That is clearly a totally unacceptable result. It is unfair, it is inequitable. It is simply wrong. That is why I strongly support the provisions in the pending substitute for H.R. 831 that restores the 25-percent deduction for health insurance expenses retroactively, so that it covers the 1994 tax year, the provisions that increase that deduction to 30 percent, beginning in 1995, and the provisions that make that deduction permanent, eliminating any possible future repetition of the kind of situation we find ourselves in right now.

Restoring the deduction, increasing it, and making it permanent is the right thing to do. It eliminates the kind of anxiety and uncertainty that self-employed Americans are facing right now, and assures them that Congress is committed to addressing the disparity in the tax treatment of health insurance costs incurred by self-employed Americans, and Americans who work for larger businesses, for the nonprofit sector, or for government.

Self-employed Americans are hard-working and make an enormous contribution to our economy. We should not, we must not, make it more difficult for them to make that contribution by handicapping their ability to access health care.

Unfortunately, Mr. President, the Finance Committee has chosen to end this unacceptable, inequitable, and unfair situation by creating another one. The price for a public policy of moving towards greater equity in the Tax Code treatment of the health insurance expenses of the self-employed, is the creation of a totally unacceptable, inequitable, and unfair policy in the tax treatment of the purchase of broadcast or certain other communications businesses by minority Americans, and, in some circumstances, women. I am, of court, speaking of the provisions in the committee substitute repealing the provisions known as section 1071.

I strongly oppose the repeal of section 1071 for both procedural and substantive reasons. It is a statement that Congress does not care about diversity of voice in major portions our Nation's communications industry which, after all, are using the public airwaves, or franchises granted by the public. And it is a statement that Congress does not care about Americans who have proceeded in good faith to spend literally millions of dollars based on the existence of section 1071. They are being taught a very bitter, expensive lesson, never to rely on the government's word, or to take actions based on the law, because the Government may decide, in a matter of just a few weeks to repeal that law—retroactively.

Most Americans, I am sure, have never heard of section 1071, and it is fair to say that, until 2 months ago, most Members of Congress knew little or nothing about it. And there was no particular reason for Congress to focus on the section. After all, it was enacted in 1943 as part of the revenue act of that year to help implement a new policy that prohibited the owners of radio stations from owning more than one radio station in a given market.

What section 1071 action does is to provide the Federal Communications Commission with the authority to defer capital gains taxes arising from transactions involving communications properties. Essentially, it permits those gains to be rolled over as a nontaxable event. It does not eliminate even one dollar of tax liability; it simply postpones the date when that tax liability must be paid.

As initially reported by the Senate Finance Committee in 1943, the provision would have allowed a rollover if the sale or exchange of the property was required by the FCC as a condition of the granting of the application. However, the provision was broadened during the conference with the House of Representatives. The conference report stated that, because:

> . . . the Commission does not order or require any particular sale or exchange, it has been deemed more appropriate to provide that the election, subject to other conditions imposed, shall be available upon certification by the commission that the sale or exchange is necessary or appropriate—I want to emphasize this part—to effectuate the policies of the commission with respect to ownership or control of radio broadcasting stations.

In 1954, the FCC's authority to defer capital gains taxes in transactions involving the sale of radio stations was broadened to include television stations. In 1973, the FCC's authority in this area was broadened yet again, to encompass cable systems.

Until 1978, this authority was used virtually exclusively by the kind of people who then owned radio, television, and cable systems, and that certainly, at the time, did not include minorities or women.

It was not until 1956 that even one radio station in this entire country was owned by a minority, and it was not until 1973 that there was even one television station in the Nation owned by a minority. It was not until 1974 that the FCC first awarded a new radio station license to a minority-owned company the same way it had awarded tens of billions of dollars' worth of broadcast spectrum to nonminorities—for free—by an FCC comparative hearing.

The truth is, Mr. President, that the FCC initially handed out virtually all of the broadcast spectrum to nonminorities free of charge, and then used section 1071 over and over and over again to allow them to roll over the huge capital gains they made in tax-free transactions that allowed them to defer their tax liability. The FCC, as it handed out the spectrum owned by all Americans relied heavily on the question of the previous broadcast experience of competing applicants in awarding new licenses. Yet for several decades, even broadcast training was denied to minorities in this country and in some parts of this country as a matter of law.

