

government through the increased sales of appreciated assets. 10 or 15 percent of something is a lot more than 28 percent of nothing.

Another of our opportunities is an increased estate tax exemption. The 600,000 dollar exemption currently in the law hasn't been changed for a decade. We must work to obtain an exemption that will allow farm operations to pass from generation to generation with minimal disruption and dislocation.

A fifth area of opportunity would be obtaining legislation requiring risk assessment and cost/benefit analysis. A sixth is legislation limiting the creation of unfunded mandates.

And a seventh is granting compensation for victims of takings. That's the key in our private property battle. Make government pay for what they take and they'll take less or, better yet, they'll stop taking. Or, if they take, we get fair market value.

That's seven goals for us to shoot for, by Easter. And we'll work to get a 100 percent income tax deduction for health insurance premiums paid by the self-employed and adequate funding for new farm programs.

That will be enough on our plate for now, for these 100 days. Challenge and change. Opportunity and good fortune. The future is exciting. We are creating our own breaks. Better prosperity beckons. But there's more, much more.

Innovations overtake us with dizzying speed. And we accept and adapt them to our advantage. About the only thing old-fashioned about farmers today is our adherence to our traditional values.

I recently came across a paragraph from the Durants' 11-volume "Story of Civilization." I'll quote the paragraph, not the 11 volumes. "Civilization is a stream with banks. The stream is sometimes filled with blood from people killing, stealing, shouting and doing things historians usually record \* \* \* While on the banks, unnoticed, people build homes, make love, raise children, sing songs, write poetry and even whittle statues. The story of civilization is the story of what happened on the banks. Historians are pessimists because they ignore the banks for the river."

Sometimes, we get awfully close to being like those historians. Still, even though agriculture is so enmeshed in executive orders, legislation, regulations and court rulings, we know there's a lot more to life than making a living.

It's seeing seedlings push through the crust \* \* \* to unfold in a burst \* \* \* Green rows stretching to the horizon. It's seeing a cow nuzzle and nudge her calf, to stand on its own. It's going to Saturday night church service so on Sunday morning we can see dawn break and contemplate God from our deer stand. It's hurrying to finish chores so we can go to another Farm Bureau meeting. It's seeing the kids beam with pride as they see their hog take a fourth-place ribbon, even if there was only a class of four.

There's more to life than making a living. Winston Churchill said we make a living by what we get, but we make a life by what we give. We know life and we call it farming. And it's what Farm Bureau is all about. We work to preserve the ideals we cherish, the life that others only dream about.

You and I, working together, can keep this nation the country we want, the country we fought for, the country we will always fight for. Our future is bright because of our faith, our families and Farm Bureau.

As the country prepares for the 21st century, let us keep our principles in place for the 22nd. We face a different world, and you, working through Farm Bureau, can make a difference.

Thank you for the wonderful opportunity, the gift, of serving you. God bless you. God bless America. God bless Farm Bureau.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### CONGRESSIONAL ACCOUNTABILITY ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2) to make certain laws applicable to the legislative branch of the Federal Government.

The Senate resumed consideration of the bill.

Pending:

Ford/Feingold amendment No. 4, to prohibit the personal use of accrued frequent flyer miles by Members and employees of the Congress.

The PRESIDING OFFICER. Now pending before the Senate is amendment No. 4.

Mr. GLENN. Mr. President, we had this legislation on the floor last week, of course, and continue it today. We will continue it tomorrow. The time is limited on this.

I wanted to rise and let all the people watching in the offices, all the different staffs, as well as the individual Senators, know that it is my understanding—and I ask my distinguished colleague from Iowa to comment on this, too—it is my understanding that the majority leader has indicated that he wished to end this bill, if at all possible, by 7 o'clock tomorrow evening, Tuesday evening.

Now, I presume that is correct. I know we will try to end by a certain time. I was just told a few moments ago that the time expressed is 7 tomorrow evening.

That being the case, there are no amendments on the Republican side. They are all on the Democratic. If we are to meet that deadline, it means that people had better get their amendments together and get them over here. We have no time agreements at this point, so anyone can take up as much time as they want on the floor.

But we do have a number of amendments still pending, and if people expect to make certain of not getting frozen out with their proposals, then they better get over here this afternoon. We will have some tomorrow morning. But people should be cognizant of the fact that tomorrow is conference day also where we will be out of session temporarily, or in recess, from about 12:30 to 2:15, so we lose a block of time in the middle of the day.

As I see it right now, with the number of amendments still left, there is not going to be time for getting them all in right now even if people started

coming to the floor now. I hope people are not going to wait until late tomorrow afternoon and then bump up against the 7 o'clock deadline and then want the floor managers, Senator GRASSLEY and myself, to try to make some special arrangement for them, because that is not likely to be possible. I encourage people who have amendments to get them together, get them over here and consider them this afternoon while we have time. We have quite a bit of time. It is 20 minutes to 4. We can consider several amendments. We have nothing pending at the moment. I urge my Democratic colleagues to get them together and get over here. Thank you.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, let us take a look at the amendments that might be brought up. I hope they will not all be brought up:

One by Senator BRYAN dealing with pensions. One by Senator BYRD that is described as a relevant amendment. We have four by Senator FEINSTEIN dealing with campaign finance reform. We have one by Senator FORD that is an amendment pending dealing with frequent flier miles. Also, another one described as a relevant amendment. We have a manager's amendment by our friend Senator GLENN. Senator GRAHAM, of Florida, has an amendment that is in the process of being drafted of which we have no description. Senator KERRY has an amendment dealing with leadership PAC's and campaign fund conversion for personal use. Senator LAUTENBERG has an amendment that is described as a relevant amendment. Senator LEAHY dealing with employment rights. Senator LEVIN, another one described as relevant. Senator REID, described as relevant. And Senator WELLSTONE has several, two that deal with gift ban, three that deal with campaign finance reform, one with health care, and two described as relevant.

I think that anybody in this body or anybody listening throughout the country would probably realize that each of these amendments, at least those that we have a description of, are legitimate subjects for discussion within this body. Most of them—not all of them—but most of them have already been alluded to by the Senate majority leader by his saying that before just a few short months are up, all of these issues will be discussed. The issue of gifts and the issue of lobbying reform have all been described by Senator DOLE, the majority leader, as issues that he intends to give any Member of this body an opportunity to go as in-depth as they want to on any of these issues.

So there is not any issue on this set of pending amendments that will not have an opportunity to be discussed; in other words, it will have an opportunity to be discussed the first half of this year, for sure.

So I urge my colleagues who are very sincere about what they are trying to accomplish through these amendments to maybe not offer these amendments on the bill that is before us.

Then that brings me to further discussion of the bill that is before us, because this is a bill that the people of this country have been demanding that we pass for quite a few years now, to correct a situation where in this country there are two sets of laws: One for Capitol Hill and one for the rest of the country; one for Pennsylvania Avenue, DC, and the other for Main Street, USA; where there is one set of laws for the Congress as an employer, or we individual Senators and Congressmen and women as employers because we hire staff, and another set of laws for every other employer in America. There is one set of protections for people in the private sector whose employees are protected by the employment, safety and civil rights laws, but no protection, or very little protection, for employees on Capitol Hill.

We have a situation of one set of laws applying to one part of the country and those laws not applying to Capitol Hill. Under the laws that apply outside Capitol Hill, employers of America can be intimidated and harassed and fined and maybe even put out of business by regulators and inspectors and various employees of Federal enforcement agencies coming around to their place of business to enforce those laws; whereas we, as an institution of Congress and an employer and we as individual Senators—and we happen to be employers of staff—we do not have to worry about that sort of intimidation and harassment and fined by regulators coming around and inspecting our offices and looking into our employment practices because we are not covered by those laws.

We have a situation where the private-sector employers understand that intimidation and they understand the egregiousness and the cost of legislation on their operation. We on Capitol Hill, because we have exempted ourselves from this series of legislation since the 1930's, do not know about that cost, do not know about the paying a fine, do not know about the intimidation that the private sector feels.

So for a long period of time—and I have been involved in sponsoring this legislation for 7 or 8 years—but for a long period of time, people in the private sector, understanding the unfairness of the situation, the American people have asked Congress to end that situation of dual statutes. They have asked Congress to end the unfair situation where we have exempted ourselves from this legislation.

The legislation that passed the House of Representatives did that. It passed unanimously in the other body. Senator DOLE made a commitment a long time ago, after the Republicans had become the majority again as a result of

the last election, that this bill would be No. 1 up on the floor of this body.

So we have the Congressional Accountability Act, a bipartisan bill sponsored by myself and by Senator LIEBERMAN of Connecticut, to carry on from where the House left off, to end this situation. We discussed this bill all day Thursday, all day Friday and today is the third day. We are going to be on it, as Senator DOLE said, until about 7 o'clock tomorrow night when we hope to pass it. Four days to pass legislation that unanimously has passed the House of Representatives and which everyone agrees is a situation that should be rectified.

But we have not spent much time in debate on the floor of this body discussing the merits of the legislation. We have had speeches by the Democratic manager, Senator GLENN, myself, Senator LIEBERMAN, the main cosponsor, Members on both sides of the aisle gave some opening statements about why they support the legislation but no amendments to change the basic legislation.

We had 6 or 7 amendments last week, all of them tabled, unrelated amendments to the Congressional Accountability Act that we had to deal with because under the rules of the Senate those amendments can be offered even if they do not concern the subject matter of the basic underlying legislation.

Again, I would say, as I said about the amendments that are pending, that might be offered yet today and tomorrow, there was not a single issue that has been offered by my colleagues that is not a legitimate subject for discussion on the floor of this body. But again, whether those amendments were Thursday or Friday or today and tomorrow, they all fit into the category of issues that Senator DOLE is going to give everybody an opportunity to participate in the debate and bills where those amendments are more germane to the subject.

So I think, since there is not opposition to the underlying legislation, we ought to be able to just get this behind us and move on and respond to what the people said in the election on November 8; that they no longer wanted business as usual in Washington, DC. And there is no better example of business as usual than for Congress to continue its exemption from employment and safety and civil rights laws that apply to the rest of the Nation but have not applied to us.

The House has demonstrated, for sure, it is not business as usual because they passed the bill with just a few minutes of discussion and unanimously. I wish we could do as well in the Senate. It looks as if the legislation will pass and we will end this dual system of lawmaking, and end our exemptions, but it is just taking a little bit longer than it should.

It is also important that we move on to other important pieces of legislation that are in the contract that we have with America: Unfunded mandates, the

next bill that will be coming up on the floor of this body, so that we do not make policy here in Washington and then make Governors and legislators and mayors and councils raise their local taxes to pay for a policy we will not pay for here in Washington. Then we move on to a constitutional amendment requiring a balanced budget, and then move on to a line-item veto, welfare reform, then moving term limits for Members of Congress, tort reform, and two or three other things such as tax relief and crime that we have a contract with America to pass within the first few months.

Then we have still the part of the year, the spring, the summer and the fall, when most of the work around here gets done in the late night hours. Maybe we will not have to work so late at night so long as we are working early in the year.

So I appreciate that scheduling and that better management of the calendar. But there will be plenty of opportunities to deal with all these very important amendments that my colleagues want to offer to this bill even though they are not relevant to the bill. I hope we will see some of these amendments not actually offered, and I hope that we can get agreement to time limits on these amendments when they will be offered.

I wish, as my good friend, Senator GLENN, has already stated, Senators would come over here and offer these amendments.

I am going to yield the floor, but before I do, Mr. President, I would like to have a section-by-section analysis of the legislation that Senator LIEBERMAN and I have introduced submitted and printed in the CONGRESSIONAL RECORD.

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

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1—SHORT TITLE

This act may be cited as the "Congressional Accountability Act of 1995".

##### Title I—General

##### Section 101—Definitions

This section defines terms used throughout this act, as follows:

(1) The term "Board" means the Board of Directors of the Office of Compliance, which has authority under this act to promulgate regulations for the implementation of the laws made applicable by this act and to review decisions of hearing officers in cases brought under the dispute resolution process created by this act.

(2) The term "Chair" means the Chair of the Board of Directors of the Office of Compliance.

(3) The term "covered employee" means any employee of the House of Representatives, the Senate, the Office of the Architect of the Capitol, the Congressional Budget Office, the Office of Technology Assessment, the Office of Compliance, the Capitol Police, the Capitol Guide Service, or the Office of the Attending Physician. It does not include employees of the General Accounting Office, Library of Congress, or Government Printing Office.

(4) The term "employee" includes an applicant for employment and a former employee.

(5) The term "employee of the Office of the Architect of the Capitol" means employees of the Office of the Architect, the Botanic Garden, or the Senate restaurants.

(6) The term "employee of the Capitol Police" includes any member or officer of the Capitol Police.

(7) The term "employee of the House of Representatives" means an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or other official designated by the House of Representatives, or any employment position in an entity that is paid through funds derived from the Clerk-hire allowance of the House of Representatives, but not any such individual employed by the Capitol Police Board, the Capitol Guide Board, the Office of the Attending Physician, the Congressional Budget Office, Office of Technology Assessment, or the Office of the Architect of the Capitol.

(8) The term "employee of the Senate" means, any individual whose pay is disbursed by the Secretary of the Senate, excluding such individuals employed by the Capitol Police Board, the Capitol Guide Board, the Office of the Attending Physician, Office of Technology Assessment, Office of Compliance, or the Office of the Architect of the Capitol.

(9) The term "employing office" means a personal office of the Member of the House of Representatives or the Senate, or joint office, or any office under the authority of an individual who has final authority to appoint, hire, discharge, or set the terms of employment of an employee, as well as contractors and consultants. The office of compliance created by this act will issue rules concerning the "employing office" of minority staff of committees.

(10) The term "Executive Director" means the Executive Director of the Office of Compliance.

(11) The term "general counsel" means the general counsel of the Office of Congressional Fair Employment Practices.

(12) The term "Office" means the office of compliance.

#### Section 102—Application of Laws

Section 102(a) enumerates the statutes, as prescribed by this act, that are made applicable to the legislative branch. These are (1) the Fair Labor Standards Act of 1938; (2) Title VII of the Civil Rights Act of 1964; (3) the Americans with Disabilities Act of 1990; (4) Age Discrimination in Employment Act of 1967; (5) Family and Medical Leave Act of 1993; (6) Occupational Safety and Health Act of 1970; (7) Federal Service Labor Management Relations Act; (8) Employee Polygraph Protection Act of 1988; (9) Worker Adjustment and Retraining Notification Act; (10) Rehabilitation Act of 1973; (11) Veterans Reemployment Act.

Section 102(b) requires the Board of review statutes and regulations relating to the terms and conditions of employment and access to public services and accommodations. Beginning on December 31, 1996, and every 2 years thereafter, the Board is to report on whether these provisions apply to the legislative branch, and to what degree, and whether provisions inapplicable or less than fully applicable should be changed to govern Congress. Thus, the Board will review laws already in existence at the time of enactment that are not addressed or fully addressed by this act, and will, in the future consider as well legislation enacted after the enactment of this act. Each report will be printed in the CONGRESSIONAL RECORD and referred to the House of Representatives and Senate committees of appropriate jurisdiction.

Section 102(b) requires each committee report accompanying a bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations to describe the manner in which the bill applies to Congress. In the event the provision is not applicable to Congress, the report will contain a statement of reasons for its inapplicability. If such requirement is not followed, it shall not be in order for either House to consider the bill. On a majority vote of that House, this point of order can be waived.

#### Title II—Extension of Rights and Protections

##### Section 201—Rights and Protections Under Laws Against Employment Procedures

**Civil Rights.** Section 201(a) sets forth the basic rights to freedom from employment discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability, that are extended to all employees covered under this act. By defining the rights guaranteed under this act by reference to existing statutes, the Act incorporates the interpretations of those rights as developed in case law.

**Applicable remedies.** In addition to setting forth the rights to freedom from employment discrimination, this section (in subsection (b)) sets forth the remedies available to employees who prove a violation of those rights in proceedings before hearing officer, or in Federal district court. With respect to claims of discrimination on the basis of race, color, religion, sex, or national origin, the remedies are those that would be available to private employees under sections 706(g) and 706(k) of title VII (42 U.S.C. § 2000e-5(G), 2000e-5(k)), including reinstatement, back pay, and attorney's fees. For these claims, the Act incorporates the waiver of sovereign immunity from interest for delay in payment that applies to the executive branch under section 717(d) of title VII (42 U.S.C. § 2000E-16(d)), as provided in section 225(b). Employees are also entitled to compensatory damages available under section 1977 and sections 1977(A)(a) and (b)(2) of the revised statutes (42 U.S.C. § 1981, 1981A(a), (b)(2)). Damages under title VII may not exceed, for each employee, and without regard to the size of the employing office, \$300,000, the same maximum figure that applies to large private employers.

With respect to age discrimination claims, employees are entitled to the same remedies as are available under section 15(c) of the Age Discrimination in Employment Act (29 U.S.C. § 633a(C)) available to Federal employees who prove age discrimination. The waiver provisions of section 7(f) of that Act also apply to covered employees. 29 U.S.C. 626(f). In regard to claims of discrimination on the basis of handicap within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791), employees are entitled to the same remedies as are available to Federal employees under section 505(a)(1) of that act (29 U.S.C. § 794a(a)(1)), as well as the compensatory damages provisions described above under Title VII. For claims of discrimination on the basis of disability within the meaning of sections 102-104 of the Americans With Disabilities Act of 1990, employees are entitled to the remedies as are available under section 107 of that Act (42 U.S.C. § 12117(a)), as well as the title VII compensatory damages.

As under current law with respect to Federal employees, punitive damages are not available for any claims under this section.

Section 201 is also made applicable to instrumentalities of Congress.

**Effective date.** This section is effective one year after enactment.

##### Section 202—Rights and Protections Under the Family and Medical Leave Act

**Family and medical leave.** This section provides employees with the rights to family and medical leave provided to private employees under sections 101 through 105 of the Family and Medical Leave Act of 1993. For purposes of applying those sections, the term "eligible employee" as used in the Family and Medical Leave Act is defined so that a covered employee within the Senate, the House of Representatives, or of the Congressional instrumentalities covered by this act, earns his or her entitlement to family and medical leave without respect to transfers between employing offices. For example, once an employee has been a covered employee for at least twelve months, and works for at least 1250 hours during the previous twelve months, he or she is an eligible employee for purposes of family and medical leave, irrespective of whether he or she changes employing offices.

This section makes title I of the Family and Medical Leave Act, rather than title II, applicable to the General Accounting Office and the Library of Congress, beginning one year after the date of completion of the study referred to in section 230.

**Applicable remedies.** The remedies for a violation of the rights conferred by this section are the same remedies that would be available to a private employee under section 107(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. § 2617(a)(1)), which includes damages, liquidated damages and interest, attorney's fees, and costs. The remedies and protections under this act provide rights over a one year period. Accordingly, the Board is to ensure that the six month statute of limitations that applies under this act is applied in such a way as to ensure the possibility that employees will have six months to seek to redress violations of any rights conferred by the Family and Medical Leave Act.

Under this section, and various other sections of the bill, the Board is given authority to issue regulations to enforce the Family and Medical Leave Act. Such regulations shall be the same as the substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsection (a), except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

"Good cause" is a term of art in the Administrative Procedures Act. This is a narrow phrase. It does not provide an escape hatch for the Board to deviate from executive branch regulations except for substantial justification. I expect courts to interpret the term "good cause" narrowly here, just as they have done with respect to the equivalent term in the Administrative Procedures Act.

**Effective date.** This section is effective one year after the enactment of this act.

##### Section 203—Rights and Protections Under the Fair Labor Standards Act

**Minimum wage, maximum hours, and equal pay.** This section provides employees with rights to minimum wage, equal pay, maximum hours, afforded private and other public employees under sections 6(a)(1), 6(d), 7 and 12(c) of the Fair Labor Standards Act (29 U.S.C. §§ 206(a)(1), 206(d), 207, 212(c)). As in the private sector, employees may not be provided compensatory leave in lieu of overtime compensation. For the purposes of this section, the term "covered employee" does not include an intern as defined by regulation.

