

that were made by, as I mentioned, my colleagues Senator KERRY and Senator MCCAIN that support that change were very compelling. I thought the observations of Senator SMITH, which took a different view but, nonetheless, were related to the subject matter, were constructive as well.

The country will be addressing this issue in the next several days or weeks. I think our Members would be wise to review their comments because they are individuals who have spent a great deal of time on this issue and, obviously, have given it a great deal of thought. The fact that they come from different vantage points in terms of many other different issues, both in domestic and foreign policy, and still are as persuasive on this matter, I think really reflects some very, very constructive and positive thinking.

#### COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1491

Mr. GLENN. Mr. President, the pending legislation before us is an amendment by the Senator from Georgia, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. GLENN. I particularly dislike having to oppose my good friend from Georgia, Senator NUNN. We worked together in the Governmental Affairs Committee on our bipartisan regulatory reform bill. We both supported the bill. I certainly have the very highest regard for him. He has always been a tireless champion of the interests of small business men and women in our country, and I certainly applaud him for that effort.

But I believe that while this amendment is very well-intentioned, I think there are two serious problems. I do not believe the amendment should be accepted. First, it revises the Regulatory Flexibility Act in a number of ways that I think do not fit with workable regulatory reform.

First, the amendment would require cost-benefit analysis of all reg flex rules. That is, rules that have a significant economic impact on a substantial number of small entities. This would be small businesses, local governments, and the like. Including these rules in the cost-benefit analysis process would increase the number of rules that have to go through that analysis by over 500 rules. That is not a figure grabbed out of thin air; that is the administration's estimate. It is based on actual Federal Register entries over the last year.

Now, OMB has estimated that if this passed this way, there could possibly be as many as 600 to 800 rules and regulations that would fall under this provision. That would raise the number of investigations and rulemaking procedures to something like three times our present number.

Now, agencies are going to be hard pressed with the budget cuts they are

facing now just to do the analysis required if we just pass the Glenn-Chafee bill with its \$100 million threshold. S. 343, which is before us now, would lower the threshold to an unreasonable \$50 million. This amendment that we are considering now by the Senators from Georgia would have the potential of adding somewhere between 500 to the current rate, or up to as many as 800 more rules to that list. That just overloads the circuits.

To make the point even further, one estimate before our committee by one of the people testifying earlier this year was that each full-blown rule investigation costs somewhere around \$700,000. If you take the 500 to 800 potential on this, that means we would be spending on investigations somewhere between \$350 million for the 500 investigations, up to a potential of \$560 million for the 800 investigations.

Let us say that is a pessimistic view of how much it costs, that \$700,000. Even if you cut it in half, it means it is somewhere around \$175 million up to, say, \$270 or \$280 million to do this increased number of investigations. So I say that agencies are going to be very hard pressed with these budget cuts to make it.

The second major problem with the amendment is the way it expands reg flex judicial review. The Glenn-Chafee bill is basically the bill brought out of committee earlier and is designated as S. 1001. As opposed to S. 1001, this amendment would allow judicial review of final rule reg flex analysis. As opposed to that, this amendment permits judicial review of proposed rule reg flex decisions.

Now, this expands enormously the number of judicial challenges that can be made, and it further overturns a principle that has been long held that court review should wait until an agency makes its final rulemaking decision and then challenge the whole process, whatever it is, and not permit judicial review challenges all along the way, which means that the persistent challenger can keep something bogged down in court for years and years. It can literally bog down the whole process, this number of new rulemaking procedures that would have to be reviewed.

So allowing judicial review of preliminary decisions about whether a rule is even subject to reg flex, which this would do, will bog down agencies and use more tax dollars unnecessarily and be a full employment bill for lawyers, basically. I do not think that should be the objective of this legislation.

Mr. President, further, I must admit that I do not understand exactly how this whole thing would work. It would increase the complexity, as I see it, and it would create more judicial review, to be added to our expense in a substantial way.

Let me say that the Regulatory Flexibility Act was passed by Congress as a way to ensure that agencies would

evaluate the impact of proposed regulations on small businesses and other small entities such as local governments. The act was also intended to ensure that agencies consider less burdensome and more flexible alternatives for these small entities.

I have supported the reg flex act from its inception when passed here a number of years ago. But the legislation before us and the amendment we are considering now would fundamentally change the Regulatory Flexibility Act by making its considerations the controlling factor, the controlling decisional criteria, for the very promulgation of a rule. I do not think that is the way we ought to be going. We should ensure that the Federal Government is more sensitive to the needs of small business. I certainly agree with that. That is why the Glenn-Chafee bill, S. 1001, provides for judicial review of final reg flex decisions, and the whole process can be challenged at that one time. It does not permit judicial challenge at each step along the way, which means multiple judicial review, and additional ways of stalling what may be very good legislation.