State universities were legally barred from admitting minorities at the time these stations were originally given out. State-owned public broadcasting authorities refused to hire or train them. State legislatures denied black

State colleges the funds to start broadcasting programs or to apply for broadcasting licenses. For example, the FCC routinely granted broadcast licenses to colleges and universities that were segregated by law, such as WBKY–FM, serving the University of Kentucky, which was licensed in 1941, WUNC–FM, serving the University of North Carolina, which was licensed in 1952, and KUT–FM, serving the University of Texas, among many others.

These segregated policies helped ensure that a generation of minorities would be denied the skills and the access necessary to enter the broadcast industry—with the FCC's full endorsement and ratification.

The extent of the FCC's complicity is illustrated by the case of Broward County Broadcasting versus FCC. This 1963 case involved a radio station, WIXX, located in a community with a large African-American population, a population that received no black-oriented programming from any station serving that market. WIXX decided to devote its program schedule to black-oriented news, public affairs, and music. The city government complained to the FCC that WIXX was offering a format which the city did not need and did not want. The FCC, in turn, threw the station into a public revocation proceeding, which placed its broadcast license in jeopardy. Faced with the loss of the ability to do business, the station dropped its black programming, and the FCC quietly dropped the charges of ''character violation.''

These policies kept minorities from participating in the free broadcast spectrum ''gold rush'' that was going on in America. And by the time these policies were ended, the gold rush was over, and there was no more spectrum to allocate for free.

In 1978, the FCC finally recognized its role in denying minorities any opportunity to participate in the gold rush and to enter the broadcast or cable industries. That year, the FCC announced a policy of promoting ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities to minority individuals or minority-controlled entities. The FCC's policy was based on the view that minority ownership of broadcast properties would provide a significant means of fostering the inclusion of the views of minority Americans in programming, thereby better serving the needs and interests of the minority community and enriching the range of material available to the nonminority audience. The FCC subsequently expanded its policy to cover the sale of cable systems, as well.

In 1982, during the Reagan administration, the FCC further expanded its tax certificate program. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be able to receive a tax certificate on the subsequent sale of their interest in the minority entity.

This became an incentive for investors to help with preserving and expanding diversity of voice.

The FCC program is not a set-aside or a quota. It functions in the same voluntary manner as the FCC's other uses of tax certificates. The FCC does not require a percentage of licenses to be controlled by minorities, it does not require media properties to be sold to minority-controlled businesses, it does not require a set percentage, nor does it require a nonminority seller of media property to a minority-controlled business to even request a tax certificate.

So there is nothing compulsory. There are no quota aspects of the tax certificate policy at all. The direct beneficiaries of the tax certificate may or may not be the minority member. In many instances it may be the nonminority seller and/or the investors who participate in the acquisition with the minority purchaser. The benefit to potential minority purchasers is the incentive it creates for sellers, and the enhanced access to capital it provides.

The FCC certificate program then operates as a key to unlock the door of opportunity for minorities who have a role in the broadcast industry in our Nation.

There can be no question that minority entrepreneurs have a tougher time accessing the capital markets of this country. The FCC recognized this fact, and the minority ownership program has expanded that access to capital.

In 1987, Congress explicitly endorsed the FCC's actions in expanding the tax certificate program to encourage expanded minority ownership of broadcast and cable systems. That year's Commerce, State, Justice, appropriations bill contained language locking in the tax certificate program, they thought. The committee report on the bill stated ''Diversity of ownership results in diversity of programming and improved service to minority and women audiences.'' Similar language has been included in every annual appropriations bill since that time, until now.

Between 1978 and 1994, the FCC issued 317 tax certificates under its minority ownership program. Radio stations represented about 83 percent of the certificates issued, television stations 8 percent, and cable systems, about 9 percent. These certificates helped minorities enter a business which, as I have outlined, was virtually completely closed to them. And it did so not by taking away a license from anyone, or through any form of direct financial assistance to the minority buyers, but, as I have already stated, through tax deferrals for potential sellers of radio and TV stations, and cable systems, and potential investors who were willing to enter partnerships with minority buyers to purchase these properties.