The exemptions for certain employees, set forth in section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. §213(a)(1)), also apply under this act. Employees who are employed in a "bona fide executive, administrative, or professional capacity" are not covered by the minimum wage and maximum hours provisions. Volunteers are also excluded from coverage if they receive no compensation or are paid expenses, reasonable benefits, or a nominal fee for their services, and such services are not the same type of services for which the individual is employed.

Applicable remedies. The remedies for a violation of the rights conferred by this section shall be the remedies that would be available to other employees under section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. §216(b)), which includes unpaid minimum or overtime wages, liquidated damages, attorney's fees, and costs.

Regulations issued by the Board. This section also directs the Board to promulgate rules, pursuant to section 304 of this act, that are necessary to implement the rights and protections under this section. This would include rules on what employees are exempt from the minimum wage and maximum hours requirements, the definition of an intern, and which employees' work depends directly on the schedule of the House of Representatives and Senate. "Directly" is to be strictly limited to those employees who are essentially floor staff. Regulations issued by the Board are to be the same as substantive regulations issued under the Fair Labor Standards Act by the Secretary of Labor, unless the Board determines that a different rule would be more effective for implementation of the rights and protections of this act.

Effective date. Subsections (a) and (b) of this section are effective one year after enactment of this act.

#### Section 204—Rights and Protections Under the Employee Polygraph Protection Act of 1988

Under this section, no employing Office, irrespective of whether a covered employee works in that Office may require a covered employee to take a lie detector test where such a test would be prohibited if required under paragraphs (1), (2), or (3) of section 3 of the Employee Protection Act of 1988 (29 U.S.C. 2002 (1), (2), (3)). For purposes of this section, the term "covered employee" includes the employees of the General Accounting Office and Library of Congress. The term "employing Office" includes the General Accounting Office and Library of Congress. However, nothing in this section precludes the Capitol Police from using lie detectors in accordance with regulations issued under subsection (c).

The remedies available for a violation of this section are the appropriate remedies under section 6(c)(1) of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 20005(c)(1)). In addition, the waiver provisions of section 6(d) of the act (29 U.S.C. 2005(d)) shall apply.

The Board is empowered to issue regulations to implement this section under section 304 of this act. These regulations shall be the same as substantive regulations issued by the Secretary of Labor to implement the underlying statute, except insofar as the Board may determine, for good cause, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

The effective date for this section is one year after the date of enactment of this act, except with respect to the General Accounting Office and Library of Congress, for which the effective date shall be one year after the

transmission to Congress of the study authorized in section 230.

#### Section 205—Rights and Protections Under the Worker Adjustment and Retraining Notification Act

This section provides that no employing office shall be closed or a mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 1202) until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees. For purposes of this section, the term "covered employee" includes employees of the General Accounting Office and Library of Congress and the term "employing office" includes the General Accounting Office and Library of Congress.

The remedies available for a violation of the rights conferred by this section shall be such remedy as would be appropriate under paragraphs (1), (2), and (4) of section 5 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2104(a) (1), (2), (4)). Under this statute, a specific rule affecting coverage is contained in section 225(f)(2).

The Board shall issue regulations pursuant to section 304 to issue regulations to implement this section. These regulations shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the Board may determine, for good cause shown, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

This section is effective one year after the date of enactment of this act, except in the case of the General Accounting Office and Library of Congress, where the effective date will be one year after transmission to the Congress of the study provided for in section 230.

#### Section 206—Rights and Protections Relating to Veterans' Employment and Reemployment

This section prohibits an employing office from (1) discriminating, within the meaning of subsections (a) and (b) of section 4311 of title 38, United States Code, against an eligible employee; (2) denying an eligible employee reemployment rights within the meaning of sections 4312 and 4313 of title 38, United States Code; or (3) denying an eligible employee benefits within the meaning of sections 4316, 4317, and 4318 of title 38, United States Code. For purposes of this section, the term "eligible employee" means a covered employee performing service in the uniformed services, within the meaning of section 4303(13) of title 38, United States Code, whose service has not been terminated upon occurrence of any of the events enumerated in section 4304 of title 38, United States Code. For purposes of this section, the term "covered employee" includes employees of the General Accounting Office and Library of Congress, and the term "employing office" includes the General Accounting Office and the Library of Congress.

The remedy available for violation of this section shall be the remedies available under paragraphs (1), (2)(A), and (3) of section 4323(c) of chapter 43 of title 38, United States Code. These remedies shall be in addition to, and not substitutes for, any existing remedies available to covered employees under chapter 43 of title 38, United States Code.

The Board, pursuant to section 304, shall issue regulations to implement this section. These regulations shall be the same as substantive regulations issued by the Secretary of Labor to implement the underlying statutory provisions except to the extent that the

Board may determine, for good cause shown, that a modification of such regulations would be more effective for the implementation of the rights and provisions under this section.

The effective date of this section is one year after enactment of this act, except as to the General Accounting Office and Library of Congress, where the effective date shall be one year after transmittal to Congress of the study authorized under section 230.

#### Section 207—Prohibition of Intimidation or Reprisal

This section provides one uniform remedy for intimidation or reprisal taken against covered employees for exercising rights and pursuing remedies of violations for the violation of rights conferred by this act. Under this section, it is unlawful for an employing office to take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this act, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this act. The remedy available for a violation of this subsection shall be such legal or equitable remedy as would be appropriate.

#### Section 210—Rights and Protections Under the Americans With Disabilities Act

This section applies the protections of title II and III of the Americans With Disabilities Act, which concern rights other than employment discrimination, to each office of the Senate, each office of the House of Representatives, each Joint Committee, the Office of the Architect, the Capitol Guide Board, Capitol Police Board, Congressional Budget Office, Office of Technology Assessment, Office of Compliance, and Office of the Attending Physician. It prohibits discrimination in the provision of public services on the basis of disability, within the meaning of sections 201 through 230, 302, 303, and 309 of the Americans With Disabilities Act of 1990 (42 U.S.C. §12131-12150, 12182-83 and 12189). For purposes of the application of the Americans With Disabilities Act under this section, the covered congressional entities are deemed to be public entities.

The protection afforded by this section applies to any individual with a disability as defined in section 201(s) of the Americans With Disabilities Act of 1990 (42 U.S.C. §12131(2)). However, with respect to any claim of employment discrimination on the basis of disability made by any employee covered under this act, the exclusive remedy shall be under section 201 of this act.

Applicable remedies. The remedies for discrimination in public services prohibited by this section shall be the remedies that would be available under section 203 or 308(a) of the Americans With Disabilities Act of 1990 (42 U.S.C. §§12133, 12188(a)). Section 203 and 308(a) of the ADA incorporates the remedies under section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794A). This includes equitable relief, attorneys fees, and costs. It does not include the remedial procedures described in section 717 that involves the Equal Employment Opportunity Commission, which is not provided any enforcement authority under this act. Nor does it include the provisions in title III of the Americans With Disabilities Act that enable the Attorney General to seek monetary damages in particular cases.

Procedures for enforcement. Under this section, a qualified individual with a disability who alleges a violation under this section may file a charge with the general counsel of the office of compliance. The general counsel shall investigate any such charge and, if the general counsel believes that a violation

may have occurred and that mediation may aid in resolving the dispute, the general counsel may request mediation with the Office under section 403 of this act between the complaining individual and the entity alleged to have committed the violation. The general counsel does not participate in the mediation.

If the dispute is not resolved through mediation, and the general counsel believes that a violation has occurred, the general counsel may, in his or her discretion, file a complaint against the entity with the Office. Ordinarily, once the general counsel concludes that a violation has occurred, a complaint should be filed; however, in a particular case, circumstances, such as the de minimis nature of the violation, may warrant a decision not to file a complaint.

The Office shall submit the complaint to a hearing officer for decision under section 405. Any person who has filed a charge under this section may intervene as of right, with the full rights of a party. This procedure is established so that this individual may participate in developing the record for appeal in the event that the general counsel does not participate in the judicial appeal.

Any party (including the complaining party who has intervened) aggrieved by a final decision of a hearing officer under this section may seek review of the decision by the Board. Any party aggrieved by a final decision of the Board may file a petition for review with the United States Court of Appeals for the Federal Circuit, pursuant to section 407 of this act. This section authorizes judicial review only of a final decision of the Board. Decisions of the general counsel not to file a request for mediation or a complaint, or not to appeal a hearing officer's decision to the Board, are not subject to judicial review under this section or under any other provision of this Act.

Regulations to be issued by the Board. This section directs the Board to issue rules pursuant to Section 304 of this Act, to implement the rights and protections under this section. Any such rules are to be consistent with the regulations issued by the Attorney General and the Secretary of Transportation to implement the provisions of the Americans with Disabilities Act of 1990 referenced in section 210(b) of this Act. The Board may promulgate rules that differ from those of the Attorney General and the Secretary of Transportation only if the Board determines for good cause shown that a modification would be more effective for the implementation of the rights and protections under this section.

Inspections, reporting, and detailees. This section also provides for regular inspections by the General Counsel of the covered entities to ensure that they are in compliance with the requirements of this section. The general counsel is directed to report at least once each Congress to the Speaker of the House of Representatives and the President pro tempore of the Senate on the results of the inspections and to describe any steps necessary to ensure full compliance with this section.

Under this section, the Attorney General, the Secretary of Transportation, and the Architectural and Transportation Barriers Compliance Board may, upon the request of the general counsel, detail such personnel as may be necessary to advise and assist the Office in carrying out its duties under this Section.

A private right of action is provided to any qualified person under the Americans with Disabilities Act against the General Accounting Office, the Government Printing Office, and Library of Congress. However, the enforcement authority of the Equal Employment Opportunity Commission shall be exer-

cised by the Chief Official of the Instrumentality.

Effective date. This section is effective on January 1, 1997, except as to the private right of action against the instrumentalities, which is effective one year after transmittal to Congress of the study provided for in section 230.

#### Section 215—Rights and Protections Under the Occupational Safety and Health Act; Procedures for Remedy of Violations

Protections from workplace hazards. This section requires employees and employing offices to comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. §654). Section 5 requires each employer to furnish employees a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm and requires both employers and employees to comply with the Occupational Safety and Health Standards promulgated by the Secretary of Labor under section 6 of that act (29 U.S.C. §655). The requirement that employers and employees comply with the Secretary of Labor's standards is subject to variance granted under subsections (c)(4) and any regulations promulgated by the Board under subsection (d).

For purposes of this section, the term "employer" as used in the Occupational Safety and Health Act means an employing office and the term "employee" means a covered employee. For purposes of this section, the term "employing office" includes the General Accounting Office and Library of Congress, and the term "employee" includes employees of the General Accounting Office and Library of Congress.

Applicable remedies. The remedy available for violations under this section are an order to correct the violation, including such an order as would be appropriate under section 11 of the Occupational Safety and Health Act of 1970 (29 U.S.C. §662), which include citations issued by the general counsel.

Procedures for enforcement. The responsibilities for enforcement of this section are vested in the general counsel rather than the Secretary of Labor. The Board is given the responsibility to conduct hearings and review orders that is vested in the Occupational Safety and Health Review Commission under section 10(c) of OSHA (29 U.S.C. §659(c)) and to the Secretary of Labor with respect to affirming or modifying abatement requirements, to hear objections and requests with respect to citations and notifications. The remedy available under this act for a violation of OSHA is an order to correct the violation, including such order as would be appropriate if ordered under section 13(2) of the Occupational Safety and Health Act of 1970.

Inspections. With respect to inspections, the authorities granted to the Secretary of Labor in sections 8(a) and 8(f) of OSHA (29 U.S.C. §§657(a), (f)) to inspect and investigate places of employment are to be exercised by the general counsel. Under this section, there are two possible scenarios under which inspections will occur: through employee-initiated requests that the general counsel inspect particular offices and periodic inspections of all congressional facilities. The general counsel exercises OSHA authority with respect to both employee requested and periodic inspections. Periodic inspections are random. Each facility is to be inspected each Congress. However, the act does not provide that employing offices are to receive notice of the inspections.

Citations. With respect to citations, the authorities granted to the Secretary of Labor in sections 9 and 10 of OSHA (29 U.S.C. §658, 659) to issue citations for violations or notices of failure to correct violations for

which citations have been issued are vested in the general counsel. The citation would normally state a date by which corrective action is to be completed. The citation is to be issued only against the employing office that is responsible for the particular violation as determined by regulations issued by the Board. The general counsel may also issue a notification to any employing office that the general counsel believes has failed to correct a violation for which a citation has been issued within the period permitted for its correction.

If after issuing a citation or notification, the general counsel determines that a violation has not been corrected, the general counsel may file with the Office of Compliance a complaint against the employing office named in the citation or notification. Under OSHA, the general counsel can issue a citation and proceed to file a complaint if the violation remains unabated. Or the general counsel may file a notification after the citation is not complied with, and then file a complaint. The general counsel may not file a notification without having first filed a citation that has not been honored. The choice whether to follow a citation with a complaint once it is evident that there has not been compliance, or to file a notification before the filing of the complaint, will normally turn on whether the general counsel believes that good faith efforts are being undertaken to comply with the citation, but the time period for complete remediation of the citation period has expired. The Office shall submit the complaint to a hearing officer subject to Board review under the general provisions of the Act outlining those procedures.

Variances. The Board shall exercise the authorities granted the Secretary of Labor in sections 6(b)(6) and 6(d) of OSHA (29 U.S.C. §655(b)(6) and (d)) to act on any request by an employer for a temporary order granting a variance from a standard made applicable by subsection (a). The Board may refer such a request to a hearing officer for a hearing conducted in accordance with section 405 of this act and subject to review under section 406 of this act. The general counsel or employing office aggrieved by a final decision of the Board regarding a citation, notification, or variance, may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 407.

Compliance date. If a citation of a violation under OSHA is received, and appropriated funds are necessary to abate the violation, abatement shall take place as soon as possible, but no later than the fiscal year following the fiscal year in which the citations are issued. This permits the Congress to appropriate funds to remedy OSHA violations during the standard appropriations timetable where the abatement amount is large, and avoids disruptions to other functions of the employing office caused by the unanticipated need for additional expenditures.

Regulations issued by the Board. The Board shall promulgate regulations to implement this section. Such regulations shall be the same as the standards and regulations promulgated by the Secretary of Labor to implement OSHA with the same standard for deviation contained elsewhere in the act.

Periodic inspections. At least once each Congress, the general counsel shall conduct periodic inspections of all facilities of the Congress for compliance with the Occupational Safety and Health Act. Based on the result of each periodic inspection, the general counsel will prepare and submit a report to the House Speaker, Senate President pro tempore, and the employing office responsible for correcting the violation. The report will also contain the results of the periodic

inspection, identify the responsible employing office, describe the actions necessary to correct any violation, and assess the risks to employee health and safety associated with any violation. If a report identifies any violation, the general counsel shall issue a citation or notice. The general counsel may be assisted by personnel detailed from the Secretary of Labor, upon request of the executive director for such assistance.

The bill uses the terms "employing office" as a designative term referring to an office. There is no requirement that the employing office responsible for the violation actually be the employing office of the employee that makes the complaint, for instance.

Effective date. The period from the date of enactment until December 31, 1996 shall be available to the Office of the Architect of the Capitol to identify any OSHA violations, determine costs of compliance, and to take any necessary abatement actions. The general counsel shall conduct a thorough inspection prior to July 1, 1996, and report the results to the Congress. Except as to GAO and Library of Congress, this section will become effective on January 1, 1997. As to these instrumentalities, this section will take effect 1 year after transmission to Congress of the study provided for in section 230.

#### Section 220—Application of Federal Service Labor-Management Relations Statute; Procedures for Implementation and Enforcement

Labor-management relations. This section applies to employees and employing offices the rights, protections, and responsibilities relating to collective bargaining established for other Federal employees and employers under 5 U.S.C. §§ 7102, 7106, 7111 through 7117, 7119 through 7122, and 7131. For purposes of applying those provisions under this section, the term "agency" shall be deemed to mean an employing office.

The remedy for a violation of subsection (a) shall be a remedy under section 7118(a)(7) of title 5 of the United States Code as would be appropriate if awarded by the Federal Labor Relations Authority to remedy a violation of any provision made applicable by subsection (a).

In applying the Federal service labor-management relations provisions to employees and employing offices, the Board shall exercise the authorities of the Federal Labor Relations Authority under 5 U.S.C. §§ 7105, 7111 to 7113, 7115, 7117, 7118, and 7122 and of the President under 5 U.S.C. § 7103(b). Any petition or other submission that would be submitted to the Federal Labor Relations Authority shall, under this section be submitted to the Board.

The Board may refer any matter submitted to it under subparagraph (c)(1) of this section to a hearing officer for decision pursuant to section 405 of this act. The Board may direct that the general counsel carry out the Board's investigative authorities.

Procedures. Under this section, the general counsel shall exercise the authorities of the general counsel of the Federal Labor Relations Authority under 5 U.S.C. §§ 7104 and 7118. Any charge or other submission that, if submitted under chapter 71 of title 5 would be submitted to the general counsel of the Federal Labor Relations Authority shall, if brought under this section, be submitted to the general counsel. If any person charges an employing office or a labor organization representing employees with having engaged in an unfair labor practice in violation of this section within 180 days of the occurrence of the alleged unfair labor practice, the general counsel shall investigate the charge, and may issue a complaint. A complaint issued by the general counsel under this section

shall be submitted to a hearing officer for decision under section 405 of this act.

For purposes of applying the Federal service labor-management relations provisions under this section, the Board shall exercise the authority of the Federal service impasses panel under 5 U.S.C. § 7119. Any request that under those provisions would be presented to the Federal service impasses panel shall, if made under this section, be presented to the Board. At the request of the Board, the director shall appoint a mediator or mediators to perform the functions of the Federal service impasses panel under 5 U.S.C. § 7119. Ordinarily, the Board should request the appointment of a mediator and should avoid participating in the mediation of disputes for which it may have adjudicatory responsibilities.

Regulations to be issued by the Board. The Board shall promulgate regulations to implement this section. The rules promulgated under this section shall be the same as the rules promulgated by the Federal labor relations authority to implement 5 U.S.C. §§ 7102, 7106, 7111 through 7117, 7119 through 7122, and 7131. The Board may promulgate rules that are not the same as the rules of the Federal labor relations authority only under the standard provided as elsewhere in the act, except as provided in subsection (e).

The Board shall issue rules pursuant to the rulemaking provisions of section 304 of this act on the manner and extent to which the rights conferred by this section should apply to employees who are employed in positions in offices with a direct connection to the legislative process, including the personal office of any Member of the House or the Senate, a standing, select, special, permanent, temporary, or other committee of the Senate or the House, a joint committee of Congress, and the offices of various party officers, including the Office of the Majority and Minority Leaders of the Senate and the House of Representatives. These rules should be the same as the regulations of the Federal labor relations authority except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and that the Board shall exclude from coverage any covered employees who are employed in the offices listed in paragraph 2 of subsection (e) if the Board determines that such exclusion is required because of a conflict or appearance of a conflict of interest, or Congress' constitutional responsibilities. Paragraph (h) of subsection (e) should be construed narrowly. However, one portion of one office that might fall within this paragraph would be the employees of the Office of the Sergeant at Arms who engage in doorkeeping and maintaining order in the legislative Chamber and who compel the presence of absent Senators.

A conflict of interest would include, for example, whether certain classes of employees should be precluded from being represented by unions affiliated with noncongressional or non-Federal unions. This separate standard from deviation from regulations is not a standardless license to roam far afield from such executive branch regulations. The Board cannot determine unilaterally that an insupportably broad view of Congress' constitutional responsibilities means that no unions of any kind can work in Congress. Without abdicating its review responsibilities, however, courts should give more deference to congressional determinations under this particular regulatory area than to all other deviations from executive branch regulations made by the Board.