Now, both bills also do provide—whether it is S. 343 or S. 1001, they both provide for congressional veto. In other words, a rule or regulation being put out by an agency can be challenged and brought back to the Congress and lay here under one bill for 60 days or 45 days for challenge here on the floor. That applies to small business provisions or any other provision.

So it seems to me that we have provided adequate protection, quite apart from the amendment as proposed by the Senators from Georgia.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROTH. 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. ROTH. Mr. President, I want to take a moment to talk about the small business amendment to S. 343 offered by Senator NUNN and Senator COVERDELL.

This amendment would, of course, modify the definition of "major rule" to include rules that have a significant impact on small business and small governments as provided in the Regulatory Flexibility Act.

This would have the effect of requiring all reg-flex rules to be subject to cost benefit analysis and the decisional criteria, as well as to be subject to the petition process for reviewing rules.

Mr. President, as I have said before, I am deeply concerned about the impact

of the regulatory burden on small business. Indeed, that is exactly why I support the amendment offered by Senator ABRAHAM earlier today.

The Nunn amendment in its present form does raise some serious problems. I had hoped we could use an approach for this amendment similar to the Abraham amendment. So far, we have not been able to reach that agreement.

While I believe strongly in the need for regulatory reform, it must be reform that is workable. I fear that, as drafted, this amendment could place too heavy a burden on the agencies, which are already pressed by the many other provisions of S. 343.

This amendment does not distinguish clearly between costly rules which deserve detailed analysis, and smaller rules which should not be subject to time-consuming and expensive analysis.

I hope that we can work together to address the concerns about the workability of this amendment, concerns shared by many of my colleagues. I would welcome the opportunity to use some of the good ideas in the Abraham amendment, such as giving OIRA greater responsibility in selecting rules for analysis, or to pursue other suggestions offered by my colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COVERDELL. 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. COVERDELL. Mr. President, there has been an assertion that this would unleash a flood of regulatory burden on the agencies. I want to make the point again that quite the reverse would be the case. There has been a regulatory flood on the small businesses of America.

As I said in my opening statement, if I want to pick where I want that burden to be, it ought to be on the Government side, and not on the backs of all these small companies with 4 or less employees, or 50 or less employees, which is almost all the companies in America except for 6 percent.

Last year, 116 rules were swept up by the net of the Regulatory Flexibility Act, the act that is already in place.

Now, this idea that we would have 800, I think, is an unfounded assertion. If this had been in effect last year, it would have swept up 116, just as it did last year. Because there is a judicial review, there could be changes that would add some. I think it is most difficult to assert that we will have 500 or 1,000 new rules that would require action under this amendment.

Assuming, again, that there is more burden, it ought to be on the back of the Government and not on the back of the small business. We should be trying to protect the small businesses, not the

regulators. That is where our concern is properly fixed—helping small businesses to generate new companies, new jobs, and expand.

Now, I would just like to take a moment, Mr. President, and review what is already required under the act which Congress has already passed, the Regulatory Flexibility Act of 1980. We have had any number of statements here asserting that we all support that.

Whenever an agency is required to publish a notice of proposed rule-making for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.

What does that include? Each initial regulatory flexibility analysis required under this act shall contain a description of the reasons why action by the agencies is being considered; a succinct statement of the objectives of and legal basis for the proposed rules; a description of, and where feasible, an estimate, of the number of small entities to which the proposed rule will apply; a description of the projected recording, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; an identification to the extent practicable of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of political statutes and which minimize any significant economic impact of the proposed rule on small entities.

It goes on. Mr. President, that is what the Regulatory Flexibility Act required in 1980. I do not know how to do this without having a cost estimate. All we are saying in the amendment is that it should include a financial impact on small business—a financial impact on small business. And that there is an enforcement proceeding to ensure that is done—the judicial review.

I would be hard pressed, Mr. President, having fulfilled the act that already has been in effect for 14 years, I do not know how to do this as a former businessman and not understand economic consequences.

In other words, the argument I am making, Mr. President, is that the work is virtually done under the existing law. We are simply saying, Mr. President, that the Government is going to have to do and certify what we all intended all of small business to think we were doing when we passed this act.

Several points, Mr. President. First, I think the assertion of the increased burden is without sufficient evidence. The evidence we have would suggest a modest increase.

Second, Mr. President, the act that is already required of the agencies re-

quires virtually all that is necessary already. If we spent the money to do all this work, why not have the fundamental question before the country and the American people: What is the cost going to be?

The average small businessman today is spending \$5,500 per employee; the average American family is spending \$6,000 a year because of the surge of regulation. We ought to know what the impact of these regulations would be.