The program has begun to make a difference, but it is worth keeping in mind that, out of the 1,342 television stations operating in the United States, only 26, or about 1.9 percent are owned by women. African-Americans owned less than that, only 21 stations, Hispanics owned 9, and Asians owned 1.

In radio, the situation is a little better. Out of the 10,244 radio stations operating in the United States, 394, or about 3.8 percent are owned by women, another 172 are owned by African-Americans, 111 by Hispanics, 4 by Asians, and 5 by native Americans.

These are the public airwaves we are talking about, Mr. President, and cable systems that require public approvals in order to function. Every American ought to have the right to participate in this industry, and there should be enough diversity of voice to ensure that our broadcast and cable systems meet the needs of all of our people.

And research confirms a link, or the nexus, between expanding minority ownership and diversity of voice.

By diversity of voice we mean the notion that the airwaves that we communicate on as Americans will include the views of everybody and not just one segment of the population or community, but of all segments of the population and the community. And in that diversity comes the kind of vitality that will keep our Nation vital and keep our democracy alive.

You will recall George Orwell talked in ''1984'' about the wave of communication happening, and big brother sent one message to the people at all times. There were no alternative messages, alternative points of view, alternative perspectives to encourage people to think for themselves. The whole idea of diversity of voice is that the entire community benefits when it has the point of view and the perspective of all our people, when the perspective and the information that is communicated through the public airwaves represents the whole panoply of Americans in this country and that we can all participate and draw from our diversity as a source of our strength.

The Supreme Court made this clear, in a case of Metro Broadcasting, Inc. versus FCC. In that case, the Supreme Court held that benign, race-conscious measures mandated by Congress are constitutionally permissible, based on a record of empirical evidence demonstrating a nexus between minority ownership and diversity in programming.

There were five studies of this connection cited in the Metro case, including a study by the Congressional Research Service, ''Minority Broadcast Station Ownership and Programming: Is There a Nexus?'' (1988).

That is to say, does minority ownership encourage diversity of views?

This study, which looked at radio data collected by the FCC from over 9,000 radio and TV stations, showed a strong correlation between minority ownership and programming targeted

to minority ownerships and expansion of diversity of voice for everyone. The other studies all had similar findings, showing differences in programming, including news programming, and differences in the willingness to hire women and minorities as employees.

Mr. President, what the Finance Committee and the House of Representatives are now proposing with this legislation, however, is to terminate this progress toward diversity, to terminate the 1071 tax certificate program and to do so retroactively and with virtually no notice at all.

The committee report sets out three reasons for terminating the program. It says that the tax certificate program has evolved far beyond what Congress originally intended. The report makes this argument even though it was Congress that gave the FCC broad discretion to set the terms of the tax certificate program.

Second, the committee report argues that the FCC standards for issuing the certificates are vague and therefore subject to significant abuse. It asserts that the FCC's determination of control does not guarantee that a minority purchaser will continue to manage the broadcast or cable property after the tax certificate has been issued.

Third, the report argues that the tax certificate program is not supervised and reviewed by the Internal Revenue Service, and that the FCC does not request information regarding the size of the tax benefit or otherwise act to ensure that the nonminority seller does not get the entire benefit of the certificate.

Mr. President, these arguments, it seems to me, are sufficient to warrant a reasoned, deliberate and careful review of this program and not the total elimination retroactively of it. As a general matter, I believe that all Federal programs should be periodically reviewed. We should take a look at everything to make sure it works as it was intended to work by this Congress, to make sure that it is more efficient. However, that commonsense principle, I believe, should not be exploited as a blanket license to just carelessly throw out longstanding Federal laws without any review before the fact, without any chance to take a look at it. And yet that is exactly what we are saying here.

No study of the effectiveness of section 1071 was undertaken by the House of Representatives before it rushed to repeal this legislation. Nor has the Senate undertaken the opportunity to fully study the merits of section 1071. The majority leader of this body stood in the Chamber just last week talking about the fact that there are over 160 Federal programs he would like to see reviewed as part of a comprehensive review of Federal affirmative action policies. And the majority leader asked two Senate committees to hold hearings as part of that review. The majority leader also commended this administration for its ongoing review of affirmative action policies and programs.