Effective date. Subsections (a) and (b) of this section shall be effective on October 1, 1996, except with respect to the offices listed

in subsection (e)(2), to the covered employees of such offices, and to representatives of such employees, for which subsections (a) and (b) shall be effective on the effective date of regulations issued under subsection (e).

#### PART E—GENERAL

#### Section 225—Generally Applicable Remedies and Limitations

Under subsection 225(a), if a complainant is a prevailing party under section 405, 406, 407, or 408, the hearing officer, Board, or court, as the case may be, may award attorney's fees, expert witness fees, and other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964. Although the Board has no authority to issue regulations under section 201, it does have the ability under section 303 to issue procedural rules. Such rules could govern the availability of fees and costs under section 706(k), so long as the rules were consistent with court cases interpreting the Civil Rights Act. For example, some courts have held that the amount of compensatory damages a prevailing party recovers is relevant to determine a reasonable fee award, and that recovery of only a portion of the compensatory damages request can form the basis for reducing the fee award. Other courts have held that proportionality cannot be considered in awarding attorney's fees. Given the conflict among the cases, the Board could decide which set of cases to follow when it issues its regulations.

Subsection (b) provides that in any proceeding under section 405, 406, 407, or 408, the same interest to compensate for delay in payment shall be made available as would be appropriate in actions involving the executive branch under section 717(d) of the Civil Rights Act of 1964. This is an explicit waiver of sovereign immunity as to these interest payments. Subsection (c) provides, in keeping with longstanding rules applicable to the Federal Government, that no civil penalty or punitive damages may be awarded with respect to any claim under this act.

Subsection (d) provides that except in cases under the Veterans Reemployment Act, no person may commence an administrative or judicial proceeding to seek a remedy for the rights and protections afforded by this act except as provided in this act.

Subsection (e) provides that only a covered employee who has undergone and completed the procedures described in section 402 and 403 may pursue a civil action in court. Counseling and mediation with the office are preconditions to bringing any civil action under this act.

Subsection (f) states that except where contrary exemptions and exemptions appear in this act, the definitions and exemptions in the laws made applicable by this act shall apply under this act. This means that although the various 11 laws are made applicable to Congress, the exemptions and definitions that limit its application in the private sector limit its applicability to Congress as well and that regulations of the executive branch interpreting those definitions and exemptions should ordinarily apply.

Subsection (g) states that the act shall not be construed to authorize enforcement by the executive branch of this act, but this does not override the provision that executive branch employees may be detailed to the Office of Compliance at the request of the executive director.

#### Section 230—Study and Recommendations Regarding General Accounting Office, Government Printing Office, and the Library of Congress

This section directs the Administrative Conference of the United States to study the

extent to which the legislative branch employees not covered under this act are or are not covered by the employment laws made applicable by this act. This primarily includes employees in the General Accounting Office, the Government Printing Office, and the Library of Congress. The Administrative Conference should study the manner and extent to which these employees are covered under existing laws, and should also study the regulations and procedures implemented by these congressional instrumentalities to provide for the enforcement of these rights and protections.

This study should evaluate not only the extent to which employees are provided the rights and protections of the laws made applicable to Congress in this act. But also whether they are as comprehensive and effective as those provided under this act. The study should include recommendations for legislation to extend or improve coverage as well as recommended improvements in regulations or procedures. Recommendations for legislation may include recommendations on clarifying existing legislation where coverage of legislative branch employees is ambiguous, or can be determined only by unduly complex parsing of a number of laws.

The Administrative Office shall submit the study and recommendations required under this section to the Board within 2 years after enactment of this act. The Board shall transmit the study and recommendations head of each instrumentality or other entity considered in this study and to the Speaker of the House of Representatives and President pro tempore for referral to the appropriate committees of the House of Representatives and of the Senate.

#### *Title III—Office of Compliance*

##### Section 301—Establishment of Office of Compliance

This section creates the Office of Congressional Fair Employment Practices as an independent office in the legislative branch of the Government to administer the dispute resolution process created by this act.

The Office shall be overseen by a board of directors, which shall be composed of 5 members. A five member board is the best size to discourage deadlock and to facilitate effective decisionmaking.<sup>1</sup>

It is extremely important that the Board function in a nonpartisan manner. For this reason, the act requires that all members of the Board be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of office. Board members shall be appointed solely on the basis of fitness to perform their duties under the act, and shall have background and experience in application of the rights, protections, and remedies under the laws made applicable to section 102. There is no assumption that any particular kind of training or experience is necessary, but a variety of experiences would qualify an individual for a position on the Board. The act does not require that any individual member have training or experience under all of the statutes made applicable by this act, but members should be selected with a view to providing the Board as a whole with some expertise in each field of law within the Board's jurisdiction.

On the other hand, the committee also recognizes that, in order for the Board to function in Congress's political environment, and to insulate the Board against claims of partisanship that will inevitably be raised by

persons dissatisfied with a particular decision, the process for the selection of the Board members must be fully bipartisan. To accomplish this, the appointment of members is jointly made between the Houses and between the parties. Accordingly, the members shall be appointed jointly by the Speaker of the House, majority leader of the Senate, and the minority leader of both Houses. The chair of the Board shall also be appointed jointly. Appointment of the first 5 members of the Board shall be completed not later than 90 days after the date of enactment.

There are certain disqualifications from service as a Board member. No lobbyist may serve. No Board member may be a Member of Congress or a former Member. Nor may a Board member be an officer or employee of the House, Senate, an instrumentality of Congress, except an officer or employee of the GAO Personnel Appeals Board, House Office of Fair Employment Practices, or the Senate Office of Fair Employment Practices, or a former holder of one of these positions within 4 years of the date of appointment. These requirements are critical because the office must, in both appearance and reality, be independent in order to gain and keep the confidence of the employees and employers who will utilize the dispute resolution process created by this act.

Vacancies on the Board are to be filled in the same manner as the original appointment for the vacant position. Because the Board is small in number, it will be important to fill vacancies as quickly as possible, consistent with selecting the best qualified individuals for these positions.

Terms. The terms of office of the members are staggered so that, after the first appointments, there will not be complete turnover of the Board. The appointment is for 5 years and cannot be renewed, except for someone who serves three years or less. Of the first five members, one shall serve three years, two for four years, and two for five years, one of whom shall be chair.

Removal. Members may be removed from office by a majority vote of the appointing authority. To further ensure the independence of the Board, members may only be removed for specific causes including a disability that substantially prevents the member from carrying out the member's duties, incompetence, neglect of duty, malfeasance in office, a felony or conduct involving moral turpitude, or holding an office or employment or engaging in an activity that disqualifies the individual from service as a member of the Board. The reason for removal of any member must be stated, in writing, to the member being removed by the Speaker of the House of Representatives and the President pro tempore of the Senate.

Compensation and travel expenses. Members may be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under 5 U.S.C. sec. 5316 for each day during which the member is engaged in the performance of board duties. Travel time should be included in the computation of the time a member has spent engaged in the performance of board duties.

Members of the Board are entitled to reimbursement for travel expenses for each day that the member is engaged in the performance of Board duties away from home or the regular place of business of the member. The rates for travel expenses, including per diem in lieu of subsistence, shall be at rates authorized for employees of agencies under 5 U.S.C. sec. 5751.

Subsection (h) describes the duties of the office, which include educating members and other employing authorities of their duties and employees of their rights under this act.

It is also to provide educational materials on the statutes made applicable to Congress by this act to employing offices for new employees. The office shall also compile and publish statistics on the use of the office by covered employees, including the number and types of contacts made with the office, on the number of covered employees who initiated proceedings under the act, as well as the number of employees who filed a complaint, the basis for the complaint, and its disposition. In light of the confidentiality of the proceedings in the administrative process, this information should be compiled in a manner that does not reveal the identity of particular employees or employing offices.

The Board and office shall be subject to oversight by the Committee of rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight of the House of Representatives. Oversight authority of these committees does not extend to the processing, consideration, or disposition of individual cases or the unwillingness of the general counsel to file a complaint regarding particular charges within his or her responsibility.

The office is to open within 1 year after enactment of this act. This will provide sufficient time for the Board members to be selected, the regulations to be issued, and the office to be staffed.

Financial disclosure reports. Members of the Board will be required to file financial disclosure reports under the Ethics in Government Act of 1978, Pub. L. No. 95-521, title I (5 U.S.C. appendix sections 103(H)(A)(II)).

##### Section 302—Officers, Staff, and Other Personnel

This section provides for the appointment of staff of the new office.

Executive director. The position of executive director is modeled after the Director of the Office of Senate Fair Employment Practices (OSFEP), who administers the Senate's internal resolution process. Like the Senate's Director of OSFEP, the Director of the Congressional Office will have the responsibility of the daily administration of the disputes resolution system created by this act. This includes assisting in the development and implementation of rules of procedures for the dispute resolution process, selecting hearing officers, counselors, and mediators, and maintaining the dockets of cases filed with the office.

The Chair, subject to the approval of the Board, shall appoint, and has the power to remove, the director. As is the case of members of the Board, selection of a director should be made solely on the basis of ability to perform the functions of the job and without regard to political affiliation. To ensure the appearance of independence and impartiality of the Director, certain individuals are precluded from service as Director. These are the same persons who are ineligible to serve as Directors.

The Chair may set the compensation of the Executive Director, but the rate of pay may not exceed the annual rate of basic pay prescribed for level V of the executive schedule under 5 U.S.C. sec. 5316. The Executive Director will serve a nonrenewable 5-year term, except that the first Executive Director may serve a nonrenewable 7-year term.

Additionally the office will have two Deputy Directors, one for each House of Congress. The Deputy Executive Directors are appointed and removed by the Chair, subject to the approval of the Board. The appointment shall be made without regard to political affiliation and with the same disqualifications that apply to service as Executive Director. The Deputy Executive Director

<sup>1</sup>Some management researchers have concluded that policymaking bodies of five members are preferable to both larger and small groups. See, U.S. Senate Committee on Governmental Affairs, Study on Federal Regulation, Vol. IV, Doc. No. 95-72, July 1977, p. 115.

shall serve a 5-year term, except that the first Deputy Executive Director shall serve for 6 years. This will mean that the Deputy Executive Director will serve terms that do not expire concurrently with the Executive Director.

The Deputy Executive Director shall recommend the regulations to the Board under section 304(a)(2)(B)(i), maintain the regulations and all records pertaining to the regulations, and shall assume such other responsibilities as may be delegated to the Executive Director.

The Executive Director may appoint, terminate, and fix the compensation of such staff, including hearing officers, necessary to enable the office to carry out its functions. The Executive Director does not have authority to appoint attorneys to assist the general counsel, which authority is provided directly to the general counsel. The Executive Director may request other Government departments or agencies to detail on a reimbursable or nonreimbursable basis the services of the personnel of the department or agency. In addition, the Executive Director is authorized to procure the temporary or intermittent services of consultants.

**General Counsel.** The Chair, subject to the approval of the board, may appoint and remove a general counsel. This position does not have an analogy in the Senate fair employment process. This position and its duties, however, are modeled on the role of the general counsel in bodies such as the General Accounting Office Personnel Appeals Board or the Federal Labor Relations Authority. Under this act, the general counsel may receive complaints of violations of the provisions of titles II and III of the Americans With Disabilities Act made applicable by this act and file and prosecute complaints in the name of parties making charges of violations. The general counsel will also conduct workplace inspections and issue citations of violations of the requirements of OSHA made applicable by this act. The general counsel exercises authority comparable to that of the Federal Labor Relations Authority's General Counsel. The general counsel also provides representation to the office when it is named as a respondent in proceedings brought in the Federal Circuit under this act.

To ensure that the general counsel is, and appears to be, independent and impartial, certain individuals are precluded from service as general counsel. These are the same as apply to the Board of Directors.

The Chair may fix the compensation of the general counsel, which shall not exceed the annual rate of basic pay prescribed for level V of the executive schedule under 5 U.S.C. sec. 5316. The general counsel may appoint, terminate, and fix the compensation of such additional counsel as may be necessary to carry out the duties of the general counsel. The term of office of the general counsel is for a single term of 5 years. The general counsel may only be removed for cause. The act carefully prescribes which officials may be removed only for cause and which may not.

#### Section 303—procedural rules

This section sets forth the procedure for the adoption and amendment of rules governing the procedures of the Office of Compliance, including rules concerning hearing officers. The rules and amendments thereto shall be submitted for publication in the CONGRESSIONAL RECORD.

Under subsection (b), the Executive Director shall adopt the rules referred to in subsection (a) in accordance with the principles and procedures of the Administrative Procedures Act. The Executive Director shall publish a notice of proposed rulemaking in ac-

cordance with the APA, but with publication occurring in the CONGRESSIONAL RECORD rather than the Federal Register. Before issuing rules, the Executive Director shall provide a comment period of at least 30 days after publication of the notice of rulemaking. Upon adopting rules, the Executive Director shall transmit notice of such action along with the rules to the Speaker of the House and the President pro tempore of the Senate for publication in the CONGRESSIONAL RECORD. Rules are considered to be issued on the date on which they are so published.

#### Section 304—substantive regulations

This section sets forth the procedures of issuing regulations to implement this Act, including regulations the board is required to issue under title II, including appropriate application of exemptions under the laws made applicable in title II. There shall be three sets of substantive rules, one for each House, and one for other employing offices.

The authority conferred by this section is authority only to issue rules that will aid in understanding how the laws apply to the Congress and does not include the authority to limit the substantive rights conferred under this act. Thus, for example, such rules might set forth guidance to Senate offices as to how the board would interpret the family and medical leave act's entitlement to unpaid family or medical leave, in light of the fact that the Senate payroll system does not have a leave without pay status.

Under subsection (b), the Board shall adopt the regulations in accordance with the principles and procedures of the Administrative Procedures Act. Instead of publishing a general notice of proposed rulemaking in the Federal Register, the Board shall transmit such notice to the Speaker of the House and President pro tempore of the Senate for publication in the Congressional Record. Such notice shall set forth the recommendations of the Deputy Director in regard to regulations of the House and Senate and of the executive director for the other employing offices. In this way, the members of the approving body will know how the board's proposed regulations differ from the recommendations of the Deputy Director for their respective house.

Before adopting regulations, the Board shall provide a comment period of at least 30 days after publication of a general notice of proposed rulemaking. After considering comments, the Board shall adopt regulations and transmit notice of such action together with the regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record. The Board shall include a recommendation in the general notice of proposed rulemaking as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.

Regulations referred to in paragraph (2)(B)(i) of subsection (a) may be approved by the Senate by resolution or by the Congress by joint or concurrent resolution. Regulations referred to in paragraph (2)(B)(ii) of subsection (a) may be approved by the House of Representatives by resolution or by the Congress by concurrent or joint resolution. Regulations referred to in paragraph (2)(B)(iii) may be approved by Congress by concurrent resolution or by joint resolution. Upon receipt of a notice of adoption of regulations, the presiding officers shall refer such notice and the proposed regulation to the committee or committees of jurisdiction in that House. The referral is designed to let the committee determine whether the regulations should be approved and by which method.

Following approval of regulations by the Congress or one of its Houses, the Board shall submit the regulations for publication in the Congressional Record. The date of issuance of the regulations is the date on which they were published in the Congressional Record as a result of this procedure. Regulations shall become effective not less than 60 days after the regulations are issued, except that an earlier effective date may be specified for good cause found within the meaning of section 553(d) of title 5 of the United States Code.

Amendment to the rules. The Board's rules may be amended in the same manner as they are initially adopted under this section. The Board may, in its discretion, dispense with the publication of a general notice of proposed rulemaking of minor, technical, or urgent amendments when the Board finds that notices are "impractical, unnecessary, or contrary to the public interest" within the meaning of 5 U.S.C. sec. 553(B).

**Right to petition for rulemaking.**—Any person may petition the Board for the issuance, amendment, or repeal of a rule. However, nothing in this section confers upon any individual a right to seek judicial review of any action or inaction of the Board under this section.

In formulating regulations, the Executive Director, Deputy Directors, and Board shall consult with the chair of the administrative conference, the Secretary of Labor, the Federal Labor Relations Authority, and may consult with any other persons of their choosing.

#### Section 305—Expenses

**Authorization of Appropriations.** In fiscal year 1995, and each fiscal year thereafter, the Congress authorizes to be appropriated necessary funds for the expenses of the office in carrying out its duties. Until money is first appropriated under this section, but not for a period exceeding 12 months after the date of enactment of this act, the expenses of the office shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House, upon vouchers approved by the director.

**Witness fees and allowances.** Except for employees, witnesses before a hearing officer or the Board in any proceeding other than rulemaking are entitled to be paid the same fee and mileage allowances as are paid to subpoenaed witnesses in the courts of the United States. It is intended that, as in the courts, these costs will be borne by the parties. Employees who are summoned, or assigned by the employers to testify in their official capacity or to produce official records before a mediator, hearing officer, or the Board, shall be entitled to travel expenses under 5 U.S.C. §5751. The committee intends for the office to bear these costs.

#### Title IV—Administrative and Judicial Dispute—Resolution Procedures

Much of title IV builds on the dispute resolution process created for the Senate in title III of the Civil Rights Act of 1991. The most significant changes in this title from the existing Senate procedures are the addition of the option of initiating an action in Federal district court following the initial two stages of dispute resolution and the deletion of review of each decision by the Senate Ethics Committee. An opportunity to appeal to the Board is available in the place of Ethics Committee review.

#### Section 401—Procedure for consideration of alleged violations

Section 401 lists the procedure for consideration of alleged violations of the statutes made applicable to congressional employing offices under part A of title II. They are



counseling as provided in section 402, mediation as provided in section 403, and an election as provided in section 404 of either (1) a formal complaint and hearing as provided in section 405, subject to board review in section 406, and judicial review in the United States Court of Appeals for the Federal Circuit as provided in section 407, or (2) a civil action in a district court of the United States as provided in section 408. However, in the case of an employee of the Architect of the Capitol or of the Capitol Police, the Executive Director, after receiving a request for counseling under section 402, may recommend that an employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. The decision to make the recommendation to the employee is entirely discretionary on the part of the Executive Director. The decision to follow the recommendation is entirely discretionary on the employee. The purpose is to permit employees to use another administrative remedy that may function well in the eyes of the employee, without prejudice for further opportunity to utilize the procedures available through the Office of Compliance, as the time limitations available for counseling or mediation shall not apply when during the specific period that the Executive Director recommends that the employee use for using the grievance procedures.

#### Section 402—Counseling

**Initiation.** A covered employee shall request counseling with the Office as a condition for commencing a proceeding alleging a violation of a law made applicable under part A of title II of this act. For claims under any of these statutes, the request for counseling must be made within 180 days after the date of the alleged violation. A failure to request counseling within the time required bars an employee from proceeding under this act to redress violations under these sections.

**Purpose.** The purpose of counseling is to provide an employee with the opportunity to discuss and evaluate the employee's claims. Under the current Senate system, employees meet with a counselor who assists them in preparing a statement of their claims, reviews what other information might aid in making a determination about whether to proceed with a claim, and may assist the employee in contacting the employing office to determine if a dispute can be resolved. The type of counseling may vary, depending upon the nature of the problem, the sophistication of the employee, and the willingness of parties to resolve issues. The purpose of counseling is neither to discourage nor to encourage further adversarial proceedings, but rather to assist in identifying issues at an early stage, so that they can be addressed appropriately.

**Period for counseling.** Counseling commences on the date the request for counseling is received in the Office and continues for 30 days, unless the employee and the Office agree to reduce the period. The 30 days begins on the date the request for counseling is received.

**Notification of the end of the counseling period.** The Office is required to notify the employee in writing of the end of the counseling period.

#### Section 403—Mediation

**Initiation.** A covered employee must request mediation with the Office no later than 15 days after the date on which the employee receives notification of the end of the counseling period. Mediation under section 403 is a precondition for making the election of procedures provided in section 404.