Last, Mr. President, the point I would like to make is that we ought to be in the business of being more concerned about the small business person who has such limited resources and their ability to deal with one regulation after another after another than with worrying about what the regulatory overload will be on the people who are making all these regulatory reviews.

Mr. President, maybe a side effect would be that the agency will be more careful in determining whether or not it needs to propose a new regulation. That is another way we could affect what the ultimate cost is of the review of the regulation. They might start thinking, for a change, do we need it? And my guess is that this amendment, in fact the overall underpinnings of the bill itself, will suggest that the Government needs to be a little more thoughtful about imposing yet another requirement, another burden, and another form on that little company of two or three people, all over America, who have so little ability to respond or know, even, what the new regs require.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, we all want and hope and believe in a significant and a meaningful regulatory reform. No one wants rules that do not make sense or are not cost effective. No one wants, or should want, regulatory requirements that exceed real needs. We want Government to be smart, efficient, reasonable and practical.

There are plenty of regulatory horror stories, some of which are accurate, some of which are not. There is more than enough evidence, though, for us to be convinced of the fact that the regulatory process needs fixing. It has needed fixing for some period of time.

We have been in the process of reforming it for years. Back in the late 1970's, when the Governmental Affairs Committee conducted a lengthy set of hearings and issued a multivolume report on the regulatory process, the findings in those hearings led directly to the Senate passage, in 1981, of Senate bill 1080, the number was at that time, by a unanimous vote, 94 to nothing.

S. 1080 looked similar in many ways to the legislation which we are considering this week. It had many of the same elements, including cost-benefit analysis of major rules, a procedure for reviewing existing rules, legislative review, and Presidential oversight.

S. 1080 did not make it into law because the coalition supporting it did not hold together once the bill got to the House. It was tough reform, and if it had been in place for the last 15 years we would not be here today with the legislation before us. We would undoubtedly have had a lot fewer horror stories and a lot more thoughtful regulation over the past decade and a half.

So we are here to try again, and I am all for it. We spent several months in the Governmental Affairs Committee earlier this year considering a bill introduced by Senators ROTH and GLENN which, with a few amendments, we reported to the full Senate for its consideration. Many of us think it is a solid bill. It was passed by a unanimous, bipartisan vote of 15 to nothing. It has cost-benefit analysis, risk assessment, legislative review, and a procedure for the review of existing rules. It is tough but balanced. It is a bill that makes sense.

The bill is tough, the Governmental Affairs bill, which is basically now the Glenn-Chafee bill. It is tough because it would require by law that every major rule be subject to a cost-benefit analysis. It would require that each agency assess whether the benefits of the rule that it is proposing or promulgating justify the costs of implementing it. It requires that agencies select the most cost effective rules among the various alternatives.

These two elements are key controls to rational rulemaking. The Governmental Affairs approach, now embodied in Glenn-Chafee, is tough because, by statute, it resolves once and for all the role of the President in overseeing the regulatory process. The bill gives the President the authority to oversee the cost-benefit analysis and the risk assessment requirements, and recognizes the unique contribution that a President, above all of the agencies, can make to rational rulemaking. It also gives Congress the right and the practical capability to stop a rule before it takes effect.

The Glenn-Chafee approach is tough because it allows for judicial review of an agency's determination as to whether or not a rule meets the \$100 million economic impact test and because a rule can be remanded to an agency for the failure of the agency to do the cost-benefit analysis or risk assessment. It is tough because it requires existing major rules to be subject to repeal should the agency fail to review them in 10 years, according to the schedule and the requirements of the legislation.

The bill was reported out of Governmental Affairs, as I mentioned, by a unanimous bipartisan vote. It is a balanced bill, and this is the balanced half of it. It is balanced because it recognizes that many benefits are not quantifiable and that decisions about benefits and costs are, by necessity, not an exact science but require, often, the exercise of judgment. It is a balanced alternative because it would require

that, to the extent the President exercises his oversight authority over the rulemaking process, that authority must be conducted in the public eye and with public accountability.

It is a very important part of the Glenn-Chafee bill that we have some sunshine on the rulemaking process right up to and including the office of the President and the OMB. It took us years to get to that point. President Bush promulgated an Executive order—President Clinton has promulgated a similar Executive order—that called for sunshine when rules are kicked upstairs to the White House for their consideration before final promulgation. This bill, this alternative which is called Glenn-Chafee, in a very significant step incorporates, or would incorporate into law, the basic elements of the Executive orders of Presidents Bush and Clinton.

The Glenn-Chafee bill is balanced because it does not subject all rules to congressional review, just the major rules. It is balanced because it uses information as a tool for assessing agency performance and makes that information available to everyone to judge and to challenge. It is practical because it does not overwhelm the rulemaking process by requiring cost-benefit analysis and risk assessment for less than major rules. It is balanced because, while requiring an analysis and certification by the agency as to whether the benefits of the rule justify the costs, it does not override the underlying statutory scheme upon which a rule is based.