All of these suggestions that there be a review indicate to me that the Finance Committee should have at least awaited the results of the administration's efforts and should have considered whether or not section 1071 was working, whether it had problems, whether its objectives were important ones, and whether or not reform rather than retroactive elimination would have been more appropriate.

That is not what is happening with this bill, Mr. President. Instead, we see a rush to judgment. Instead, what we see is an unwillingness to confront the fact that minorities and women have been excluded from the broadcast and cable industries and that minorities and women continue to have access-to-capital problems that are significantly greater and different than other potential acquirers.

Indeed, what we see is a total disregard of the policy considerations having to do with diversity of voice that led to the creation of this tax certificate program in the first place.

This hasty repeal would not just eliminate a genuinely worthy minority ownership program; it would also repeal all of the other uses of the FCC tax certificates. For example, a broadcast or cable licensee is eligible for a tax certificate when it divests a media property in order to comply with the FCC's cable/broadcast cross-ownership policy and the newspaper/TV cross-ownership policy. Repeal of section 1071, therefore, eliminates a reasonable incentive for FCC licensees to comply with FCC policies.

Repealing section 1071, moreover, does not mean ending capital gains rollovers in the future. There will still be many, many ways to structure transactions in ways that will avoid capital gains taxes. And in fact the experience is that the most recent sales in the cable industry have all been tax-free transactions that did not involve the tax certificate program which was calculated to give minorities and women a chance.

Some recent examples illustrate this point. Time/Warner announced in January of 1995 that it will acquire KBL Communication from Houston Industries in a tax-free stock transaction with an estimated purchase price of $2.2 billion. Time/Warner has also announced a tax-free acquisition of Summit Communications for $350 million via a stock exchange. Again, no tax rollover questions there. Cox Cable acquired Times Mirror Cable in a tax-free merger with an estimated price of $2.3 billion. Minority entrepreneurs, however, because they frequently lack the access to capital of long-established companies, cannot rely on section 328 of the Tax Code which authorizes those tax-free transactions. Instead, they have had to rely and have relied on section 1071.

That is why it is particularly troubling that the proposal before the Senate is to retroactively repeal section 1071 simply because a particular African-American businessman is involved in a large transaction that is eligible for a tax certificate and the resulting capital gains tax deferral. The rush to undo this transaction ignores, in my opinion, some important facts. The first is that the transaction that precipitated the House Committee's action, the so-called Viacom transaction, is not the only pending transaction at the FCC. There are at least 19 others.

Second, all of these acquirers have justifiably relied on the existence of section 1071, which has now been in place for over 17 years and which has been explicitly endorsed by Congress over and over again through the appropriations process.

In the Viacom transaction, the purchasing group has incurred literally millions of dollars in out-of-pocket expenses for costs such as legal fees, commitment fees, and travel. The prospective minority purchaser has made it clear that he was entering into the transaction in order to run the company, not to purchase it for a quick resale or turnover. Enormous amounts of time and energy and faith in our Government have been placed in putting this transaction together. Major banks have committed to participate. And the transaction was not hastily entered into in the last 30 days in order to get in under the wire before the repeal of this section. But the House of Representatives and the Finance Committee seemed to ignore all the time and money and energy that have been expended, all the faith and confidence in laws that have been around for 17 years and seemingly went out of its way to repeal this section with a retroactive effective date to get at this transaction which because of its size had made the newspapers.

Mr. President, I believe what we see here is a good example of why people are so cynical about Government. What we see here is an effort to ignore the facts, to ignore the good-faith reliance on section 1071 exhibited by the prospective purchaser in all transactions now pending before the FCC. What we see here is a total disregard of the equities and due process in an effort to rush to judgment.

Mr. President, retroactive effective dates are very unusual in the Senate. In fact, this body has a long and consistent history of using one of three dates as the effective date of a tax change that reduces or eliminates tax redemptions, exclusions or similar provisions. The usual choice for those effective dates are the date of enactment, the first December 31st of the year of enactment, or the first taxable year beginning after one of the first two dates.