**Mediation process.** The Director shall specify one or more individuals to mediate a dispute, depending upon the Director's view

of what would be most beneficial in a particular case. In selecting mediators, the Director is required to consider individuals recommended by organizations with expertise in mediating or arbitrating personnel matters. The Director may also consider other individuals with expertise in this field.

The purpose of the mediation is to resolve disputes at an early stage in a manner that serves the interests of all parties. To this end, it is important that both sides participate in the process. Although parties cannot be forced to mediate, it is expected that employees and employing offices will take seriously this opportunity by carefully assessing the claims of the other party and responding to reasonable requests for information. The parties to mediation under section 403(b) may include the Office, the covered employee, and the employing office. Mediation may occur through meetings with the parties separately or jointly for the purpose of resolving the dispute.

**Mediation period.** Mediation shall occur for 30 days beginning on the date the request for mediation is received. The 30-day period may be extended at the joint request of the covered employee and the employing office. The Office shall in writing notify the parties to the mediation of the end of the mediation period.

**Independence of the mediation process.** In order to protect the integrity of the mediation process and ensure that parties have confidence in it, no individual who conducts mediation may conduct or aid in the hearing conducted under section 405 with respect to the same matter. In addition, no individual who participates as a mediator may testify about, or produce records relating to, that mediation, either voluntarily or by compulsion, in any proceeding under this act or before any other investigative or adjudicative entity.

#### Section 404—Election of Proceeding

Not later than 90 days after a covered employee receives notice of the end of the period of mediation, but no sooner than 30 days after receipt of such notification, such covered employee may either (1) file a complaint with the Office in accordance with section 405, or (2) file a civil action in accordance with section 408 in the United States District Court for the district in which the employee is employed or for the District of Columbia.

#### Section 405—Complaint and hearing

**Complaint.** An individual who has made a timely request for counseling and mediation, has completed those processes, and has not elected to file a complaint in Federal District Court under section 408, may file a complaint with the Office. The complaint must be filed no later than 90 days after receiving the notice of the end of mediation, but no sooner than 30 days after receiving such notice. The respondent to the complaint shall be the employing office involved in the violation or in which the violation is alleged to have occurred, and about which mediation was conducted.

**Appointment of a hearing officer.** Upon the filing of a complaint, the Director shall appoint a hearing officer to the case. The hearing officer may dismiss any claim that the hearing officer finds to be frivolous or that fails to state a claim upon which relief can be granted. When the Executive Director issues rules under section 303, he or she may consider whether the procedures of title VII can be applied to these proceedings. For instance, whether employing offices can be awarded fees when the hearing officer determines that the complaint is frivolous, groundless, and brought in bad faith.

No member of the House of Representatives, Senator, officer of either House, head

of an employing office, member of the board, or covered employee, may be appointed to be a hearing officer.

The Executive Director is required to develop lists of individuals experienced in arbitrating or adjudicating the kinds of personnel and other matters for which hearings may be conducted under this act. The lists can be composed of categories of individuals with expertise in particular fields, or possessing particular skills. In developing the lists, the Executive Director shall consider candidates recommended to the Director of the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or other organizations composed of individuals with expertise in adjudicating or arbitrating the kinds of matters for which hearings may be conducted under this act, such as technical matters relating to occupational safety and health.

In requiring the Executive Director to select individuals randomly or by rotation from these lists, the act does not prevent the Executive Director from hiring hearing officers as full-time employees of the Office or from selecting hearing officers on the basis of specialized expertise required for a particular case.

**Hearing.** Unless a hearing officer dismisses a complaint on a threshold legal issue, the hearing officer shall conduct a hearing on the record. The hearing should be conducted as expeditiously as practical, but in any event must be commenced no later than 60 days after the filing of the complaint. The hearing officer should, to the greatest extent practical, conduct the hearing in accordance with the principles of 5 U.S.C. §§ 554-57.

**Discovery.** The hearing officer may, in his or her discretion, permit reasonable prehearing discovery. In exercising this discretion, hearing officers should be mindful of the requirement that the hearing is to be conducted expeditiously and should seek to prevent repetitious, overly burdensome, and unnecessary discovery.

**Subpoenas.** In general. At the request of a party, a hearing officer may issue a subpoena for the attendance of witnesses and the production of records. Hearing officers should not issue subpoenas in blank, but rather only issue subpoenas for specific witnesses or document requests. Ordinarily, subpoenas should not be required for the production of testimony or records in this process. Employees and employing offices have a responsibility to respond to reasonable discovery requests, without the requirement of compulsory process.

Where appropriate, the attendance of witnesses and the production or records may be required from any place within the United States. Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure.

**Objections.** If a person refuses, on the basis of relevance, privilege, or other objection, to testify or produce records in response to a question or to produce records in connection with a proceeding before a hearing officer, the hearing officer shall rule on the objection and, if the objection is overruled, order compliance. The hearing officer shall, at the request of the witness or any party, and may on the hearing officer's own initiative, refer the ruling to the board for review.

**Enforcement.** If a person fails to comply with a subpoena, the Board may authorize the General Counsel to apply to an appropriate United States District Court for an order requiring that the person appear before the hearing officer to testify and/or to produce records. The application shall be made in the judicial district where the hearing is conducted or where the person refusing to comply is found, resides, or transacts business. Any failure to obey a lawful order

of the district court issued pursuant to this section may be held by such court to be a civil contempt thereof.

Service of process. In an action brought in district court to enforce a subpoena under this section, or in a civil contempt action under this section, process may be served in any judicial district in which the individual or entity refusing or failing to comply resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceedings may run into any other district.

Decision. Following any hearing under this section, the hearing officer shall issue a written decision as expeditiously as possible, but in no event more than 90 days after the conclusion of the hearing. Each decision shall state the issues raised in the complaint, describe the evidence in the record, contain findings of fact and conclusions of law, and contain a determination of whether a violation has occurred, and, where appropriate, order remedies authorized under title II of this act. The decision shall be entered in the records of the Office as the final decision of the hearing officer, and of the Office if such decision is not appealed under section 406 to the Board. The Office shall transmit a copy of the decision to each of the parties.

Precedents. In conducting hearings and deciding cases, hearing officers are to be guided by judicial decisions under the statutes made applicable by section 102 and by Board decisions under this act.

#### Section 406—Appeal to the Board

In general. Any party aggrieved by the decision of a hearing officer under section 405(g) may seek review by filing a petition for review in the Office not later than 30 days after notice by the Office of the entry in the Office records of the final decision of the hearing officer.

Opportunity for argument. The Board shall provide the parties with a reasonable opportunity to be heard on their appeal through written submissions. In the discretion of the Board, the parties may be heard through oral argument.

Standard of review. The standard of review to be applied by the Board is the same standard that will be applied by the Federal Circuit sitting in review of the Board's decisions. The Board shall set aside a decision of a hearing officer only if the Board determines that the decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with the law, not made consistent with required procedures, or unsupported by substantial evidence.

Record. In making determinations under this section, the Board shall review the whole record, or those parts cited by a party. The record on review shall include the record before the hearing officer and the decision of the hearing officer. Due account shall be taken of the rule of prejudicial error.

Decision. The Board shall issue a written decision setting forth the reasons for its decision. The decision may affirm, reverse, or remand to the hearing officer for further proceedings. A decision of the Board that does not require further proceedings before a hearing officer shall be entered in the records of the offices as a final decision.

#### Section 407—Judicial Review of Board Decisions and Enforcement

In general. The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any proceeding commenced by a petition of a party aggrieved by a final decision of the Board under section 406(e) in cases arising under part A of title II, a charging individual or respondent before the Board who files a petition under section 210(d)(4), the general coun-

sel or a respondent before the Board who files a petition under section 215(c)(5), or the general counsel or a respondent who files a petition under section 220(c)(3). The same court shall also have exclusive jurisdiction over any petition of the general counsel filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 405(g) or 406(e) with respect to a violation of part A, B, C, or D of title II.

Procedures. The rules governing the naming of respondents reflects the different procedural postures under which appeals may arise. The goal is to make sure that the Office is not a respondent in a petition filed by its employee, the general counsel. Any party before the Board may be named respondent if not so named if the party so elects within 30 days after service of the petition. The section also provides for a right of intervention for participants before the Board who were not made respondents.

Law applicable. Proceedings under this section shall be governed by chapter 158 of title 28, of the United States Code, which applies to appellate court review of agency orders. In order to tailor chapter 158 to review of congressional adjudicatory processes, some changes are made in that chapter's requirements. Under 28 U.S.C. §2344, the clerk is to serve a copy of the petition on the general counsel; the authority of the Attorney General under 28 U.S.C. §2348 shall not apply, and a petition for review shall be filed in the Office not later than 90 days after the entry in the Office of the final decision under section 406(e) for which review is sought. The Office shall be an agency as that term is used in chapter 158 of title 28, and any reference to the Attorney General shall be deemed to refer to the general counsel. The Office shall be named as the respondent in any such action in order to defend the decision of the congressional process.

Standard of review. The Standard of review in proceedings under this section is the standard that applies under the administrative procedures act, namely, that the court shall set aside a final decision of the Board only if it determines that the decision was arbitrary, capricious, and abuse of discretion, or otherwise not consistent with law; not made consistent with required procedures; or unsupported by substantial evidence.

Record. In making determinations under this section, the court shall review the whole record, or those parts cited by a party. The record on review shall include the record before the hearing officer, the decision of the hearing officer, the record before the Board, and the decision of the Board. Due account shall be taken of the rule of procedural error.

#### Section 408—Civil Action

Jurisdiction. An individual who has made a timely request for counseling and mediation, has completed those procedures, and has elected not to file a complaint with the Office, may file a complaint in the United States district court for the district in which the employee is employed or for the District of Columbia. The time period for filing such a complaint is set forth in section 404. The defendant shall be the employing office alleged to have committed the violation, or in which the violation is alleged to have occurred.

Jury trial. In a proceeding under this section, any party may demand a jury trial in circumstances where a jury trial would be available in an action against a private defendant under the relevant law made applicable by this act. In any case in which a violation of section 201 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 201(b)(1) or 201(b)(3).

#### Section 409—Judicial Review of Regulations

This section provides that in any proceeding brought under Section 407 or 408 in which the application of a regulation issued under this act is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5, United States Code, except that with respect to regulations approved by a joint resolution under section 304(c), only the provisions of section 706(2)(B) of title 5, United States Code shall apply. This simply means that if the regulation has the force of law, the regulation cannot be challenged as being inconsistent with the underlying statute applied to Congress under this bill, but may only be challenged on constitutional grounds. All other regulations could be challenged as not complying with the statutory provisions forming the substantive and procedural basis for issuing the regulation.

The only means for challenging the validity of theregulation is through a proceeding brought under section 407 or 408 of this act. Thus, there is no ability to challenge a regulation when issued, as would be available under the Administrative Procedures Act, but only through collateral challenge. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued.

In determining whether to hold the regulations invalid, the court should give equivalent deference to the Board as to an executive branch agency with statutory authority and expertise in issuing the regulation only if the regulation in question is identical to a regulation of an executive branch agency. To the extent the Board modifies the executive branch agency in issuing the regulation whose validity is challenged under this section, the court of appeals is to provide no deference to the Board's reading of the underlying statute when it issued the regulation unless the regulation was adopted by joint resolution, or in connection with the regulations issued under section 220(e).

#### Section 411—Effect of Failure To Issue Regulations

In any proceeding under section 405, 406, 407, or 408, except a proceeding to enforce section 220 with respect to offices listed under section 220(e)(2), if the Board has not issued a regulation on a matter for which this act requires a regulation to be issued, the hearing officer, board, or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

#### Section 412—Expedited Review of Certain Appeals

This section authorizes a direct appeal to the Supreme Court from any interlocutory or final judgment, decree, or order of a court upon the constitutionality of any provision of this act. In such a case, only the constitutional issue would be before the court.

#### Section 413—Privileges and Immunities

Under section 413, the authorization to bring judicial proceedings under sections 407 and 408 shall not constitute a waiver of sovereign immunity for any other purpose, or of the privileges of any Member of Congress under the speech and debate clause, or a waiver of wither the Senate or the House of Representatives, including under article I, section 5, clause 3, or under the rules of either House relating to records and information within its jurisdiction.

## Section 414—Settlement of Complaints

Under section 414, any settlement entered into by the parties to a proceeding described in sections 210, 215, 220, or 401 shall be in writing and not effective until approved by the Executive Director. Nothing in this act shall affect the power of the Senate and the House of Representatives, respectively, to establish rules governing the process by which a settlement may be entered into by such House or by any employing office of such House.

## Section 415—Payments

Except as provided in subsection (c) of section 415, only funds which are appropriated to an account of the Office of the Treasury for the payment of awards and settlements may be used for the payment of awards and settlements under this act. A prevailing party may recover exclusive compensation for his or her claims from such appropriated funds. Funds in the account are not available for awards and settlements involving the General Accounting Office, the Government Printing Office, or the Library of Congress.

Awards and settlements may not be paid from the Claims and Judgment Fund of the Treasury. Nothing in this act authorizes the Board, the Office, the Director, or a hearing officer, without further authorization, to direct that amounts paid for settlements or awards be paid from official accounts of the employing office. This act does not affect the power of each House to determine how settlements or awards shall be paid.

Subsection (b) provides that except as provided in subsection (c), there are authorized appropriations of such sums as may be necessary for administrative, personnel, and similar expenses of employing offices which are needed to comply with this act. These expenses could be such items as funding management side labor negotiations under section 220. These expenses are costs of adhering to the act, but not costs of complying with adjudicative decisions remediating violations, which are addressed in section 415.

Under subsection (c), funds to correct violations of the Americans With Disabilities Act and the Occupational Safety and Health Act may be paid only from funds appropriated to the employing office or entity responsible for correcting such violations.

## Section 416—Confidentiality

A principal distinction between the administrative dispute resolution proceedings conducted under this act and the proceedings in district court authorized under section 408 is the confidentiality of the administrative proceedings. Under this section, all counseling, mediation, and hearings are confidential. The record developed in the hearing and the decisions of hearing officers and the board may be made public only for purposes of judicial review under section 407. This Requirement of confidentiality does not preclude the Executive Director from disclosing to committees of Congress information sought; however, such information shall remain subject to the confidentiality requirements of this section.

Final decisions entered under section 405(g) or 406(e) shall be made public if it is in favor of the complaining covered employee, or in favor of the charging party under section 210, or if the decision reverses a decision of a hearing officer which had been in favor of a covered employee or a charging party. The Board may make public any other decision at its discretion. Nothing in the act prohibits the employing office from making public a final decision in its favor.

## Title V—Miscellaneous Provisions

## Section 501—Exercise of Rulemaking Power

This section provides that sections 204 and 401 and the rules issued pursuant to them are

an exercise of the rulemaking power of the House of Representatives and the Senate and shall be considered part of the rules of each House. These rules shall supersede other rules of each House only to the extent that they are inconsistent with them. The House and the Senate each retain their constitutional rights to change these rules (insofar as they relate to such House) at any time, in the same manner, and to the same extent as each House may change its other rules.

## Section 502—Political Affiliation and Place of Residence

This section permits employing offices to consider the party affiliation, domicile, or political compatibility with the employing office of an employee as referred to in subsection (b) of this section with respect to employment decisions. The term employee here means an employee on the staff of leadership offices, committees and subcommittees, employees of the staff of a member, an officer of either House or a congressional employee elected or appointed by the House or Senate and applicant for these positions.

## Section 503—Nondiscrimination Rules of the House of Representatives and Senate

This section provides that the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives retain full power, in accordance with the authority provided to them by the Senate and the House of Representatives, with respect to the discipline of members, officers, and employees for violating rules of the Senate and the House of Representatives on nondiscrimination in employment.

## Section 504—Technical and Conforming Amendments

This section amends the Government Employee Rights Act so that it remains in effect for certain Presidential appointees and for certain State employees, and repeals the remaining sections of the act as of the date this act takes effect.

## Section 505—Judicial Branch Coverage Study

This section requires the judicial conference of the United States to prepare a report by the Chief Justice to Congress on the application to the judicial branch of the 11 laws made applicable to Congress by this act. The report is to be submitted by December 31, 1996, and shall include any recommendations the Judicial Conference may have for legislation to provide to employees of the judicial branch, protections, and procedures under these laws, including administrative and judicial relief, that are comparable to that provided to congressional employees under this act.

## Section 506—Savings Provisions

This section provides a method for the transition from the previous dispute resolution processes under which congressional employees were covered to the process established by this act. The purpose of this section is to ensure that claims that are in the process of being resolved are not extinguished, and that they will be adjudicated under current law.

## Section 507—Severability

This section provides that if any provision of this act is held to be invalid, the remainder of this act shall not be affected.

Mr. GRASSLEY. I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Ohio.

Mr. GLENN. Mr. President, I stated a few moments ago I hope that our colleagues who are watching in their offices or staffs working in the offices will get interested Senators who have

amendments to propose—and I would add that they are all on the Democratic side—let us get them over here because we are going to be time limited on consideration of this bill as far as time for amendments. The majority leadership has indicated, as I understand it, a desire to close out this bill at 7 o'clock tomorrow evening if at all possible.

Now, granted, considering that we also have our respective parity caucuses tomorrow which takes us out of the Senate Chamber here from about 12:30 to 2:15, we lose that time. It means that we are going to be very hard pressed to consider all the amendments we have on the list by that time. So I would urge my colleagues to get their amendments over here and let us get debating on them and so we can get them all considered. I would hate to see anyone get closed out tomorrow night with not enough time on the Senate floor to consider their amendments.

Mr. President, in the opening days of the 104th Congress I think we can accomplish a reform that is long, long overdue. We can finally eliminate the congressional double standard under which we have enacted laws that apply to everyone but ourselves.

Now, by enacting laws for others and then exempting ourselves, we have done great damage to the public perception of Congress.

When I go back home and make speeches in Ohio and open it up for questions or you remark about the fact that you would like to see Congress covered by the same laws that cover everyone else in this country, laws that address individual concerns, organizational concerns, Government concerns, and so on, but that we want to make those same laws apply to them apply here on Capitol Hill where we have exempted ourselves for many years, I can tell you from personal experience there is nothing guaranteed to get you a rousing ovation any faster than bringing that up as something you want to correct. This has been true for a number of years.

We in Congress I sometimes think do not really understand the real impact of these laws because we do not have to follow them here. And that is an irritant to other people around the country.

Our efforts to apply the law on Capitol Hill go back many years. I stated in my opening statement the other day that back in 1978, just a few years after I came to the Senate, I proposed a resolution to assure that all Senate employees would be protected against employment discrimination. I referred then to Capitol Hill being the last plantation and incurred the ire of some of my colleagues for that remark at that time. The resolution did not pass. It is only in just the last few years that we have finally enacted some substantial legal protection for Senate employees. So we are not quite as bad off as we were back then in 1978. Our employees

are now covered under the civil rights laws and certain other employment laws, and they can take their cases to the U.S. Court of Appeals. But despite this progress, what we still have is a unacceptable. It is a patchwork quilt of coverage and exemptions here on Capitol Hill. And it has not been easy to solve this problem.

As I have often said, we should apply the same laws to ourselves as we apply to the private sector. But there is a difference here on Capitol Hill compared to businesses in the rest of the country. That is, we have the concerns of our Members—and they are legitimate concerns—who believe that the Constitution requires us to preserve substantial independence of the Senate and the House of Representatives. That is not just because it is a personal preference or an ego matter with those particular Members. In the private sector these laws are normally implemented by the executive branch and the judicial branch. But there are many Senators—and this is not the prerogative of one side or the other—there are many Senators, both Democrats and Republicans, who have expressed genuine concern through the years about politically motivated prosecutions that might result if we ignore the principle of separation of powers as we apply these laws to the Congress.

I think everyone should understand that concern about separation of powers has probably been at the heart of the delay, of why legislation in this regard has not been considered more seriously through the years. I think we have taken care of it in this bill. The separation of powers is very, very real. It is in the Constitution. When one branch of government gains ascendancy over another, or authority over another branch of government, it is a very serious matter. Many of our Members through the years have been very concerned about this.