I believe the amendment before us, to address the specific amendment on the floor, goes too far. It would provide for the interlocutory judicial review at an early stage in a proceeding in a way which could swamp both the regulatory process and the courts. What we are trying to do is reform this system and not swamp it and not make it worse. We all, again—hopefully all of us—want to reform this system, the cost-benefit analysis, with the kind of risk assessment which is essentially in both bills.

But what we must avoid doing is swamping either the regulatory system so that it becomes totally unworkable, or delaying it through interlocutory court proceedings, which will, in effect, make the regulatory system unworkable.

I do not think any of us want that. We want a system which is commonsensical and does not impose costs and burdens on this society where the benefits are inadequate. But surely there is a role for rules. There is a role for the rollback of rules, for the review of existing rules, and we have to make sure, both in terms of new rules and review of existing rules, that we have a process which can function in a practical way.

The amendment before us would add this interlocutory appeal from an agency determination that a rule will not have a significant impact on a small

entity and, therefore, it does not require regulatory flexibility analysis.

One of the problems with having that interlocutory appeal is that it then opens up the court process to two appeals on the same rule. You have a rule up front to a court for an interlocutory appeal if an agency does not do a regulatory flexibility analysis. That then can go to the court of appeals. That then can be appealed to the court of appeals. That then can be appealed to the Supreme Court just on the question of whether or not the agency erred in failing to do a regulatory flexibility analysis. But that does not end it because there is still an appeal at the end on the subject of regulatory flexibility analysis. This time, however, on the question of whether or not, assuming the regulatory flexibility analysis was done, it was done correctly.

So the amendment before us has really two problems. One is that it will significantly increase the load on courts and the delays in the regulatory process. It does it unnecessarily because in the bill itself there is judicial review of a decision by an agency not to conduct a regulatory flexibility analysis. But it is done at the correct time, which is at the end of the process, and it is done at a time when both aspects of regulatory flexibility can be decided by a court at the same time: One, if there was a failure on the part of the agency to conduct the regulatory flexibility analysis, was that failure error; and, second, if there was a regulatory flexibility analysis, whether or not the analysis was correctly done. That is the more practical way to do it. That is the way to avoid both swamping courts in judicial review prematurely, and that is the way if we can avoid having two judicial reviews in effect of regulatory flexibility analysis relative to the same rule.

The amendment also is going to create a problem in that it is going to probably double the number of rules. We can debate how many more rules there are going to be subject to this elaborate cost-benefit analysis requirement if we adopt this amendment. But the best estimate that we can make is that it would at least double the number of rules that will be subject to that cost-benefit analysis. It is costly. It is something which delays the process. It is obviously necessary when it comes to major recalls. I think all of us agree on that. Both bills contain that. The question is whether or not, given the downsizing of Government, we can effectively then load onto agencies these kinds of burdens to increase so dramatically the requirement relative to cost-benefit analysis.

So for both those reasons, I hope that we would either defeat or modify the amendment before us because to put it in the middle of the rulemaking, to put this interlocutory review in the middle of the rulemaking process, will use the court systems unnecessarily. It will use them prematurely. And it will end up overloading both systems. That

would be harmful for people who are participants in the regulatory process, whether they are favoring a regulation or opposing it.

Again, I emphasize, this can work both ways. There are many businesses that want to review existing rules. We want the reviews to go in a practical and a smooth way, too. There are many businesses which need new rules. For instance, the bottled water business has been waiting for a rule for years to try to put some restrictions on the representations of the type of water that is being sold as bottled water, as spring water, for instance. It is the business which is waiting for the rule. It is the business which is trying to stop the false representations relative to bottled water.

So this is not always the kind of outside groups versus business. This is frequently business that needs rules to be changed or added or amended. We have to make sure that this rulemaking process works in a practical and a functional way.

So, for that reason, I hope that the pending amendment will be defeated or modified.

I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the Senator from Michigan referred to the interlocutory appeal, and, in fact, the Nunn-Coverdell amendment has been criticized because it allows two appeals, both an interlocutory appeal to be taken within 60 days of the notice of the proposed rulemaking and a later appeal.

Mr. President, I have just been discussing with the Senator from Georgia a modification of that amendment to make sure that the final appeal relates only to those classes of appeals which would not otherwise be subject to appeal under section 706 of the Administrative Procedure Act or under section 625 of this act, which are, in effect, final agency actions, so that both the appeal and the remedy, the final appeal under this bill, would be a very limited and narrow one. But I will describe that amendment when it comes up.

Mr. LEVIN. I wonder if the Senator will yield just on that point for a question.