Putting aside tax rate changes, Mr. President, the Senate has departed from the usual effective dates only in rare circumstances where there has been a legitimate concern about the ability of taxpayers to rush the market

and therefore avoid changes. Even in those rare cases where Congress was closing loopholes in the tax law because taxpayers were abusing the system, Congress adhered to the standards of fairness to ensure that taxpayers would have sufficient notice and could plan their private transactions, so that the business community could plan, the taxpayers could plan, so they could order their affairs in reliance on our activity.

That is not what has happened here, Mr. President. The provisions repealing section 1071 therefore represent a dramatic departure from the general procedure for drafting effective dates. After reviewing the facts and precedents, I remain convinced there is no policy reason to justify singling out this particular section of the Internal Revenue Code for an unprecedented formulation of an effective date.

It is worthwhile to compare the effective date for the repeal of section 1071 in this bill to the precedents. First, there is the January 17, 1995, effective date. What is the significance of this date? Well, Mr. President, it is the date on which the chairman of the House Ways and Means Committee issued a press release indicating the committee would review this section and that they might consider repealing the section, in which case he intended to use a January 17 effective date.

When has this body ever allowed a single Member of the House of Representatives to unilaterally dictate the effective date of a tax change? When the chief of staff of the Joint Committee on Taxation was asked this question during the Ways and Means markup, I understand that he cited the tax-exempt leasing bill that was introduced by former Congressman Jake Pickle. Well, in that case, the majority leader, Senator DOLE, introduced a companion bill in the Senate. And in that case, the retroactive effective date was made all but moot by three very generously, broadly applicable transition rules and a host of targeted rules.

The most recent and more relevant example of an effective date that was sent by press release occurred in the Tax Reform Act of 1986. However, in that case, taxpayers were put on notice in 1984—2 years before the press release—when Treasury published a tax reform proposal. In that case, a press release was issued to revolve the difference between a retroactive January 1, 1986, effective date in a House provision dealing with tax-exempt bonds, and a Senate provision with a January 1, 1987 prospective date. What is important to note is that this was a joint press release; it was signed not only by both chairman of the House and Senate tax-writing committees, but also by the two ranking members and the Secretary of the Treasury. It is also interesting that the parties involved chose a date well after the retroactive January 1, 1986, House bill; they agree instead on September 1, 1986.

It is interesting, in that situation also there was consensus, an agreement between both bodies with regard to the setting of an effective date. Again, that is not what happened here. Here, because of a press release of one Chamber by one individual, the Senate has rushed to judgment to adopt that and thereby undo the work that all these actors in the private sector have undertaken in reliance on section 1071.

This is the precedent that this body will overrule if we approve the effective date in H.R. 831 for the repeal of section 1071.

I mentioned earlier that Congress has departed from the general rule where there was a perceived abuse of the tax law. The general practice in those situations has been to use the date of the committee action as the effective date, and even then to provide fair and reasonable transition rules. For example, in the 1990 revenue reconciliation bill, Congress shut down a loophole through an amendment to section 355 of the Internal Revenue Code. The 1990 act was passed on October 27, 1990, and signed into law on November 5, of that year. In that case, the general effective date applied to securities purchased after October 9, 1990—the day before the Ways and Means Committee reported out the bill, but Congress also provided a transition rule where the material terms of a transaction were described in a written public announcement before October 10, 1990, and SEC filing was made before that date. The same rule was provided in another section of the 1990 act dealing with debt exchanges.

Another example is provided by the 1989 Revenue Reconciliation Act. Again, there were perceived abuses by businesses making debt-financed stock sales to ESOP's; there, the general effective date for an amendment that modified the partial interest exclusion for ESOP loans was for loans made after July 10, 1989, the day before that provision was presented in a chairman's mark to the Ways and Means Committee.

In the Revenue Act of 1987, which was signed into law on December 22, 1987, Congress closed a loophole that allowed ''C'' corporations to avoid LIFO recapture by converting to ''S'' corporation status. There the effective date was December 16, 1987—the date of the conference committee action. Moreover, a transition rule was provided where there was a board of directors resolution before the December 16 date.