Last year, in a meeting with our then majority leader, Senator Mitchell, he asked me to work on a bipartisan solution for this. In the Governmental Affairs Committee we had as a starting place the very excellent bill introduced by Senators GRASSLEY and LIEBERMAN. Then, together with those two Senators and other Senators from both sides of the aisle, we worked hard to reach a solution. I think we succeeded with this bill. We included even stronger applications of the laws to Congress and we also included the text of that constitutional independence, that separation of powers that I just mentioned. Our legislation won broad bipartisan support, but unfortunately it was blocked on the Senate floor in the closing days of the 103d Congress.

So I am particularly gratified that the Congressional Accountability Act of 1995 is modeled closely on that proposed legislation from last year. Also, our new minority leader, Senator DASCHLE, introduced our congressional accountability legislation from last year. He did that the other day. But

that is not the vehicle that we are on here today. That proposed legislation by Senator DASCHLE included the gift ban and lobbying reform, which we dealt with to some extent on the floor the other day, as additional amendments to this bill that just covers congressional coverage.

So, I am pleased our solution to congressional coverage was introduced as a separate bill as part of Senator DASCHLE's comprehensive congressional reform proposal. But regardless of that, we have strong bipartisan support, I believe, for this bill.

Let me urge once again—I will break in the middle of my comments here to urge any of my colleagues who have amendments to this bill to come to the floor. Tomorrow we are going to be very short of time to consider all of the amendments. I urge any of the staff or any of the Senators who are watching these proceedings in their offices to, if at all possible, get their amendments over here to the floor so we do not find ourselves in a time shortage tomorrow afternoon, because it is my understanding the majority leader has indicated it is his intent to end consideration of this bill by about 7 o'clock tomorrow evening.

Let me give a little more background on this legislation. Though Congress has taken strides in recent years to apply antidiscrimination and employee protection laws to its employees, there is a patchwork of coverage that remains that allows certain exemptions to these laws and permits different applications to different employees. This has helped create the impression among many citizens that Congress exempts itself from the same employment and antidiscrimination laws that it applies to the general public and to other entities of government.

There have been a number of statements. People have commented on the fact that on November 8 the people of this country sent a message they did not want business as usual anymore. I think that was a generally accepted message that was received here on Capitol Hill. But there is another aspect of this, too. We apply laws to the rest of the country and the citizens of this country in their places of employment or their businesses or their organizations and we say, in all fairness, here is what you have to do. Here is what the Federal Government says. Whether it is civil rights or whatever, we say this is the way it is going to be because it is right for our people. Repeat, "right for our people." We base our legislation on that, what is right for our people. Are our people out there being dealt with fairly by their employers? By their Government? By their local governments? By whatever we are passing legislation on here? But at the same time we say what is right for workers out there, what is right for employees out there, what is right for people working in communities, is not necessarily right for those working on

Capitol Hill. So we do not cover them. We exempt them.

What kind of possible justification can there be for exempting what is right for everybody else in this country? Regardless of whether we are treating ourselves differently, is it right for our employees that they have the same protections of employment rights? Of organizational rights? Of whatever other rights we insist on giving to everybody else in this country and yet we say we do not want to give our own people that same coverage? We do not want to deal that fairly with our own employees here on Capitol Hill? That is just flat not right.

So I bring this down not just to the perception of what other people say around the country, or the perception that Congress exempts itself and so we are somehow above the law, but let us bring it down to this. Is it right for our people or is it not right for our people who work for us right here on Capitol Hill to have the same protections that everybody else here in this country has? Is it right? To me that is the most powerful argument for passing congressional coverage.

We can say the perceptions are out there that we are dealing differently and so the people do not like that—but is it right that our people here on Capitol Hill, the people who man the elevators and the Government Printing Office and everything else around here that goes to support congressional action—is it right that they get the same protections as other people around this country? The answer to that has to be that it is right. And that is the reason why I think we have a lot of bipartisan support for this legislation.

Congress has responded in the last few years to the call for a uniform application of employment and anti-discrimination protections to our employees. We made some moves. A Bipartisan Task Force on Senate Coverage, which was established in 1992 in the 102d Congress, and the Joint Committee on the Organization of Congress, which was also created in 1992, both proposed recommendations for congressional compliance with employment laws. Numerous witnesses before the joint committee and in hearings of the Senate Governmental Affairs Committee expressed the sentiment that exemptions for congressional coverage had to end. The time had finally come.

There were several significant pieces of legislation introduced in the 103d Congress that drew from the work of the joint committee and the Task Force on Senate Coverage. I had a bill in. It was a Glenn substitute to H.R. 4822, which followed action taken by the Senate Rules Committee on a substitute version of S. 1824, which contained sections on congressional coverage. There was other action by the Governmental Affairs Committee on S. 2071, which is substantially similar to the substitute to H.R. 4822 plus overwhelming passage by the House of its version of H.R. 4822.

Senator Mitchell sought unanimous consent that the Senate proceed to the consideration of my substitute to H.R. 4822, as modified by a managers' amendment, on October 6, 1994. But there was objection to proceeding. Senator LOTT objected to the motion to move to consideration of the bill and this Republican objection prevented any further consideration of the measure in the 103d Congress.

S. 2, the Congressional Accountability Act, is substantially—almost identical. It is very similar to the managers' amendment to the substitute to H.R. 4822 that was brought before the Senate at the end of the 103d Congress, as well as the congressional coverage language that is part of the current leadership congressional reform package, which was S. 10, that we have already dealt with a couple of days ago.

Just a little short summary statement of what is provided in the legislation today. S. 2, the Congressional Accountability Act, would apply a number of Federal workplace safety and labor laws to the operations of Congress. The bill also provides a new administrative process for handling complaints and violations of these laws. I had not mentioned that in any detail before, but that is a very key part of this legislation and addresses the difficulties that Members have had dealing with this separation of powers through all of these years, which has been the basic reason why legislation has been held up.

I do not quarrel with those concerns. They are very real concerns. In other words, if you had an administration so inclined and they wished to go into a super enforcement of OSHA or clean air or whatever the bill was, and you wish to apply some sanctions to Congress in return for getting something else that a President wanted sometime, would they do that? I think those of us who have been around here for a while have seen some pretty politically motivated executive branch officials who just might take such action against the legislative branch. I do not think that would be commonplace, but should we even set up in law the possibility that that might happen?

So the second part of what I just read, as a summary: The bill also provides a new administrative process for handling complaints and violations of these laws, which is a key toward dealing with this problem of separation of powers. We set up a separate process by which people can bring complaints about how they are being dealt with. That is a very key part of this legislation, and something that is different from most of the proposals that occurred back through all of these years. I may run through some of the major provisions.

First, in the application of workplace protection and antidiscrimination laws, S. 2 would apply to several Federal laws regarding employment and the operation of legislative branch of-

fices and provide an administrative process for handling complaints and violations—provide an administrative process for handling complaints and violations—a key part of this legislation.

The following laws would be applied to legislative branch employees. First, under antidiscrimination laws, title VII of the Civil Rights Act of 1964 would apply; the Age Discrimination in Employment Act of 1967, title I; Americans With Disabilities Act of 1990; Rehabilitation Act of 1973; and under public services and accommodations under Americans with Disabilities Act, title II of the Americans with Disabilities Act of 1990, which prohibits discrimination in Government services provided to the public; and title III of the Americans with Disabilities Act of 1990.

Workplace protection laws are very important. Why should we exempt our people in those areas of workplace protection laws? Are we a factory? No, we are not. But should we protect those people here on Capitol Hill who work and have some concerns about their safety? Workplace protection laws and fair labor standards: Should they be protected? How can we say that they should not be protected? So under workplace protection laws, we have the Fair Labor Standards Act of 1938, concerning the minimum wage, equal pay, maximum hours, and protection against retaliation, regulations which will be promulgated to track the executive branch regulations.

These regulations will take into account those employees who work irregular schedules or whose schedules depend directly on the Senate which, as we all know, is an irregularly scheduled body at best. Also, under workplace protection laws; OSHA, the Occupational Safety and Health Act of 1970; the Family and Medical Leave Act of 1993; the Employee Polygraph Protection Act; and Worker Adjustment and Retraining Act, which requires a 60-day notice of office closings or mass layoffs—you might say we are not a factory, that we do not have to give 60-day notice. But we do have people working for us here on Capitol Hill, such as the Government Printing Office and some others, that should have the same protections that people out there in industry have because they are performing at least a semi-industrialized function for us here on Capitol Hill.

The Occupational Safety and Health Act of 1970, Family and Medical Leave Act—I read these before—Employee Polygraph Protection Act, Worker Adjustment and Retraining Act, the 60-day notice that I just mentioned; and another one, the Veterans Re-Employment Act, which grants veterans the right to return to their previous employment with certain qualifications if reactivated or if they are drafted.

Under labor-management relations, the Federal Service Labor-Management Relations Statute of 1978, which applies to personal staff, committees,

or other political offices, would be deferred unless rules are issued by the new Office of Compliance. We expect that Office of Compliance to get into operation just as quickly as possible after this legislation is passed.

Who are covered employees? The compliance provisions for the preceding laws would apply to staff and employees of the House, of the Senate, the Architect of the Capitol, the Congressional Budget Office, the Office of Technology Assessment, and the newly created Office of Compliance itself. Congressional instrumentalities, as they are called under that title—instrumentalities are such organizations as the General Accounting Office, the Library of Congress, and the Government Printing Office—will be covered under some of these laws. But a study will be ordered to discern current application of these laws to the instrumentalities and to recommend ways to improve procedures.

This was necessary, at least in part, because some of these instrumentalities had already taken action some years ago to make some of these laws apply to their own operations. So the General Accounting Office has taken certain actions that the Library of Congress or the Government Printing Office has not taken. And so, rather than just saying we set down in concrete mandates for all of these different organizations, we felt it was better to make a transition period where we would have a study to discern current application of these laws to the instrumentalities and to recommend ways to improve procedures.

What are the protections and the procedures for which people might seek remedy? The bill provides the following five-step process, which is similar to some current Senate procedures for employees with claims of violations of the Civil Rights and Americans with Disabilities Act and employment discrimination laws, for violation of family and medical leave protections, for violations of fair labor standards, violations of laws regarding polygraph protection, plant closing, and veterans reemployment violations. If there are concerns in those areas and an individual or individuals wish to file a complaint, they would go through a several-step procedure.

The first step will be they would be required to go through counseling, which could last up to 30 days and must be requested within a 6-month statute of limitations.

If that does not take care of things, if you cannot counsel people out of this into an acceptable solution, then you go into step two, which is a mediation service. That, too, can last for 30 days, and must be pursued within 15 days.

Let us say that the aggrieved party, or the person who feels they have been aggrieved, feels at that point they have not been dealt with fairly. They have been through counseling and mediation. Step No. 3 they could take, if the

claim cannot be resolved, is then a formal complaint and trial before an administrative hearing officer. That would be the next step.

At that point, if the person still says, "I don't feel I've gotten justice here, so I want to go ahead with this thing," there would be another step. After the hearing, any aggrieved party may still appeal to the Office of Compliance's board of directors.

So at that point we are up to a four-step process—counseling, mediation, and the administrative hearing officer can still request that this go before the board, the Office of Compliance's board of directors. Even at that point, after all these four steps, if a person feels, no, I feel I still have not received my due or have not received a fair shake, then they can take it outside to the U.S. Court of Appeals for judicial review.

I think that gives the employees here on Capitol Hill tremendously increased protection. The bill would allow employees to bring suit in Federal district court. Let me explain this a little bit. I mentioned that five-step process. Another option is that if the employee did not wish to go through that whole process of counseling, mediation, the hearing officer, the board, and so on, the person could say, OK, after that mediation step—just the mediation step now, counseling and mediation—at that point the aggrieved employee could start up a separate track and go directly outside to the U.S. Federal district court, rather than proceeding to an administrative hearing. The district court remedy would include the right to a jury trial. The option to seek district court redress could occur only after an employee went through the counseling and mediation process. That is required, whichever track you want to go through—the counseling and mediation process.

Then you can decide whether you want to go up the first track I went through, the five-step process. Or you might say: I want to go outside, I am going directly to district court. That is in there because that is what any businessman or organization across this country can do. If they have a problem and they do not get satisfaction from the agency or the Government entity involved, they could go directly to district court and file suit. So we give our own employees here the right to do the same thing if they feel they are not being dealt with fairly or they prefer not to go up that more lengthy in-house procedure before they could, as a last step, go to the U.S. Court of Appeals. So there is a dual track they can go through, and it is up to whoever would be filing the charge.

With respect to discrimination based on race, color, religion, sex, or national origin, remedies include reinstatement, back pay, attorneys' fees, and even other compensatory damages. That matches what happens out in the world, the business world or organiza-

tion world, out there across the country.

For claims under the ADA, title II and title III relating to discrimination in Government services, we provide the following steps: A member of the public may submit a charge to the general counsel of this Office of Compliance. The general counsel could call for mediation. The general counsel may file a complaint, which would go before a hearing officer for a decision. There could be an appeal to the board and, once again, there could be an appeal to the U.S. Court of Appeals.

For violations of OSHA, the bill provides the following procedures: Employees would make a written request to the general counsel, again, to conduct an inspection. The general counsel will not only conduct the inspection but will also inspect all facilities at least once each Congress as a normal course of events. We may not have the expertise to do that, so they would most likely use detailees from the Labor Department, who are familiar with OSHA regulations and in administering OSHA law out in the civil sector. They could give advice in this area and even conduct inspections at the request of the general counsel.

Pursuant to that, citations may be issued by the general counsel and disputes regarding citations could be referred to a hearing officer once again.

Appeal of hearing officer decisions could go to the board. The board may also approve requests for temporary variances. And, finally, an appellate court review of decisions of the board would be in order.

There would be a 2-year phase-in period for the OSHA procedures, to allow inspection and corrective action. A survey also would be conducted to identify problems and to prepare for unforeseen budget impact. Some of these corrective actions might be expensive. So you cannot just say that we will put something in without considering the budget impact here on Capitol Hill. Penalties would not apply under the OSHA provisions, because this would result only in shifting among accounts in the Treasury. In other words, you are going to find somebody on Capitol Hill on OSHA violations and the money would go from there to Treasury, transferring it from one pocket to the other in the Treasury accounts.

The following process applies to violations of collective bargaining law. First, petitions will be considered by the board and could be referred by the board to a hearing officer. Charges of violations would be submitted to the general counsel. Once again, they will investigate and may file a complaint. The complaint would be referred to a hearing officer for a decision, subject to appeal to the board. Negotiation impasses would be submitted then to mediators, and next a court of appeals review of board decisions will be available, except where appellate review is not allowed under the Federal service labor-management relations statute.

"Employees who are employed in a bona fide executive, administrative, or professional capacity" are not covered by the minimum wage and maximum hours provision. Interns are also exempted. In addition, compensatory time may not be offered in lieu of overtime. That does not apply to those I just mentioned—executive, administrative, or professional capacity people. Otherwise, we have to abide by the same laws that apply to everybody else across this country.

Otherwise, remedies for violations of rights of all other employees under the FLSA will include unpaid minimum or overtime wages, liquidated damages, attorneys' fees and costs.

Let me briefly address the Office of Compliance, because they have a great deal of authority and would be a very important part of this whole operation. S. 2 will establish an independent, non-partisan Office of Compliance to implement and oversee the application of antidiscrimination worker protection laws. Under rulemaking, the office will promulgate rules to implement these statutes. In other words, normally we pass legislation here on the Hill, and it goes over into a branch or agency of Government, and that branch or agency then writes the rules and regulations that apply all across the country. That has been one of the hangups, because of this separation of powers through all these years. So we basically gave that authority for rulemaking to this Office of Compliance. The office will promulgate rules to implement the statutes. Congress may approve and change, by joint resolution, rules issued by the office. But if Congress fails to approve rules by the effective date within the legislation, then applicable executive branch rules would be applied.

Rules would be issued in three separate sets of regulations: One, those that apply to the House of Representatives; two, those that apply to the Senate; and, three, those that apply to joint offices and the instrumentalities of the Congress that I mentioned a moment ago. Rules for each Chamber would be subject to approval by that body. Rules for the Senate would be approved by the Senate. Rules for the House would be approved by the House. I would presume that most of those will be the same. I do not think there would be much difference from one body to the other, or to grant the force and effective law by joint resolution of the Congress, if that was required.

Rules for joint offices and instrumentalities would be subject to approval by concurrent resolution. This Office of Compliance will be a very important office for Capitol Hill. It will be something new and different.

Membership of this Office of Compliance: The office will be headed by a five-member board that will be appointed to fixed, staggered terms of office. The board will be appointed jointly by the Senate majority leader, the Senate minority leader, the Speaker of

the House, and the House minority leader. Membership may not include lobbyists, Members, or staff except for Compliance Office employees. Its chair will be chosen by the four appointing authorities from within the membership of the board.

Under settlement and award reserves: Payment for awards of House and Senate employees will be made in a new single contingent appropriation account. All settlements and judgments must be paid from funds appropriated to the legislative branch, not from a Government-wide judgment account. In other words, it will be solely administered here on Capitol Hill. Once again, concern about the separation of powers dictates that. There will be no personal liability on the part of Members.

Mr. President, that is a thumbnail sketch in some detail here, a rundown of what this bill provides and how it will be administered and how it would take care of some of these problems of separation of powers that have plagued consideration of this bill for all these years.

So, Mr. President, I would only close by saying we do not plan to make more lengthy speeches this afternoon. We have gone through some of these things before. I thought it was worthwhile going through them again, since we have gone through the weekend.

But I urge my colleagues in their offices, or their staffs, if you have an amendment, let us get it over to the floor because the majority leader has indicated a desire to have action wound up on this, terminated by Tuesday evening, by tomorrow evening, at around 7 o'clock.

And I say to my Democratic colleagues, we are the ones that have the proposed amendments to this bill. There are none pending on the Republican side. They were able to convince all their Members to put off their concerns to a later time. That does not mean that I am joining them in that. I think we have every right on the floor here to address whatever concerns Members have and whatever amendments they wish to put on this bill.

I can understand the majority's desire that there be no amendments to the bill, but it has been a rare occasion in the history of the Senate when that has occurred.

But I urge my colleagues on the Democratic side who still have amendments on this to get over here and get them presented, because we are going to fast run out of time tomorrow. If we do not consider some of these this afternoon, then we have a limited time tomorrow morning. We go out for our respective party conferences tomorrow between 12:30 and 2:15, as is our custom. So that means we have a considerable block of time taken out right in the middle of the day and we will be coming back on the floor tomorrow with just a little bit of time left until we reach 7 o'clock tomorrow night. If everyone waits until that time to bring their amendments over, I am afraid some of them will get left out before

we wrap this thing up tomorrow night. So I urge my colleagues to get their amendments over here to the floor so that they can have them considered today.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I thank the Chair.

Mr. President, after careful consideration of the issues involved, I have determined that I must vote against the Congressional Accountability Act of 1995. I do not expect to persuade others, and there may be no others who will vote against this act. I may be alone.

There should be no mistake about my intentions. I support the goal of this legislation. It is the means for implementing the provisions in the bill to which I largely object. I support holding all Senators accountable for the treatment of their employees. We should and we must evaluate our employees' job performance on the basis of merit, not with respect to race or gender or age or national origin or religion or disability. We should and we must pay our employees fair wages for the work they do. We should and we must provide our employees with a safe environment in which to work. I have been in Congress now going on my 43d year. I have always held to these principles. We should and we must accommodate the disabled and allow employees to take leave when they are blessed with the birth of a child or a family member becomes seriously ill.

Over the past several years the Senate has made considerable progress in this area. Most of the employment laws addressed in the bill before us already apply to the Senate: discrimination laws apply, the Rehabilitation Act applies, the Family and Medical Leave Act applies, the Americans With Disabilities Act applies. I believe I am correct in all of this. This is probably one of the best kept secrets around here and across the country. It will no doubt come as a surprise to the media so many of whom seem much more interested in our institutional failings than in our many achievements.