Mr. JOHNSTON. Yes.

Mr. LEVIN. Is the amendment going to be modified so as to prevent an appeal on how a regulatory flexibility analysis has been conducted if there were an interlocutory appeal on the question of whether a regulatory flexibility analysis should be done? Will the modified amendment be precluding an appeal on how that regulatory flexibility analysis has been conducted at the end of the rulemaking process? Because that would be taking away from small business something that it now has, for instance, with small units of government. I do not know if that is the intent. I think it should be clear. But the double appeal point that I was

making, I think, is slightly different from the double appeal point which has been made previously, which is that the interlocutory appeal that is provided here goes to the question of whether or not there should be a regulatory flexibility analysis, and that presumably there still would be an appeal at end of the process on the question of how that analysis had been conducted, assuming one is ordered. So that is still a double appeal.

Mr. JOHNSTON. The question is an appropriate one. The first appeal in the interlocutory appeal process would be on the question of major rules, whether it meets the \$50 million threshold, whether it is a matter that involves the environment, health, and safety, or whether it has a significant impact on a substantial number of small businesses and, therefore, requires the regulatory flexibility. That appeal would be taken within 60 days and putting the notice in the Federal Register. The idea here is that you foreclose further appeals after that 60 days. Now there is in addition to that in the present Nunn-Coverdell amendment a more limited petition for review which allows you to get into the quality of the regulatory flexibility analysis.

What we are saying is if it is subject to an appeal under section 706 of the Administrative Procedure Act, or under section 625 of this act, then the quality of that regulatory flexibility analysis insofar as it relates to the question of whether the final agency action was arbitrary, capricious or an abuse of discretion, they would have in that appeal the right to test the regulatory flexibility analysis at that point.

For those which were not subject to that, they would have the ability to appeal in any court in the Nation that has jurisdiction and to ask for what would be an order to go back and do the reg-flex analysis.

Mr. LEVIN. Is that at the end of the process? Is there an appeal open at the end of the process to order a reg-flex analysis if there were no interlocutory appeal that had been asked?

Mr. JOHNSTON. Yes.

Mr. LEVIN. So you have a choice as to whether to take an interlocutory appeal on that issue or to make that part of the final appeal; is that correct?

Mr. JOHNSTON. You have a choice. If you wait until the final appeal, it would be a more limited choice because the only remedy provided there is for the court, in effect, to order the reg-flex analysis, and if that then would call for a modification in the rule, then the rule would then be modified, but there would be, for example, no stay of the rule because of the inadequacies of the reg-flex.

Mr. LEVIN. It was my question—I am unclear—is it the intent of the modified amendment that there could be either an interlocutory appeal on the question of whether or not a reg-flex analysis has to be made or that issue could be raised for the first time at the

end of the rulemaking process, either one would be allowed?

Mr. JOHNSTON. No; the question of whether this is a rule which has a substantial, significant effect on a substantial number of small businesses, which is the trigger for the reg-flex, it is the intent here—and this language has not been drawn—it is the intent here that that test be only once.

Mr. LEVIN. And that it must be made on interlocutory appeal?

Mr. JOHNSTON. That is correct. That is the intent. It is a little difficult to give precise answers since the actual language has not been drawn. That is the intent. But as to the quality of that, you can test that only later after the reg-flex attempt.

Mr. LEVIN. I thank my friend from Louisiana for his answers, and I then would withhold any further comment until after we see the language on it. I wonder if the Senator will yield for one additional question.

Mr. JOHNSTON. Surely.

Mr. LEVIN. Is the intent that the rulemaking process be stayed during the interlocutory appeal on reg-flex?

Mr. JOHNSTON. No, not at all. That is the whole idea.

Mr. LEVIN. Is that clear in the language of the amendment?

Mr. JOHNSTON. We believe so, but if it needs to be further clarified, it can be. The idea here is that you want to have this determination made early enough in the process so that you can remedy the defects in the rule while the rule is still going on and not have to wait until it is all over with, because some of these rules take 2 or 3 years. And if you do not find out until, say, your final appeal is 6 or 9 months after the final rule, then you have to stay the rule and go back and do it all over again.

Mr. LEVIN. Of course, that is what judicial review is all about. There is presumably an incentive to do the process right. That is why there is judicial review at the end. And you do not wipe out judicial review at the end in any event. You still allow judicial review in many ways, so it is not as though you are doing a whole bunch of things up front and thereby precluding the review at the end.

Mr. JOHNSTON. No, but you would preclude a review, for example, on whether this is a major rule, whether it has \$50 million, if that is the trigger, or \$100 million, which I hope we can get an amendment in to make it \$100 million. That question would be reviewed, would be finally reviewed on the interlocutory basis.

Does the Senator understand what I am saying?