Why are taxpayers with applications pending before the FCC not deserving of transition relief? The only concrete answer that I have received to this question is that the size of the one of those transactions, the Viacom transaction, is just too great—the implication is that we would somehow save tax revenues if we refuse to provide a reasonable and appropriate transition rule—and so the committee substitute before the Senate has no reasonable and appropriate transition rule.

Just yesterday, Mr. President, this Senate, by a very strong vote of 69 to 29, approved a form of line-item veto authority for the President of the United States. Senator after Senator stood up to explain how unfair it was that the Congress was, in effect, blackmailing the President, by linking pork-barrel items with must items in a single bill. Yet that is what we see here today. Those who want the Senate to consider the option of reforming section 1071 have no choice but to be linked up, in effect, be blackmailed by the fact that we also want to see the reform with the self-employed health insurance deduction issue. We want to see the health insurance passed, but now we are being forced by the committee action to accept this ill-considered rush-to-judgment, unfair, retroactive repeal of section 1071.

As I stated at the outset, I am a strong supporter of that provision; and I agree that it needs expedited consideration. However, there is no reason that the section 1071 issue had to be linked to that provision. The committee substitute now before us has offsets sufficient to ensure budget neutrality even without the provision repealing section 1071.

However, the provision repealing section 1071 is in the bill. And it is clear that the need for action in the next 2 weeks to complete action on the health insurance provisions effectively precludes this Senator, or any member of the Senate, from acting to try to slow down this train, and to ensure that the objectives of the minority ownership tax certificate program get the attention they deserve.

Let me conclude by reminding my colleagues that diversity of voice in our electronic media remains critically important, and that we have a responsibility to every American to see that entry is open enough to permit that business to meet the needs of all of our citizens. It is also critically important that Government act responsibly, and that Government keep it word. By repealing section 1071 retroactively, we are failing to meet our obligation to those who have in good faith relied on the law of the land, and our obligation to the American people generally to legislate responsibly.

By repealing this section retroactively, we have also, I believe, taken a rush to judgment and put at great peril an important policy consideration having to do with diversity of voice.

Mr. President, I intend to continue working on the issue raised by section 1071 and I intend to continue working to try to convince my colleagues in this body that the objectives of diversity of voice are important ones that must be preserved. I intend to continue speaking out on the issue of the importance of inclusion of women and minorities in every industry in this Nation, but certainly in communications, which has such a broad-range effect on the way that people see our country, the way that people see the world, the

kind of information to which they are given access.

It is access to information that is at the heart of the section 1071 program. And the notion that access to that information ought to come from as many places as we can manage, to the extent that section 1071 has had a positive effect in encouraging diversity of voice, encouraging diversity of ownership, allowing women and minorities a chance to participate in an industry in which they were historically deliberately excluded, it had a salutary effect and meaning and reason, and it is something that we should protect and preserve in this body, and not otherwise.

I think it is unfortunate that this retroactive repeal has been associated with this important health care initiative. I think it is something that I intend to continue to fight. And I hope, that as we move down the road in consideration of this tax legislation, we will not lose the one opportunity we had to unlock the door, to provide opportunity as a way of responding to concerns that may be misplaced, to concerns that need to be articulated and talked about, but concerns that we really have not looked closely enough at to see the benefit for all Americans.

And so I hope that the health care deduction passes. I want to support that. I want to help that. But on section 1071, the fight is not over. The fight continues.

I hope that what has happened here with regard to this retroactive repeal is a wake-up call to women, to minorities, to people in this country who care about diversity, who think that it is important, that we cannot sit back. And, as complex as this issue may seem, fundamentally it is a very simple one. It is an issue of whether or not the airwaves of this country are for all Americans or for some Americans. I believe that inclusion and diversity is the strength of our country and not otherwise, and I will fight to maintain access to the airwaves for all Americans.

Thank you, Mr. President.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I most emphatically wish to state the debt in which we all find ourselves to the Senator from Illinois for her powerful and persuasive statement; her first on this particular subject, but not, I dare think and hope, her last.

We will continue now with this debate.

Mr. President, I yield 5 minutes to my friend and colleague, the senior Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my good friend, as well, the senior Senator from New York.

Mr. President, in Montana, we have a saying—''it's not what you say, it's what you do.''

For too long, Members of Congress said they only wish they could permanently extend the health insurance premium for the self-employed but that they didn't have the money to get the job done.