Furthermore, contrary to popular misimpression, Members are subject to the laws they make in their capacities as private citizens. Members who own businesses or act in any private capacity, must comply with all Federal, State, and local laws applicable to any business owner or citizen. In addition, Members are subject to many laws not applicable to other citizens or private businesses, such as public financial disclosure, including reporting assets and liabilities of themselves, their spouses,

and their dependent children. In fact, the requirements and constraints under which Members of Congress live would be considered a outrageous intrusion on individual liberty and privacy in most other contexts. I have no quarrel with any of those requirements.

This bill raises serious constitutional issues with respect to the status and functions of the Senate and of individual Senators.

The bill leaves unresolved a whole array of practical and administrative issues that inevitably will impinge on the Senate's capacity to perform its legislative and other functions. It delegates these issues to a board having a broad and, in fact, unique combination of executive, legislative, and judicial authority encompassing a large number of legal issues in a way that is unprecedented in the Federal Government. As a result, we have in this bill an unknown and unknowable potential for serious dislocation and disruption of the Senate's constitutionally ordained role.

Now, Mr. President, I want to take a few moments to explain these problems in greater detail.

#### CONSTITUTIONAL ISSUES

##### THE BICAMERAL PROBLEM

This legislation establishes a bicameral office and a bicameral board with plenary powers over all of the employment laws made applicable to the Congress and to other legislative branch entities. This structure, I believe, is fundamentally inconsistent with the bicameral nature of the Congress ordained in the Constitution. Proponents will be quick to point out that the legislation provides for separate sets of rules for the House, Senate, and the remainder of the legislative branch. But this is no real solution to the basic problem. If this legislation is enacted, we will have a single bureaucracy making policy for the entire legislative branch, however that policy may be packaged.

The Constitution indisputably establishes a bicameral legislature. The Framers intended to create two separate and independent Houses of the Congress as integral components of their overall plan of shared and divided power. The Senate and House, by design and precedent, have unique and distinct roles within the constitutional structure. The discharge of the Senate's unique responsibilities requires independence. The intent of the Framers in this regard is obvious in the plain words of the Constitution.

Article I, Section 5 of our Constitution provides that each House may determine the rules of its proceedings. Two principles are expressed in this provision. First, each House is accorded the constitutional right of self-governance with respect to its internal operations. Second, neither House has the authority to govern the other House or to determine the rules of the

other House. The bill before the Senate today is an affront to those constitutional principles. If this bill is enacted, the Senate's constitutional power of self-governance will be seriously impaired. And the Senate's protection from interference by the House of Representatives will begin to erode. Conversely, the same is true with respect to the House. This is a slippery path we must not travel.

#### SEPARATION OF POWERS

Articles I, II, and III of the Constitution establish a government consisting of three independent branches. The Framers of the Constitution separated the judicial, executive, and legislative functions for the purpose of limiting the power of any one branch, while providing distinct duties to each branch. This arrangement of distinct branches, with different but interdependent powers, is the keystone of the constitutional system for checking arbitrary power. As *The Federalist*, No. 48, states, no branch of government may "possess, directly or indirectly, an overruling influence over the others, in the administration of their powers." This constitutional principle is trampled in the bill before the Senate today. It permits the judicial branch to intrude on and thereby directly interfere with the Senate's administration of its powers. We should not so lightly allow the erosion of the very concepts that are at the core of our Constitution.

The last judicial statement to address this issue directly, firmly holds against diluting the principle of Separation of Powers. In 1986, the U.S. Court of Appeals for the District of Columbia Circuit held that Members of Congress had absolute immunity under the speech and debate clause for personnel decisions concerning positions of employment relating to the legislative process. In *Browning v. Clerk, U.S. House of Representatives*, the court stated:

The speech and debate clause is intended to protect the integrity of the legislative process by restraining the judiciary and the executive from questioning legislative actions. Without this protection, legislators would be both inhibited in and distracted from the performance of their constitutional duties. Where the duties of the employees implicate speech or debate, so will personnel actions respecting that employee.

This is not the first time the Senate has been down this path. In 1985, we passed the Gramm-Rudman bill; our intentions were good, but our means were faulty. Like the bill before this body, the Gramm-Rudman bill failed to respect the constitutional principle of Separation of Powers. It delegated executive powers to a lesser legislative entity and it retained the Senate's ability to remove an executive officer. But our error in passing that law was soon rectified. In 1986, 1 year after Gramm-Rudman was enacted, the Supreme Court declared it to be unconstitutional. If enacted, this bill, which I think is similarly flawed, may be likewise declared unconstitutional, but only

after the Senate has expended considerable sums establishing the bicameral Board and eliminating the current Senate Fair Employment Office.

Let me explain more specifically how this bill permits unprecedented judicial intrusion into the Senate's affairs. Under this bill, a Senate or other congressional employee need not use the dispute resolution and enforcement procedure provided through this new Office of Congressional Compliance. Instead, he or she may file a lawsuit directly against a Member's office in Federal court in the district in which the employee works. In the course of pretrial discovery, a Federal judge could order a Senate employing office to produce documents and other information in the possession of the employing office. The employee is entitled to a jury trial. If the court finds in favor of the employee, it could order the Senate office to submit periodic reports to the court to satisfy it that the problems have been eliminated. The court also could appoint an individual to inspect the Senate offices and to interview Senate employees to satisfy the court that no employment problems reoccur. I submit that this level of intrusion by the judicial branch into the affairs of the legislative branch violates the constitutional doctrine of Separation of Powers, and it impermissibly intrudes on the Senate's constitutional power of self-governance.

The potential for political mischief this provision creates should be obvious. Political opponents and possible challengers with law degrees will be lining up to offer their services as counsel for plaintiffs in such cases.

Moreover, I suggest that this system eventually will lead to a constitutional impasse. It will be only a matter of time before a court issues an order that intimately intrudes on the Senate's powers. At this point, the Senate may very well refuse to comply. Such an impasse will be unresolvable. The Supreme Court may order the Senate to comply, but it is within the constitutional powers of the Senate to refuse. What is the compelling reason for passing a law that invites such a constitutional showdown, particularly when we have a workable system in place?

#### POWER OF THE BOARD

I have other concerns about this bill. It grants unprecedented plenary powers to a bicameral board. The Board will be the equivalent of the Equal Employment Opportunity Commission, the Labor Department, the Federal Labor Relations Authority, the Occupational Safety and Health Administration, and other Federal agencies with enforcement powers. It will have the authority to submit legislation, to interpret laws, to enforce the laws against the Senate, and against the offices of Senators. Never has this body granted so much authority over its operations and powers to an outside entity.

#### ADMINISTRATIVE AND PRACTICAL PROBLEMS COLLECTIVE BARGAINING

Mr. President, this bill, as I understand it, delegated to the Office and the Board the power to decide a whole range of very complicated and potentially highly political questions with respect to the application of these statutes in particular circumstances in the Senate. Let me just give you a few examples of what we are giving this Board and its associated bureaucracy the authority to do.

The bill extends the rights and protections of the Federal Service Labor Management Relations Act to the Congress. This is the law that provides for collective bargaining in the executive branch of the Federal Government. It should be noted that this statute is substantially different from the National Labor Relations Act, under which private sector employees collectively bargain and have the right to strike. When Congress applied collective bargaining laws to the executive branch, Congress recognized the distinctive character of that branch of the Federal Government and its functions. Thus, Federal employees do not have the right to strike. Nor can unions representing Federal employees bargain about wages. I would submit that the same concern for the special role and function of the Congress should warrant such full and careful consideration as well. Certainly we should not assume in a simpleminded way that the Congress is just like the executive branch or any other institution. But such a measured approach is not taken by this bill, in my judgment.

#### UNFAIR LABOR PRACTICE EXAMPLES

Let me give some concrete examples of the kinds of policies that will be made by this Board in the area of collective bargaining. The Board will determine what an unfair labor practice is. And what is an unfair labor practice? Under the Federal Labor Relations Act and annotated case law, an unfair labor practice would include the following: Failure to bargain with the union over the effects of layoffs, moving offices from one location to another, reassigning duties of employees, hours of work and break time. Do not be fooled by the argument that most Senate employees will be exempt from these requirements. That is not obvious on its face. In fact, the way this law has been construed in the executive branch, the right to organize and bargain collectively covers all non-supervisory employees with minor exceptions. Senators might ask themselves whether their legislative assistants are supervisory employees by any credible standard. How may we suppose the Board will decide?

The Board also will define the scope of appropriate bargaining units. The questions here are even more significant from an institutional perspective:

First, will the bargaining unit be confined to a single Senate office?

Second, will it encompass all Senate offices?



Third, will it encompass all Senate and House offices?

Fourth, will it include all employees with similar jobs in the Senate, in both Houses, or throughout the legislative branch?

On all of these questions, the legislation is silent other than to say that the Board will make these decisions. Depending on the outcome, it could well be that we will have unions representing all legislative assistants and other classes of employees in the Senate—or in the Senate and House.

Remember, to be recognized as a representative of the bargaining unit, the labor organization only has to win a majority of the votes. That means that if a majority of the legislative assistants in the Senate or in the House or in both Houses of Congress vote to have a union, then that union is the sole bargaining authority for all legislative assistants in the Senate or in the House or in both Houses of Congress. Senators will no longer have the ability to structure and manage their staffs consistent with the unique needs of the States which they represent without first consulting with union representatives. And who will bargain on behalf of management? Individual Senators? The Senate leadership? The joint congressional leadership? The Board will decide.

#### JOB CLASSIFICATION AND DEFINITION

The Board and its bureaucracy also will serve, in effect, as the Wage and Hour Division of the Department of Labor. In that capacity, it will decide the following kinds of issues:

First, which employees must be paid time-and-a-half for overtime;

Second, what kinds of record keeping must offices maintain;

Third, whether or not the Board and its bureaucracy has the right to inspect detailed payroll records;

Fourth, what positions are comparable for purposes of the Equal Pay Act? Are the tasks performed by a legislative assistant who works for a rural Congressman the same as for a legislative assistant who works for a Senator from the most populous State, for example?

These are important decisions which go to the heart of a Senator's ability to represent those who sent him to the Senate and should not be left to the unbridled discretion of an unelected and largely unaccountable Board and its bureaucracy.

#### FUNDING ISSUES

And finally, Mr. President, there is the issue of cost. It is argued that a bicameral board and bureaucracy will somehow be more efficient and cost-effective. I frankly believe that such optimism is based on little more than a pious hope. If our experience with Government organizations shows us anything, it is that they tend to expand and to cost more than what is originally estimated. I have not the slightest doubt that the cost of this new bureaucracy, when all is said and done, will far exceed the expenses of operat-

ing the Senate Office of Fair Employment Practices. The annual operating cost of the Office of Senate Fair Employment Practices is approximately \$800,000. The bureaucracy envisioned in this bill will inevitably be several times as large and correspondingly more expensive to the taxpayers. For example, section 302 of the bill empowers the Board to appoint an executive director; two deputy executive directors; a general counsel; as many additional attorneys as may be necessary to enable the general counsel to perform his duties; such other additional staff, including hearing officers as may be necessary; and, the executive director may procure the temporary or intermittent services of consultants.

But even if costs were not an issue, even if for the purposes of argument one assumes that this office would achieve administrative efficiency, there is a larger question. At what point do we bend to the political demagoguery of the day and at what price does the Senate surrender its constitutional right of self-governance and its independence from the executive and judicial branches and from the House of Representatives?

One final point about funding, Mr. President. Under this legislation, the director of this new bicameral bureaucracy can hire as many staff, consultants, and inspectors as he wants. Elected representatives, both Members of the House and Senators, will be without authority to review, control, modify, or change any of these financial arrangements entered into on the sole authority of the director.

It is highly irregular to empower the head of a new agency to create its organization and establish its budget without specific authorization and appropriation. Under section 305, one will find the following language:

Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the date of the enactment of this Act—

(1) one-half of the expenses of the Office shall be paid from funds appropriated for allowances and expenses of the House of Representatives, and

(2) one-half of the expenses of the Office shall be paid from funds appropriated for allowances and expenses of the Senate, upon vouchers approved by the Executive Director.

The Appropriations Committee will thus be faced with a staff which is already in place, with a salary structure that has already been determined, with expenses already obligated and a very difficult political situation.

This blank check on the Treasury of the United States is something, Mr. President, that no member of the Appropriations Committee and, indeed, no Member of the Senate should condone. The American people should understand that they are the ones who will be paying the bills for this new bureaucracy; for paying time-and-a-half to congressional employees; and for hiring all of these new attorneys, hearing officers, and consultants. Here is another example of the rhetoric of the

day not matching the actions of Senators. The rhetoric is—Let us make Congress live by the laws it passes for everyone else. The action being taken will result in costing American taxpayers millions of dollars and the creation of a brand new bureaucracy.

The exemption from some laws has facilitated the Member's ability to serve his constituents and to do the business of the Nation. The Hill is not a 9-to-5 operation. The Nation's business cannot be confined to normal business hours. Constituent problems do not always occur conveniently within the confines of a normal business day. In order to provide maximum service to our Nation and to the people we represent, we ask our staffs to work long and arduous hours, and we ask them to view their work as public service. Surely this ability to serve will be somewhat compromised if we apply certain of these laws to employees of the Senate and the House. Certainly the cost of providing present services will go up under the requirement that we must pay overtime. Every year we hear complaints about the cost of the legislative branch, and we have repeated efforts to cut the budget of the legislative branch.

I wonder what the folks at the town meetings would say if after the cheering stopped, a Senator would explain that bringing the Hill into compliance with certain laws would mean lessened services to the taxpayer at a substantially greater cost. We will all comply with these laws in our offices, but you, the taxpayer, will get less rapid attention to your needs, and you will have to foot the bill for this poorer service.

I am not at all sure that the cheering would continue. I am not at all sure that the cry for bringing the Hill into compliance with all of these laws would be so popular if the public understood what taking that step would mean in terms of their needs, the services they have a right to expect to receive, and their pocketbooks. But, that is the age in which we live. Anything that sounds good on the surface, we rush to do. Anything which the talk show jockeys can whip up the public about becomes the basis for legislation. Never mind whether or not it is really in the public interest. Just enact something to quiet the latest fad criticism and move on.

Well, I cannot and I will not support a measure which will likely have the effect of shortchanging my constituents in terms of the services my office can provide and which then asks the shortchanged taxpayer to foot the bill.

I congratulate Senator GLENN, who has spent many weeks and months of hard work in the effort to bring this bill to the floor and to improve upon it. And I also compliment his counterpart, Mr. GRASSLEY, for his interest and dedication to the legislation. I have made this statement in keeping with my own views, after the experience of working on this Hill, now, for almost 43

years. My staff and I have always felt that in taking on this job and in taking on the jobs as employees in my office, that we are here to render a public service and we have never felt that this was a 9-to-5 operation. I have always attempted to pay my employees in accordance with their merits and to pay them well and to be liberal in leave time. And we have never felt, anybody on my staff—and I have attempted to set the example for them, that we do not work from 9 to 5. We work until the job is done. If it takes longer we stay here longer because we are in the service of the public. And I do not find fault with others who feel otherwise about it. And there is much good, I am sure, to be achieved in passage of the legislation in many ways. But I have outlined the reasons why I will not vote for it.

As I stated in the beginning, I anticipate that I may be the only one who feels this way about it. I do not come here expecting to persuade anyone else. My feelings are based on my own experience and on my own knowledge of the problems that we confront here and I do not seek to disparage the viewpoints of others who may want to disagree with me.

Mr. President, if I have any time remaining I yield it back and I suggest the absence of a quorum.

Mr. President, I withhold the suggestion.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, Senator BYRD, in his experience here as majority leader, minority leader, repeat majority leader and so on, has an experience level in this body that no one can match. And when he rises and expresses his concerns about things it is of great importance to us because he has studied these things and no one is a greater constitutional scholar on what is provided for, for the Senate and the House, the separation of powers, and making certain that the balance of powers within our form of government remains intact and protected. When he rises to oppose this legislation it is of particular concern to me and I want to just address a couple of the items very briefly here. I do not want to get into a big debate on this.

I would say we have passed, through the years, much legislation that applies all across this country. We did that in the assumption that what we were doing was right. It was right to apply certain protections of workplace conditions and of how people were dealt with out there on safety in the workplace and on wages and conditions of employment and so on. And we applied them all across this land. Some of the arguments the distinguished Senator from West Virginia makes are the same arguments that businessmen across this country have made. They feel they are treating their employees fairly. Yet we impose laws upon them.

We are not without being justifiably criticized, sometimes, here on Capitol Hill. I remember some newspaper articles just a couple of years ago of some of the working conditions in the Government Printing Office. That is an instrumentality of the Congress. They were atrocious. They did not even come close to passing safety and OSHA regulations that we apply all across the country to every other printing plant and every business across this country. So I would just say if it is right that we impose these laws on other businesses across this country, is it not also right that we apply those for the protection of our own employees here on Capitol Hill?

At the same time, I know everyone relates to the situation in his or her own office. What is going to happen in our office on this? Let me say we provide in this legislation that employees who are employed in a "bona fide executive, administrative or professional capacity" are not covered by the minimum wage and maximum hours provision. That means, then, that the people who are covered are basically clerical people, people like that in our offices. We can say that even they are required sometimes to work irregular hours. And that is true, they are, just as out in the private industry sometimes people who are temporary employees or something are required to work very irregular hours. Where that is a norm for the conditions of employment in private industry, they can make an appeal from that and get relief from the requirements of the law. That is done on a regular basis by those who have their employees working very irregular hours.

The same way here on Capitol Hill, that would be the province of the board, to issue regulations like that right here if we wish to be exempted from that. If we did not, if our clerical personnel, for instance, and those who normally out in industry would be working a regular shift, say—if they are not exempted by the board then I would say we are treating ourselves, then, just like everybody else in the country. If a person out there running a business has some irregular working hours and applies for relief from that so he does not have to comply with certain regulations, then I think we would do the same thing here. If we find it is not working right we would appeal to the board. In other words, the board would be the authority here. Just as there is an appeals process out there in private industry, we would have our own appeals process here.

But I want to point out that bona fide executive, administrative or professional capacity—they are not covered by these minimum wage or maximum hour provisions. That would cover our LA's, our legislative assistants, who would be considered as professionals. As far as the right to strike, that is prohibited here. I was looking up the language—I did not get it—just before I took the floor. But that is pro-

hibited as it is in other Government activities also.

I would say all we tried to do in this, after all these years of having this objection about the separation of powers—and that is a very real one, and has been a problem for me all those years, too, as it has for my distinguished colleague from West Virginia. He was one who rose many years ago on the floor here and was very concerned about the separation of powers. He brought some of this up a long time ago, and rightly so, because we should not be giving away authority, back and forth, here. So what we did, instead of having the executive branch have the authority to just say, "OK, we are going up on Capitol Hill and we are going to run a check on OSHA considerations and we are going to do it on our own and we will enforce it by law"—that gets into a very sticky area, as the Senator from West Virginia knows. And it has been one of his main complaints about this.

We set up this Office of Compliance which will set rules that are appropriate to the unique operations of the Congress. They will have considerable authority. But we will have the appeals process, also.

Another area of the board's authority that I think may be misunderstood, and I want to clarify also, is most of the rules for the Congress could probably be approved once the board sees them. The rules and regulations will have to come back for approval. I think most of those can be a joint resolution that applies to both the House and the Senate, probably most of it. If there are requirements, though, for one body or the other to treat itself differently because of the different operation of the House and Senate, then those rules have to be approved by each House regarding their own operations. And if we would deem it necessary here in the Senate to say our operation here is unique to the House and we think the rule here should be applied in a different way and we passed that, and the House passed a different resolution with regard to their operations, then the board would administer those rules for that body according to what that body approved for itself. The Senate rules that applied that the board would administer might not be the same rules of the House as it applies to them. But the board would be administering the rules as approved by each body for its own operations. I was not sure that was clearly understood.