Mr. LEVIN. Is it the intent of the sponsors of this bill, and the Senator indicates the sponsors of this amendment, to preclude judicial review at the end of anything which can be raised by interlocutory appeal at the beginning?

Mr. JOHNSTON. Will the Senator reask the question.

Mr. LEVIN. Is it the intention of the sponsor of the bill pending here, of the Dole-Johnston bill, and is it the Senator's understanding that it is the intention of the makers of this amendment, that the interlocutory appeal which is provided is the exclusive remedy to raise the issues that can be raised by interlocutory appeal and that if anyone fails to raise an issue, which could be raised by interlocutory appeal, by interlocutory appeal, it cannot then be raised at the end of the rule-making process?

Mr. JOHNSTON. That is correct. And I hope our language will properly reflect that.

Mr. President, let me be a little more clear if not only for the purpose of this small business amendment, the reg-flex amendment, but also for the purpose of the whole bill. The reason for having the interlocutory appeal is that the question can be put at rest early in the process.

If, for example, an agency determines that the rule is likely to have an impact of less than \$50 million a year, then it would not be a major rule, would not require the cost-benefit analysis, or the risk assessment. They would make that determination early on, file that in the record, and any party, any interested party, would then have 60 days from the time of that determination to make this interlocutory appeal on the question of whether it was a major rule because of the amount of dollars, whether it was a rule that affects health, safety, the environment, which in turn requires the risk assessment, or in this case whether it has a significant effect upon a substantial number of small businesses.

The idea is that if that appeal is not made within 60 days, that you are foreclosed from raising that later on in the process.

Keep in mind that if an appeal is made within the 60 days on the basis that they failed to make it into a major rule, that the agency itself could make a determination, could in effect moot the appeal by going back and doing the cost-benefit analysis and the risk assessment.

What we find under the present law in areas like NEPA, National Environmental Policy Act, agencies tend to err on the side of conservative in doing an environmental impact statement, which is much more involved than the environmental impact assessment. They will do the statement rather than the assessment many times because they do not want all their work to be thrown out X years later at the end of the process.

The result is that it frequently requires tremendous amounts of additional expense in doing that which the law would not otherwise require. And the reason for the interlocutory appeal is to be able to get that question determined up front and early so that the results of the whole system will not be thrown out.

The concern with the Nunn amendment, even as amended, when amended, is that it is likely to cause an agency overload or much more than the agencies are able to do.

The amount of personnel that the agencies have, the amount of moneys that the agencies have in order to perform these risk assessments is, of course, limited. Now, how many additional rules would this require the agencies to do? We do not know. OMB tells us that it could be hundreds of additional rules that would be caught under this definition. It could have the effect of doubling, tripling, or even a fivefold increase in the amount of work that they have to do.

I hope, Mr. President, that if this amendment is adopted and becomes part of this law that that is not the result. However, I think that it is going to require continued analysis as this matter moves along. It is not my purpose, frankly, to vote for this amendment, although we are not making, or at least I am not making, a major challenge to this amendment, given the assurances of the Senators from Georgia that we will be able to continue to work on it to avoid the question of agency overload.

However, until we have dealt with a more assuring way with this question of agency overload, I will not be able to vote for this amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I believe this amendment to S. 343 is of paramount importance. S. 343, as written now, will unquestionably benefit small businesses by requiring Federal bureaucrats to only promulgate regulations that are cost-effective and based on good science. But adoption of the Nunn-Coverdell amendment will guarantee that small businesses, which represent the vast majority of employers and employees in this Nation, thus encompassing most Americans, will further benefit from regulatory reform by assuring that all regulations that are currently subject to the Regulatory Flexibility Act of 1980, termed the "reg flex act," will also be subject to S. 343's cost-benefit analysis provision and periodic congressional review.

Small businesses create most of the jobs in America. This is demonstrated by the fact that from 1980 to 1990, small businesses with fewer than 20 employees created 4.1 million net new jobs. Compare that with big business. Large businesses with more than 500 employees lost over 500,000 net jobs over the same time period.

According to the Small Business Administration, small business bears a disproportionate share of regulatory burdens. In fact, SBA, the Small Business Administration, estimates that the burden of regulations on small business is three times greater than that for large businesses. It is clear that to assure small businesses will continue to act as America's loco-

motive for job creation, Congress has to lift the regulatory burden from small family businesses.

The Nunn-Coverdell amendment will accomplish this through several mechanisms. First, the definition of "major rule." S. 343 is amended to include rules that have a significant economic impact on a substantial number of small businesses, virtually the same definition that triggers the reg flex act. The determination of a rule as a major rule subjects the rule to S. 343's cost-benefit analysis. This will assure that rules affecting small businesses will be cost-effective and less burdensome.