For too long, Members said they wanted to increase the deduction beyond 25 percent—but they did not have the money.

Today, we will vote on legislation that, at long last, permanently extends the health insurance premium deduction for the self-employed, and increases it from 25 to 30 percent for 1995 and afterward.

What does this mean back home? Well, this is real. This means farmers and small business people get relief.

I heard from Randy Koutnik in Helena who was planning to go into his own business. He needed the deduction so he could continue to afford health insurance coverage. I think this legislation is needed. It will help Randy, and many other hardworking, gutsy entrepreneurs like him start out on their own.

Polly Burke of Missoula called me up to say how angry she was that self-employed individuals were losing their 25-percent health insurance premium deduction while corporations kept their 100-percent deduction. And I think Polly is right to be angry.

Today we will take a first step to help Polly, Randy, and all self-employed across America.

My only complaint is that we should have acted earlier. For the cash-basis farmers who had to pay their taxes by March 1, Congress is 3 weeks late.

It is true that those farmers can amend their returns and collect a refund. But amending the return will take time and, unless their accountants work for free, will cost these farmers money. Probably 30 to 50 bucks apiece.

But with today's action, Congress will at least do the right thing.

We will permanently extend the health insurance premium deduction so Montana farmers, small business people, and all of America's self-employed have at least one less thing to worry about in the years ahead.

Mr. President, I intend to vote for this legislation and I strongly encourage my colleagues to vote for it. And I will push hard to make sure it gets to the President's desk fast, so the deduction is available to all the self-employed filing their tax returns before April 17.

I thank the Chair, and I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Oregon [Mr. PACKWOOD] for deferring to me briefly so that I might make a brief statement.

BLACK HUMOR

Mr. BYRD. Mr. President, a cartoon by Mr. Garry Trudeau appeared in the Washington Post last Sunday, March 19, 1995, and I assume in many other newspapers, in which he is syndicated, a cartoon which is an unfortunate example of tasteless, offensive, black humor. It belittles the war record, bravery, and selfless sacrifice of the distinguished majority leader, Mr. DOLE, by ridiculing the wounds he suffered and still carries, and always will, from the Italian campaign of World War II. The war record of all elected officials is usually a matter of some attention during political campaigns, and Mr. DOLE is no exception. But why anyone would take an excursion into cynical dark cartoon humor over this is incomprehensible and inexcusable.

Our political system and culture must be based on civility, mutual respect and honor. The discourse and debate in Presidential campaigns, indeed any campaign, should properly focus on the positions of the candidates on the major issues of the day, and what solutions are being offered. We have had too much of personal attacks, negative campaigning, and the politics of cynicism in America in recent years. I think it would be beneficial if we all tried a little more to elevate the political discourse in America, and that we focus on where we should, constructively, lead the Nation. Our attitude should certainly be positive and, while we differ on many issues, strive for unfailing courtesy and respect.

Mr. DOLE carries with him the symbol and the physical result of his valor in combat, defending our country, defending the very ability of cartoonists to exercise their trade in freedom, and our very ability to conduct an honorable, civil, enlightened debate in a democracy. Mr. DOLE has dedicated his entire life to the service of the Nation. Mr. Trudeau, I believe, owes Mr. DOLE an apology for this entirely inappropriate attack and innuendo.

Mr. President, I yield the floor.

SELF-EMPLOYED HEALTH INSURANCE COSTS DEDUCTION

The Senate continued with the consideration of the bill.

MATERIAL TERMS UNDER THE BINDING CONTRACT EXCEPTION IN H.R. 831

Ms. MOSELEY-BRAUN. Mr. President, I rise to request a clarification to a provision in H.R. 831 relating to the binding contract exception to the repeal of section 1071.

Binding contract exceptions to changes to the tax laws are commonly included in tax legislation to protect taxpayers who, in reliance on the laws, entered into legally binding agreements prior to the effective date of the statutory change but where the transaction itself will not be completed until after that effective date. H.R. 831 includes such a binding contract exception to the repeal of section 1071. The intent of this exception is to honor taxpayers' good faith reliance on the law.

The binding contract exception in this bill, however, would not apply if