So it gives us the maximum flexibility, I think, and gives us protection for the unique nature of congressional operations, both the House and the Senate, and allows for the peculiar nature of and the unique nature of the activities of both the House and the Senate.

So we try to foresee these things. We may not have done a perfect job on it. Senator GRASSLEY and Senator LIEBERMAN put the bill in last year. We worked together on this. But I think I fairly described how this whole thing

would operate. I do not know if Senator GRASSLEY wants to add anything or not. But that should clarify some of the concerns of my distinguished colleague.

I yield the floor.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Ohio for his consideration of some of the concerns I have expressed and for his explanation.

I have absolutely no doubt whatsoever as to his sincerity and his conscientiousness and his dedication to doing the right thing for and by everyone concerned. As I stated in the beginning, I guess I see this through the perspective of having managed an office here on the Hill for going on 43 years. And I do not expect any other Members of this body to agree with me on this. But I do thank the Senator. I salute him for his dedication and for his tenacity in working as long as he has to bring this legislation to the Senate. This is something that he feels strongly about and I think I heard him speak about many times, even in our party conferences.

So I do not for one moment feel that what I think about the legislation is necessarily right. I approach things, generally speaking, feeling that I can be wrong. But it is pretty hard after 43 years to share a viewpoint that is different from the one that has worked very well, I think, in my office over the years. But I admire the Senator. I like him and am very fond of him.

I hope he will understand that I come to the floor not to engage in a crusade against this bill or to persuade another mind. I simply wanted to state my own views, and that is it. On the next question, I hope we can be together.

I yield the floor, Mr. President.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, without repeating what my good friend from Ohio, Senator GLENN, had to say about our respect in this body for the views of Senator BYRD, I would just simply say that I associate myself very much with the remarks of Senator GLENN. I would like to make some commentary on the issues raised by the distinguished Senator from West Virginia and follow along on what the Senator from Ohio has said. Our intent as we approach the writing of this legislation is to be very cognizant of the separation of powers and constitutional arguments that can be made.

One of the first points that was made is that these laws already apply to Congress, or at least some of these laws apply to Congress. As to those that do not apply to Congress, Senators have a responsibility to make a conscientious effort to make sure that the principles of the law are applied out of a matter of fairness to those employees that are working for Congress as an institution or working for individual Senators.

The laws that now apply to Congress do so in a way that is, in a sense, in

name only. I have been involved with the application of some of these laws because I had what I considered a major victory at the time to get civil rights laws applied to Congress in the fall of 1991. But the remedies that we provided were not the same remedies for Hill employees that private-sector employees have.

So I say that the law applies kind of in name only. It is on paper. But the absence of the identical remedy for employees of Capitol Hill makes current coverage inadequate.

The agency that we set up here, the Office of Compliance, is a single agency that does not make policy for the two houses of Congress. No rule can be adopted without the concurrence of the membership of the body to whom the rule applies, and there is no infringement upon the independence of the Senate on the one hand, the independence of the House on the other hand, or the constitutional principle that each House can adopt its own rules.

There is a separation of powers. But constitutional analysis is not so general as to say that the Supreme Court will decide a case based upon an argument that the separation of powers has been violated. The claim must be more specific than that.

In the case law, the Supreme Court refuses to strike down legislation on the broad argument that it somehow violates constitutional separation of powers. Specific constitutional provisions must be cited, notwithstanding the novelty of the arrangement that we have set up in this legislation. The Supreme Court's decision upholding the constitutionality of the Sentencing Commission and the independent counsel—these have been court cases within the last 5 or 6 years—demonstrates this point.

In my opening statement, I mentioned that executive branch employees have some of the same rights that we want to now give to Hill employees under existing legislation we have already applied to the private sector.

Well, when an executive branch employee's rights are in question, these rights are protected by the judicial branch. It is as simple as this: no one has ever found judicial enforcement of the rights of executive branch employees to be unconstitutional. So my good friend, who spoke eloquently on this point, said that the judicial branch should not enforce a decision against a Member of Congress or Congress as an institution because it violates separation of powers. Nobody raises that argument when the judicial branch enforces an executive branch employee's right under existing law; so why should that be a problem for applying those laws to us? An independent, impartial person, or the institution of the judiciary protects the rights of executive branch employees. No one questions this.

And there has never been an impasse between the executive branch and the judiciary when any of these cases has

been decided. When President Nixon was ordered to comply with a court decision during Watergate, pure and simple, he did. If the President of the United States can obey a judge's decision saying that the most powerful executive in the entire world must obey a court order, then why would we as individual Members of Congress have any question whatsoever if we have done something wrong and the independent judiciary or any one of its judges made a decision and issued an order enforced upon a Member of Congress.

The only way, then, that there could be an impasse between Congress and the judiciary is if Congress refused to comply with the Court order interpreting the Constitution. It is one thing for opponents of this legislation to argue that Congress should be above the law, and, of course, I disagree with that; but it is breathtaking to argue that Congress should be above the Constitution.

The board's determinations regarding bargaining units and covered employees under collective bargaining and overtime will not take effect until Members of Congress themselves approve the regulations. And I have faith that for all the reasons that have been expressed by the Senator from West Virginia that Congress is different, long hours are expected, that when we deal with these regulations, my colleagues will act to preserve their constitutional responsibilities. The board is unelected, but the board that governs the Office of Compliance that will write the regulations is not unaccountable, and it is not uncontrollable.

The bill addresses separation of powers as well, by providing for legislative branch, rather than executive branch enforcement. The bill was crafted to take into account constitutional issues, and I believe the courts would permit Congress to exercise these powers against its own activities. Moreover, the bill expressly prevents waiver of any congressional prerogative.

One last point that I want to make is that there was reference to the Browning case, decided by the D.C. circuit in 1986. That was a case where there was a discharge of an official reporter at the House of Representatives, and it was challenged by that reporter. The Court held the congressional defendant to be immune under the speech and debate clause. The standard was "whether the employee's duties were directly related to the due functioning of the legislative process," and "if the employee's duties are such that they are directly assisting Members of Congress in the discharge of their functions, personnel decisions affecting them are legislative and shielded from judicial scrutiny."

If Members heard during the previous speeches that Browning may effect what we can do here on congressional coverage to protect our employees because they might be an extension of our legislative duties, under the speech and debate clause, you should observe that the Supreme Court, 2 years later,

in 1988, issued an opinion that requires Browning to be revisited. And here the Court was deciding what is referred to as the Forrester case. This case unanimously held that a State court judge did not have judicial immunity in a suit for damages brought by a probation officer whom that judge had fired. The Court explained that in determining whether immunity attaches to a particular official action, it applied a—this is their words—“functional approach.” And then, “Under that approach we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect and exposure that particular forms of liability would have on the appropriate exercise of those functions. Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy.”

Thus, it is “the nature of the function performed, not the identity of the actor who performed it, that informs our immunity analysis.”

So you can see that in Forrester, the Supreme Court is telling us that the Browning decision is not as compelling as it was for the 2 years before the Forrester case came before the Supreme Court.

I yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, everything sounds so good, it is almost hard to believe it. The general public out there believes that we are applying the same rules to our own institution as we apply to them. That is not true. That is not true. In the Americans With Disabilities Act, for instance, we excluded title II. We hear this rhetoric that we put that in. We excluded title II. Title II is buildings and transportation. You wait until we have to change the other subway. That is fine, but the last one cost \$16 million. I wonder what the others are going to cost. That is not coming out of my pocket or the Senator's pocket; it is coming out of the taxpayer's pocket.

The congressional exemptions in the statutes as provided by this bill will do a lot of things. If the same laws are applied to Congress as to the private sector, the statutory provisions must be the same. The statutory provisions are not the same. The remedies available to employees must be the same, the regulations must be the same, and the provisions for judicial enforcement and review must be the same as it applies to the private sector. But, no, we do not do that.

We do not do that. No, we do not.

The Republican bill creates a special agency, creates a special agency, to enforce selective provisions of law to the Congress. We set up a special agency. We do not just say that the provisions that apply to the small employer down

there, the small businessman, will apply to us. We do not do that.

Under the bill, Congress will have its own special regulations. We set up our own special regulations. Separation of powers, sure. But we are out there telling our general public, our constituents, that we are going to apply the same thing to us as we apply to them. Now, I may vote for the bill, but I am going to tell you one thing, I want the general public to know what we are doing and what we are not doing.

Congress will have its own special regulations that may vary for each House. We may not have the same provisions in the Senate as they have in the House. It will vary between the House and the Senate, its own rules of procedure, not what the general public has—its own agency with its own inspectors with its own staff with its own general counsel with its own executive director and its own board. Now, you know, the general public out there does not have all that as we are setting up for ourselves.

The law will not result in Congress being subjected to the same laws that apply to the private sector. It is a continuation of special treatment of Congress by Congress. Any rose should smell so sweet.

The repeal of the exemption for Congress in the various civil rights and labor statutes would be the fulfillment of what the Republicans really promised by the Democrats. We would be holding them to their promise, not to their slogans.

So when you get right down to it, it is very simple. You just say all the statutes that apply to the business people out there apply to us. That is very simple. But, no, we are making it complicated. We excluded the Members of the Senate and the Members of the House. We are giving the Senate and the House the opportunity to set up different rules, and the expense is going to be tremendous.

Impact on confidentiality: The bill provides its office proceedings, including hearings before a hearing officer and before the board on appeal, will be confidential. It would permit public release only of the hearing officer's or board's decision, provided the complainant's name had been redacted. However, trial de novo will likely become the more popular avenue for the employee to pursue. A trial is usually not confidential and the parties would be named in the complaint.

Just a lot of things that we are doing here.

The bill requires the office to develop a system for the collection of demographic data respecting the composition of congressional employees, including race, sex, wages and a system for the collection of information on employment practices, including family leave and flexible work hours, and report annually to Congress on the information collected under such system.

How many employers out there have that done for them? How many?

And so we are saying we are applying the same laws to Congress that we are applying to our constituents. Not true. Not true. You can say what you want to, get up here and make all these grandiose statements for 30-second sound bites, but when you get down to it and you read the bill, we are taking care of Congress. We are giving immunity to Congress. The immunity is there. Self-enforcement has not worked very well. And that is what is happening here. Self-enforcement is what is happening here and it has not worked very good.

Two years ago, Congress passed legislation to extend coverage of several employment discrimination laws to the Senate. A Fair Employment Practices Office was established and employees were promised fair treatment. It was certainly an intent of these actions to provide some protection against arbitrary employment decisions to employees of the Senate. With this change in the majority, we have had employees that were within a few weeks of retiring, few months of retiring, and nondesignated employees—they were not Democrat or Republican, Independent or otherwise, they were professionals—the professionals were fired so you could hire some more designated. We will see employees terminated for the sake of termination.

And we are going to have a lot of cases, a lot of cases, when you fire a professional that is there because he is a professional, not because he is a Republican or Democrat or an Independent, whatever he might be. Is this action consistent with the intent of this legislation?

If the same laws are to apply to Congress and to the private sector, the statutory provisions must be the same. The enforcement agency must be the same, the remedies available to employees must be the same, the regulations must be the same, and the provisions for judicial enforcement and review must be the same as applied to the private sector. But, no, Congress is being good to itself again. Congress is being good to itself again. We are given immunity.

So, Mr. President, I hope that we will look at what is coming down the pike. And I think it is appropriate. But let us not fool the general public. Let us not say we are applying the same laws to Congress that we have applied to them, because we are not.

We will get in the argument about separation of powers and all this sort of thing. But then that is an argument where you can take care of yourselves.

Eight-thousand employees are now serving in the Senate. We will go to approximately 24,000 employees that will be covered; counseling up to 30 days; mediation, 30 or more; inspections for OSHA and ADA, title II. You hear we have put ADA, we have applied that to the Senate. We have not.

Investigation and initiation of charges: In addition to Senate OFEP

staff above, the bill requires a five-person hearing board and two, House and Senate, deputy directors. We do not need all those. Just eliminate the statutes' exemptions for us and let the statutes apply to us.

So I will have more to say on this, I guess, before we get through. But I just want to be sure that people understand that we are not applying the same laws that we apply to our constituents to the Congress. I hope that there will be an admission that we are not doing that.

We are doing more than we have been. I have been for it for a long time. I got the Fair Employment Practices Office set up. Who had the responsibility of that? That is a \$900,000 annual budget. We have had several cases we have settled. All those things have been transpiring. And wonder who paid for that? The taxpayers paid an additional \$900,000, plus whatever the costs were. And whatever happens in this instance, the taxpayers are going to pay for it. We have immuned ourselves. Confidentiality is there. All of that.

And so, I hope those that who are listening understand that what we are doing is in the right direction, but it is not what we are saying we are doing. We are doing something far different.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COVERDELL). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 2.

Mr. MCCONNELL. Is there a pending amendment, Mr. President?

The Ford amendment?

The PRESIDING OFFICER. It is the Ford amendment No. 4 to S. 2.

#### AMENDMENT NO. 8

(Purpose: To modify amendment No. 4 to S. 2 to clarify Senate regulations on the use of frequent flier miles)

Mr. MCCONNELL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] proposes an amendment numbered 8 to the Ford amendment.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. FORD. I object.

The PRESIDING OFFICER. There is an objection. The clerk will report.

The legislative clerk read as follows:

1. On line 7 of the first page, strike from paragraph (a): "or House of Representatives";

2. On line 10 of the first page, strike from paragraph (b): "Committee on House Over-

sight of the House of Representatives and the";

3. On line 9 of the second page, strike from subparagraph (2) of paragraph (c): "the House of Representatives and";

4. On line 8 of the first page, strike from paragraph (a): "Government" and substitute "office for which the travel was performed".

Mr. MCCONNELL. Mr. President, my friend and colleague from Kentucky has offered an amendment which as it relates to the Senate codifies existing policy. It is not possible, it is my understanding, under Senate rules, for a Member of the Senate to convert frequent flier mileage acquired as a result of Government travel to personal use.

So, Mr. President, my assumption is that the amendment is designed to establish such a policy for the other body, and it is my view, and I think the Senator from Kentucky might—he can speak for himself—have objected to the House passing a Senate rule when he was chairman of the Rules Committee. Maybe he would not have. But it is my view that since the Senate has already curbed this problem—I am not sure exactly when the rule was adopted—it would be best that we not use this vehicle that Senator GRASSLEY and Senator LIEBERMAN have been working so hard on to impose a standard on the House that it may well adopt for itself at a time of its own choosing.

But this issue of the use of frequent flier miles acquired as a result of the expenditure of taxpayers' dollars to provide travel for Senators going back and forth to their States has long since been solved. It is not a problem in the Senate.

One concern I do have about the particular crafting of the amendment by my friend and colleague from Kentucky is that I gather the money saved by his amendment would accrue to "the Government." Under the current system, it is my understanding that the frequent flier mileage accrued goes to the office of the Senator; it is assigned to that particular office and then, of course, can be used to defray travel for the Senator back and forth to his State, thereby saving the taxpayers money.

So it seems to me better if we continue the policy of allowing the Senator to accumulate these miles for his own Government travel back and forth to his State, thereby saving taxpayers money for that particular office.

That is essentially my point, Mr. President, in offering this second-degree amendment. It is to simply limit the operation to the Senate, because basically that is already our policy, and to refrain from seeking to establish this standard for the House because I think they are not likely to take kindly to our advice about how they ought to handle this matter.

Let me just briefly go over a short statement here that outlines what I have said extemporaneously.

The Senate abides by travel regulations promulgated by the Senate Rules Committee. These travel regulations prohibit using frequent flier miles ac-

crued from official business for personal use. They do allow the office which accrued the miles to use them for additional travel. Thus, the Senate regulations save the taxpayers money by allowing Senators to use accrued frequent flier miles to fly back and forth to our respective States.

To the extent that the FORD amendment codifies existing Senate policy, I would argue that it is probably not necessary because that is already our policy. But a consequence of the amendment of my friend may be that the frequent flier miles would be wasted and unusable.

Under our current regulations, as I just outlined earlier, bonus miles accrue to the office that pays for the ticket. That office may then use the accrued miles for additional official travel.

The amendment of my colleague would have the miles accrued to "the Government." The airlines, as I understand it, do not allow the pooling of bonus miles, not by private citizens and not by Government agencies. So if an office with accrued miles must turn them over to "the Government," those miles would in all likelihood be lost. The result would be an increase potentially in the cost of Government to the taxpayers.

Finally, just let me reiterate what I said earlier, that I hope we would not try to impose our longstanding rule on the House. It seems to me that they are not likely to respond to that kindly and may well deal with this issue at a time of their choosing.

Mr. President, I yield the floor.

Mr. FORD addressed the Chair.

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

Mr. FORD. The other Senator.

Mr. President, I think my colleague, Senator MCCONNELL, has a very weak argument. What he is saying is let the House continue to take their frequent flier mileage and use it personally; take your wife and family to Europe on a nice trip, or go out to California on miles earned by official expense.

That is number one. Number two, the House says they are going to do this. Fine. I listened very closely to our majority leader, Senator DOLE, when he said this bill, in all probability, will be accepted by the House and we will not have to go to conference. So if this amendment is not included in S. 2, then the House will continue for a period of time being able to use their frequent flier miles for personal use. And I do not think the taxpayers want to do that.

And, if we approve this modification, or amendment, that my colleague has submitted, then the purpose of Senator FEINGOLD and I is just moot. There is no need of having the amendment, since the Senate already has its rule. I would prefer to keep it in. But nevertheless—and I am aware of the usual

practice that each House not legislate with regard to the operations of the other House. While this understanding is generally, and I underscore generally, honored, there have been a number of circumstances where it has not.

One recent major incident, and I underscore major, was the House insistence that the Senate official office accounts—if you remember that, we are just getting over that, we are just getting over that—that the Senate official office accounts be modified by adoption of restrictive language in the Legislative Branch Appropriations Act of 1991. That, in effect, was a major implementation of new rules by the House on the Senate. That change affected every Member of the Senate, and required the adoption of an extensive interpretive ruling by the Senate Ethics Committee, which my colleague should know plenty about since he is on the Ethics Committee.

The net effect of the amendment that deletes the House from this amendment is to permit the House Members to continue to convert frequent flier awards earned with taxpayers' money to personal use. Is this the congressional accountability that we talked about? It would be the only unit of Government that is allowed to do that. The executive does not allow it. The Senate does not allow it. But the House flies anywhere they want to on the perks from taxpayers' dollars. I understand you want to let the House go ahead and do it. It seems to me that if we want to be accountable here—sure we use, on our side in the Senate, those miles that are compiled from official trips back home to have more trips or to reduce the cost of our offices. It is pretty good, \$300 or \$400 a round trip, two or three trips, save \$1,000; save \$100,000 in the Senate. It begins to mount up. So the House, with 435 over there, it would be \$435,000 that you would get back. You know, just a little bit.

So I would say to my friend that if this bill is going to become law—as I understand the majority leader insists that it will, if we do not amend it too much—just to put this in the bill, I do not think the House will vote against it just because we say to them they cannot use taxpayers' dollars for personal use. If you want to vote for that, let the House use it for personal use, you are going to get an opportunity, probably tomorrow afternoon around 2:15, or 2:30. But this amendment would modify the amendment I proposed with Senator FEINGOLD by deleting the reference to the House of Representatives, and the proposal is just not acceptable. I urge my colleagues to oppose it.

I yield the floor.

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

Mr. McCONNELL. Mr. President, I want to make it clear it is not the view of this Senator that this vote on the second-degree amendment I have of-

fered is in any way condoning of the use of frequent flier miles for private use—private use of frequent flier miles acquired as a result of Government travel. That is certainly not my view. It is not the view of the Senate. And the vote on the amendment I offered will be solely on the issue of whether or not the Senate ought to be making rules for the House. That is my view. I guess reasonable people can differ about that.