This designation of rules having a substantial impact on small businesses as a major rule subject to cost-benefit analysis is necessary to close a loophole in this bill. The \$50 million threshold amount for a major rule may be too high for many small businesses. For instance, a regulatory impact of less than that amount may have a devastating effect on a small business or a sector of the economy that may not yet represent a significant burden on a Fortune 500 company. The Nunn-Coverdell amendment would resolve this problem by requiring that all rules that have a significant impact on small businesses be classified as a major rule under S. 343.

A legitimate question is just how many regulations does this amendment encompass? How many new major rules will be subject to cost-benefit analysis under S. 343? In other words, what is the impact of this amendment to Federal agencies' resources and personnel? And the answer is, not that much. The reg flex act requires that regulatory burdens be reduced for those regulations that have a "significant impact on a substantial number of small entities."

Small entities include small businesses as well as both small governments and charities, entities that shoulder a disproportionate share of the cost of regulation. Last year under the reg flex act just 127 regulations qualified for that act's special treatment. The Nunn-Coverdell amendment, as I understand it, would encompass only that part of the 127 regulations that affect small business and even 127 is not a great or burdensome amount.

The other mechanisms of this amendment that assure protection of small businesses involve modifications of the reg flex act. The most important establishes a requirement for agencies to conduct a cost-benefit analysis before rules are promulgated under the reg flex act. Furthermore, the determination by an agency that a rule will not have a significant impact on small businesses is made judicially reviewable. I believe that these changes will buttress our economy by reducing the burdens imposed on our small businesses by regulations.

So I urge my colleagues to support the Nunn-Coverdell amendment. I think it is a good amendment. I think

it helps the bill. I think it closes a loophole. I think it protects small businesses. I think that it makes the regulatory forces in this country be more responsible and, above all, it amounts to common sense. To me, that is what this bill is all about—common sense. I think it would be well for us to support this amendment.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Michigan.

Mr. LEVIN. Mr. President, the Senator from Louisiana and I previously had a colloquy, and I very much welcome the language that he is going to be preparing to clarify a critical point, but it seems to me that the more that point is clarified, the less of a favor we are doing for small business in this amendment. Let me explain why.

In talking with the Senator from Louisiana, and just talking with the senior Senator from Georgia, it is quite clear that the intent of this amendment is that an issue which can be raised on an interlocutory appeal must be raised at that time or else it is precluded from being raised at the end of the rulemaking process.

The problem with that is that an awful lot is learned about the impacts of rules during the comment period. That is one of the reasons for the comment period. To preclude a small business from taking advantage of what is learned during the comment period so it can argue on an appeal at the end of the rulemaking process that this rule has a significant impact on small business or on small units of local government, it seems to me, is doing a disfavor, a disservice to these smaller units.

So while that clarification I think is important in terms of congressional intent and it is important in order to avoid two appeals on the same subject, the better road to go here is to have the appeal at the end of the process, as it is in the way the bill is written now, where you can use the comment period to gain evidence as to why a regulatory flexibility analysis is essential. To preclude a small unit, be it business or small unit of government, from taking advantage of that comment period to make a case as to why a regulatory flexibility analysis is necessary, it seems to me, is not the way we should be going in terms of trying to help both small businesses and small units of government.

So while I think the clarification is important, again, so we all understand what the intent is and while it is important in order to avoid two appeals on the same subject, the conclusion that is reached has the appeal at the wrong point. The appeal should be there. It is new. It is important to small business that there be an appeal on this issue and the small units of government. But the right place for that appeal to come is at the end of this process where they can then use the record which has been gained dur-

ing the comment period to make the argument that there should have been a regulatory flexibility analysis and that failure to do so was an error which requires the rule to be remanded and to be done right.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1491, AS MODIFIED

Mr. NUNN. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment is so modified.

The amendment, as modified, is as follows:

On page 14, line 10, strike out "or".

On page 14, line 16, add "or" after the semicolon.

On page 14, insert between lines 16 and 17 the following new subparagraph:

"(C) any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I shall be deemed to be a major rule for the purposes of subchapter II;

On page 39, line 22, strike out "and".

On page 39, line 24, strike out the period and insert in lieu thereof a semicolon and "and".

On page 39, add after line 24 the following new subparagraph:

"(C) an agency certification that a rule will not have a significant economic impact on a substantial number of small entities pursuant to section 605(b).

On page 40, line 5, insert "and section 611" after "subsection".