But in no way could a vote for the second-degree amendment I have offered be construed as condoning the policy that the Senate does not have. We have not had this for quite some time. So I personally certainly do not support the use of frequent flier miles accrued as a result of Government travel for private use. I know my friend from Kentucky was not implying that. But it is also my view that a vote for this second-degree amendment is not a vote to condone the use of frequent flier miles acquired as a result of Government travel for private use.

I will yield the floor.

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

Mr. GLENN. Mr. President, what our distinguished colleague from Kentucky, Senator FORD, is trying to do here is say if the Government pays the bills and there is a rebate of some kind, the Government should get the benefit, not the individual. It is that simple.

For the life of me, I do not see how anyone can argue against that, particularly people elected over in the House now who are supposed to be cleaning up Government and all that sort of thing. In other words, right now over in the House the more you travel, the more trips you can generate back and forth, the more you personally gained for you and your family in free travel paid for by the taxpayers. How anybody can justify that I do not know. I realize the House sets their own rules and we apply our own rules but I submit to my distinguished colleague, Senator McCONNELL, we have had rules applied back and forth between the branches from time to time in the past. I think there are lots of examples of that.

I see this as almost a maximum personal perk. How can you have a more personal perk than all your travel back and forth between here and the west coast? You travel many, many, many thousands of miles. Or Hawaii, the Senators from out there, you build up a bundle of credit that over in the House they can use for personal family travel. They can take a trip around the world if they build enough of it up, at taxpayers' expense. I just do not see how anybody can justify that, that Government-paid-for tickets, with a rebate coming back, that rebate should not go to the Government that paid for it. That goes back to the taxpayers who paid for it to begin with. I do not think this thing of having the House determine its own rules—we have made

rules back and forth that applied to different Houses in the past.

I will at the appropriate time, probably tomorrow morning, since we have just discussed this a short time ago, but I will probably have an amendment after we dispose of this one that would ask the GSA, the General Services Administration, that supervises the travel, that they negotiate with the airlines to include a frequent flier mile reduction in the original cost of the tickets. Why should that not inure to the Government going in? We should not argue about who gets the benefits of kickbacks later on, on frequent flier miles, but say if there is a reduced cost to the Government beyond the normal Government-reduced price, Government rate, for frequent flier miles in addition to Government-reduced rates, apply those frequent flier reductions in the original cost of the ticket. It seems to me that is very simple and solves the whole problem. So I will introduce that tomorrow at the appropriate time. But I rise in strong support of the proposal of Senator FORD.

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

#### UNANIMOUS-CONSENT AGREEMENT

Mr. GRASSLEY. Mr. President, first I want to make a unanimous-consent request. I am doing it for the Republican leadership and it is my understanding it has been approved by the Democratic side of the aisle.

Mr. President, I ask unanimous consent that at 2:15 on Tuesday, January 10, the Senate proceed to vote on the McConnell second-degree amendment to the Ford amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I now ask for the yeas and nays on the McConnell amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

Mr. FORD. Mr. President, I want to clear up one item with my colleague as it relates to his interpretation of whether it belongs to the Government or to the office. Under the rules of the Senate, and legislative counsel advised us to draft the amendment that way, it says:

Discount coupons, frequent flier mileage, or other evidence of reduced fares obtained on official travel shall be turned in to the office for which the travel was performed so that they may be utilized for future official travel. This regulation is predicated upon the general Government policy that all promotional materials such as bonus flights, reduced fare coupons, cash, merchandise, gifts, credits toward future free or reduced cost of services or goods earned as a result of trips paid by appropriated funds, are the property of the Government and may not be retained by the traveler for personal use.

So, it is the Government money but it is returned to the office. So the language in the amendment is there based on the rules of the Senate, and they would apply as a result of this amendment.

I thank the Chair and yield the floor.

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

Mr. GRASSLEY. Mr. President, I rise in support of the amendment offered by Senator MCCONNELL, the junior Senator from Kentucky. Just last week, this body overwhelmingly rejected an attempt to change the filibuster rules. We did that for a very important reason. We believe that it is an integral part of the functioning of this body within our constitutional system to protect minority interests and minority points of view in debate and consideration of legislation. So we decided to maintain a historic Senate rule, and we voted for recognition of our uniqueness when we did that. The House of Representatives and the Senate are two distinctly different bodies. They are entitled to adopt different rules, and one House should not dictate the rules of the other.

The underlying bill before us, S. 2, recognizes this principle. The underlying bill, as Senator LIEBERMAN and I have introduced it, sets up different rules for the House and the Senate so long as those rules do not infringe upon the statutory and regulatory rights of employees of Congress and the individual offices within Congress.

So no amendment should be offered, including the amendment by the senior Senator from Kentucky, that tells the other body what it must do in an area unrelated to the provisions of this bill. Under the second-degree amendment, Senators would be barred from converting frequent flyer miles earned on official business to personal use. That happens to be the existing rule in the Senate. I think the point has been very clearly made, that none of the 100 Senators may use frequent flyer miles for anything but official business.

It is all right to make our Senate rule into legislation, and, if Senator MCCONNELL's amendment is adopted, that is what we will be doing. We will be putting in statute language that is already a rule of the Senate. But we should let the House make its own rule in this regard. The other body is currently studying the treatment of frequent flyer miles in the private sector. They will want to conform their rules to the existing prevalent practice, and we should allow the other body to proceed on that course. I do not think there is any doubt but what they will be dealing with this as they know they should deal with it, as they dealt with it last August. Then, it did not get through in the final process of legislation.

So I argue that the process going on in the other body, and our respect for the rights of the other body, should be

satisfactory to anyone. In the meantime, we should remember that the amendment of the senior Senator from Kentucky has no relationship to this bill.

If I have spoken more than once, I have spoken a dozen times to make the point that the underlying legislation is something that was clearly an issue in the last election. Whether you are a Republican or Democrat, you were probably elected on a proposition that you would vote for this. I did not run into anybody in the campaign who was against this legislation, Republican or Democrat. Now what we are doing is carrying out the will of the people, the mandate of that election, to get this bill passed and get it passed as quickly as we can. And the purpose of doing it as quickly as we can is so that we can show the people of this country that it is no longer business as usual.

So I believe that enacting existing Senate rules into law sometimes may be appropriate. So I will support the second-degree amendment. I want S. 2 to pass and to pass quickly, and adopting the second-degree amendment, I think, will further our goal because it is not going to complicate the bill. This is a matter of whether or not the other body is going to be turned off toward our legislation by the proposition that we are trying to tell them what to do to their own rules, because they have a constitutional right to adopt their own.

So I hope everyone will support the second-degree amendment by Senator MCCONNELL.

I yield the floor.

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

Mr. MCCONNELL. Mr. President, just briefly in conclusion, I was listening to all the speakers on the other side with great interest. Their parties controlled the House of Representatives for 40 long years. I am curious as to why we have not felt the need here in the Senate to dictate this particular House rule in the past. We could have done that at any point. I do not know how long the House has had this practice but probably a long time. I just do not see the urgency or the propriety just because the management currently changed in the House as of last week that the Senate start dictating internal House policy.

I agree with Chairman GRASSLEY that this is just not an appropriate thing to do, and a vote on the second-degree amendment that I have offered is in no way a condoning of the practice that we do not allow here. We serve in this body. We do not allow this. I do not think we ought to start off the year telling the House what ought to be in their internal operating mode.

So, Mr. President, I thank you for the opportunity to address the Senate.

I yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Kentucky.

Mr. FORD. Mr. President, I thank the Chair.

You try a lot of things on this side that do not work. We voted overwhelmingly for a lobbying bill, gift bans, and everybody on the other side voted for it, 93 to 5, overwhelmingly. Some go out of here, and the only excuse they had for not voting for it this time is that they want to set the agenda. They want to introduce their own lobbying bill-gift ban bill.

Now we are trying to uphold something that is absolutely the right thing to do, and they say we should not impose it on the House. If they have been doing it for a while, why not correct it now? Do not wait months from now.

The distinguished majority leader said that this is a bill that would be acceptable on the House side. If it is going to be accepted on the House side, why not have something in there that is right? Let us do the right thing instead of letting it go. If something bad has happened, if something bad is going on, let us correct it now. Let us not wait until we are down the pike. If anyone wants to pass this underlying bill, sure, let us pass the underlying bill, but not by setting up a new, special and separate bureaucracy by Congress for Congress.

You go out and tell your constituent tomorrow that you are immune from prosecution. He is not. Tell him about the special committee set up to set your rules, and he does not have any. Tell him about the special counsel you are going to hire for yourself, and he does not have any. Do you think this is applying the laws that you put on the small businessman to Congress? Think again.

So if the underlying bill is that bad, why not add something on it that might do a little good? Just stop the use of perks from taxpayers' dollars for personal use. It is not the first time I have tried to do this. Why is it in the Senate? In 1991 we did it. As the chairman of the Rules Committee I tried. I think I was fair to everybody. I do not believe anybody in the Senate can say that I did not attempt to be fair with every Member. A lot of things we tried to prevent.

So if you are going to allow the imagery going out of here applying the laws to the Senate and the House that you apply to your constituents, which is not really true because you are setting up something different that is costly, wait until you get on the 1988 Disability Act when we begin to get into title II. Everybody said we have covered it under ADA. We have not. Now we are finally getting around to it. The Russell subway is not handicap accessible, the subway on the House side is not. We have a lot of things to do. I want my colleagues to know that we are setting up a special bureaucracy for Congress by Congress. The more

things change the more they stay the same.

There is one thing we can change: taking taxpayers' dollars and using them for personal perks. I do not care if it has been going on for 40 years. Why should it go on for 41? And if the majority leader is right—and I have to accept his word that this bill will be accepted by the House and not go to conference—then we just delay the personal perks of the Members on the other side. I do not think they object to this. We are the ones that are objecting. I have not had anybody from the House run over here and say: FORD, you cannot do that, you cannot take my perk away from me. I want to continue to get my frequent flier miles so I can take my family to Europe or Hawaii or San Diego or Miami. We want to take a vacation on the taxpayers.

If you want to say that is what we want you to continue to do, then vote for Senator MCCONNELL's amendment, and we will just pull ours down. It will not make any difference at all.

So I hope people will look at this. The fabric of the legislation has to be accurate. There cannot be a 30-second sound bite in legislation. You can have a 30-second sound bite out in the campaign, but when we develop the fabric of the legislation here, that fabric has to meet where the rubber meets the pavement. It has to be accurate. You said something and now we are going to do it. But this legislation does not do it. I can give you chapter and verse, chapter and verse. There are about 24,000 employees that you are putting under this. You will have to have supplemental appropriations to pay for it—more than once a year, in my opinion. And I am for it, but I think all you have to do is just waive our exemptions and let us do what our constituents have to do. Very simple.

Oh, the separation of powers. If you are going to have separation of powers, that is one thing. But separation of powers is so costly under this bill, we will never see the end of tens of millions of dollars we are going to have to spend, because we are doing for Congress by Congress again, and the more things change the more they stay the same. I think in this instance we ought to change it just a little bit and say you cannot use your constituents' tax dollars for personal perks. It is a very simple vote. It will not take long, about 15 minutes tomorrow. I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The chair recognizes the Senator from California, [Mrs. FEINSTEIN].

Mrs. FEINSTEIN. Mr. President, I rise, not to discuss this subject, but to discuss another. I had a placeholder at 5:30 to introduce four amendments to this bill. But knowing that the proponents of the bill would very much like to have it passed without amendment, I simply would like to make a

statement about these amendments and then hope to work on a bipartisan basis to achieve some consensus and propose them later.

Mr. President, the amendments I was going to propose were in an area of congressional reform, which is as important as any area in this bill. It is campaign spending reform. I think campaign spending reform actually is more important, because it has so solidly conditioned the atmosphere of the public with respect to campaigns.

I was going to propose four amendments, the first, on spending limits. As I understood it, there was substantial objection to the public finance aspect of spending limits. The amendment I would propose would contain the spending limits of the prior Senate bill. In other words, the limit per State would be based on voting-age population. It would range from a high of \$8.1 million in a large State such as California and a low of \$1.5 million in the smallest State. In exchange for complying with these voluntary spending limits, a candidate would be entitled to a half-price discount broadcast rate, a reduced postage rate, and a complying candidate would be able to match an opponent that would not abide by the spending limit or exceed the spending limit without regard for the individual contribution limit of \$1,000. That would be the balance.

The second amendment would limit PAC contributions to 20 percent of the total raised.

The third amendment would require a candidate to state at the end of their television ad in the last 4 seconds, clearly and definitively, speaking on the tube, that "I believe the facts in this advertisement to be true."

The fourth amendment would be in the area of personal funds. They would require a candidate to declare if they intend to spend in excess of \$250,000 or, second, in excess of \$1 million in the race, within 15 days of qualifying as a candidate. If their answer was in the affirmative, then gradually the individual contribution limits applicable to the opponent would be raised. So, again, you would have the opportunity to achieve a more level playing field.

Let me briefly state the rationale. I think there is probably no campaign in the Nation that better demonstrates the need for campaign spending reform than does the recent California Senate race. In my own election, and in others around the country, voters, I believe, saw some of the worst features of campaigns repeating themselves. There were spiraling campaign costs. More than \$45 million was spent in the California Senate race. There was a virtual arms race of negative political advertisements day after day, beginning in February in California. One area my amendment would address, for example, is where there was a negative ad in the sense of one candidate referring to their opponent, the station broadcasting the ad would have to make a dis-

claimer. That is, this station has no way of ascertaining the truth of the ad that is about to appear. One of the problems we found is that people automatically believe a paid commercial spot is true, in the same way they believe a paid commercial spot for a product is true, and, of course, there is legitimate recourse for a false commercial spot. What we found is that there is no recourse for a false political spot. The station must run the spot, even if it is blatantly false.

Therefore, why not have the station come forward and say that this station has no way of ascertaining the truth or falsity of the spot which is about to appear.

The total amount of funds spent in the 1994 election cycle nationally is staggering. Spending by Senate and House candidates who survived primaries was \$596 million, up 17 percent from 1992 and up 50 percent from 1990. Fifty percent more funds were spent in this race than just 4 years ago. Democratic candidates spent a record of \$292 million, up 8 percent from 1992. And Republican candidates spent a record of \$294 million, up 29 percent from 1992.

The source of this is the Federal Election Commission.

Now, we all know that there is no room in campaigns for people with sensitive feelings.

However, in the 1994 campaign, negative messages, groundless attacks on character, and distorted images dragged political advertising to a new low.

I would like to quote from an op-ed appearing in the New York Times and authored by Ronald Brack, chairman of Time Inc., and also chairman of the Advertising Council, which sponsors public-service ads. He reports:

The cutthroat ads followed a disturbing formula. In clipped, agitated tones, attack your opponent's character. Distort his or her record. Associate him or her with extremists or unpopular political figures. To awaken fear, work in a between-the-lines racist message; foster suspicion, insinuate corrupt behavior. And by all means, steer clear of substantive issues.

Examples abound.

This year one ad implied that a candidate might have lied about drug abuse.

At least two candidates suggested that their opponents' political philosophies were somehow to blame for the kidnapping and murder of a 12-year-old and for the lethal rampage of a foe of abortion.

Each political party charged that the other would significantly erode Social Security, Medicare, and other such programs dear to the electorate.

It is these 30-second negative ads that are driving politics in America today and turning away the American voter.

These ads, which are short on substance and long on attack, are shaping the political debate.

A post-election poll indicated that 75 percent of the respondents who said they voted in November said they were



turned off by negative ads. In an election in which only 39 percent of the eligible voters went to the polls, 58 percent of those who did not vote said negative ads had influenced their decision to stay home.

Now, what is the problem? What I found the problem to be, is that even if a candidate wants to take the high road and deal with issues, the simple fact is you cannot. And I want to tell you why.

Focus group after focus group suggests this: The negatives drive through; the positives do not.

When you ask in a focus group what do you remember most about this or that candidate, what they remember are the negative ads, and what they do not believe are the positive ads of record and accomplishment that a candidate may run. Therefore, what you find, as you watch poll numbers in big races, is that a candidate has to respond in kind to negative ads and if you try to respond to an attack with positives, the poll numbers drop. You also have to respond in quantity and equally to the opponent to have an effect.

Consumers can file a complaint about false advertising of consumer products. But the aggrieved candidate has no legitimate recourse in a race. In my campaign, one television station began to run its own disclaimer before an attack ad saying that although the ad, they believed, was not correct, they still had to run it.

Another disturbing problem is the specter of super-wealthy candidates being able to buy a seat. In the 1994 election, several candidates received as much as 16 to 17 percent of their total funds from loans out of their own pockets—the highest proportion since at least 1986.

At least one way, I believe, the campaign system can offset the advantage of personal wealth without running afoul of the First Amendment and the Buckley versus Valeo decision is simply to loosen the constraints on the opponent. If a candidate declares up front that, "I'm going to contribute either \$250,000, up to \$1 million, or over \$1 million in personal funds," then the individual contribution limits on the opponent are adjusted gradually so that the opponent then can compete.

Last, I strongly believe that campaign reform must look at the prevalence of contributions by PAC's. There is a real distortion in the public's mind that policymakers are beholden to special interests, and the special interests are the so-called PAC's, which overshadow average citizens, and impair, the public believes, an official's ability to make policy decisions based on national interests.

Current law is thought to favor PAC's in two key respects. Most PAC's qualify as multicandidate committees and, as such, they may contribute up to \$5,000. Now, in prior legislation, the Senate has banned PAC's altogether,

and the House has opposed such a move.

It seems to me that a fair compromise between the two is simply to limit the amount of PAC dollars a candidate can receive so that it does not exceed 20 percent of whatever the candidate raises.

So I hope, Mr. President, in the future, to present these amendments, either separately or as a whole. There is no public finance in any of them. We would establish a campaign spending limit. We would be able to better bring about truth in advertising. We would be able to level the playing field when personal wealth is considered. And we would be able to reduce considerably the so-called involvement of special interests in campaigns.

They are simple, they are direct, they make sense.

So I will, in the days to come, be approaching, on both sides of the aisle, Members in hopes that I can put together a bipartisan commitment to just these four simple amendments and move them forward, either separately or as a whole.

I thank you for your indulgence, Mr. President.

I yield the floor.

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to thank the Senator from California for her willingness not to offer those amendments. I thank her very much, because it will help us hurry the legislation through this body and to the President of the United States.

I also want to assure her for our leader—because he has said so many times himself that there will be an ample opportunity to discuss the issues that she wants to bring up, as well as the campaign finance reform issue will be discussed—that there will be plenty of opportunity to do that.

I say that not only to assure the Senator from California of that opportunity, but also to suggest to other people on her side of the aisle, on the Democratic side of the aisle, who have amendments that deal with campaign finance reform—and there still are a few of the 20 yet to deal with tomorrow—that maybe they will follow the example of the Senator from California and not offer their amendments so that we can get done with this bill earlier tomorrow.

Mrs. FEINSTEIN. I thank the Senator.

Mr. GRASSLEY. I thank the Senator.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### MESSAGES FROM THE HOUSE

At 2:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1. An Act to make certain laws applicable to the legislative branch of the Federal Government.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 1. Concurrent Resolution recognizing the sacrifice and courage of Army Warrant Officers David Hilemon and Bobby W. Hall II, whose helicopter was shot down over North Korea on December 17, 1994.

At 4:13 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of section 3 of Public Law 94-304, as amended by section 1 of Public Law 99-7, the Speaker appoints Representative SMITH of New Jersey as Chairman of the Commission on Security and Cooperation in Europe.

#### MEASURES REFERRED

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 1. Concurrent Resolution recognizing the sacrifice and courage of Army Warrant Officers David Hilemon and Bobby W. Hall II, whose helicopter was shot down over North Korea on December 17, 1994; to the Committee on Armed Services.

#### MEASURE PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

S. 169. A bill 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.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4. A communication from the President of the United States, transmitting, pursuant to a Senate Rule, notice relative to the Presidential Business Development Mission to