On page 68, strike out all beginning with line 9 through line 11 and insert in lieu thereof the following:

"(A) include in the final regulatory flexibility analysis a determination, with the accompanying factual findings supporting such determination, of why the criteria in paragraph (2) were not satisfied; and

On page 72, insert between lines 14 and 15 the following new subsection:

(e) AMENDMENTS TO THE REGULATORY FLEXIBILITY ACT.—

(1) TECHNICAL AND CLARIFYING AMENDMENTS.—Section 612 of title 5, United States Code, is amended—

(A) in subsection (a) by striking "the Committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives"; and

(B) in subsection (b) by striking "his views with respect to the effect of the rule on small entities" and inserting "views on the rule and its effects on small entities".

On page 72, line 15, strike out "(e)" and insert in lieu thereof "(f)".

Mr. LEVIN. Mr. President, I wonder if I could ask the sponsors of the

amendment the following question, since we have not had a chance to look at the modification.

Mr. GLENN. Mr. President, I know this has been the subject of debate on the floor—not publicly but among different Members. I wonder if we can have a brief explanation. We only have a few minutes before the vote.

Mr. LEVIN. Mr. President, it is my intention to ask the senior Senator from Georgia this question. Is it the intent of the modification to make it clear that there is only one appeal that is permitted on the issues which can be raised by interlocutory appeal and that one appeal is the interlocutory appeal? Is that, as previously stated by the Senator from Louisiana, the purpose and effect of the modification sent to the desk?

Mr. NUNN. If I could say to my friend, there are two parts of this modification. One is to make it clear that risk assessment is not required under this amendment, only cost-benefit analysis. We talked about that earlier this afternoon. There was an omission from the draft.

The modification relates to judicial review. You made the point that small businesses might need two bites at the apple. The way the amendment reads, there would be two bites at the apple. We intend to change that at a later point during the debate on this bill.

Mr. LEVIN. Is it the intent to modify it so there is only one bite at the apple?

Mr. NUNN. This whole issue of judicial review will require more work. As the Senator knows, it is complicated, and for me, is not fixed at this point. We are going to have to work on it more.

Mr. LEVIN. Is it the intent later on to require or to provide only one bite at the apple later on?

Mr. NUNN. That is my present intent. I am always persuaded by my friend's arguments, so we may have to think more on that.

Mr. LEVIN. Is it the intent that that one bite be the interlocutory appeal? Is that the present intent?

Mr. NUNN. I would like to work with the Senators on that.

Mr. GLENN. Would the Senator consider, rather than having a vote now, waiting until it is modified and wait until later?

Mr. NUNN. I believe we ought to go ahead and vote. This judicial review issue has to be addressed on the overall bill. So we are going to have to work on this issue more, within the overall bill. I would like to vote on this amendment.

Mr. LEVIN. I am wondering if the first part of the amendment could be voted on.

Mr. NUNN. There is no way to divide it at this point.

Mr. LEVIN. It is a rather unusual thing we are doing. We are adopting an amendment which we are saying later on we know needs to be modified, and it is the intent of the makers to modify it. I would think it would be better to modify it before we vote.



Mr. GLENN. Or you are going to get people locked in on this vote.

Mr. NUNN. I do not think this is going to be the issue on which people are voting. I hope I am not the first Senator to say on the floor that an amendment is not perfect. It will require further work. This will require further work on that limited point.

This is not the central point of the amendment. The central point is to have the small business community not be full beneficiaries of these very important changes to regulatory review process.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

## EXPLANATION OF ABSENCE

Mr. DOLE. Mr. President, the senior Senator from New Hampshire [Mr. SMITH] is necessarily absent from the Senate and is holding an important meeting on Superfund reform in his home State. He has asked me to announce that had he been present for the votes we are just about to take, he would have voted in favor of both the Abraham and the Nunn-Coverdell amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

## VOTE ON AMENDMENT NO. 1490

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND], the Senator from Oklahoma [Mr. INHOFE], the Senator from Vermont [Mr. JEFFORDS], and the Senator from New Hampshire [Mr. SMITH] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 297 Leg.]

## YEAS—96

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihhan
Boxer	Gramm	Murkowski
Bradley	Grams	Murray
Breaux	Grassley	Nickles
Brown	Gregg	Nunn
Bryan	Harkin	Packwood
Bumpers	Hatch	Pell
Burns	Hatfield	Pressler
Byrd	Heflin	Pryor
Campbell	Helms	Reid
Chafee	Hollings	Robb
Coats	Hutchison	Rockefeller
Cochran	Inouye	Roth
Cohen	Johnston	Santorum
Conrad	Kassebaum	Sarbanes
Coverdell	Kempthorne	Shelby
Craig	Kennedy	Simon
D'Amato	Kerry	Simpson
Daschle	Kohl	Snowe
DeWine	Kohl	Specter
Dodd	Kyl	Stevens
Dole	Lautenberg	Thomas
Domenici	Leahy	Thompson
Dorgan	Levin	Thurmond
Exon	Lieberman	Warner
Faircloth	Lott	Wellstone

## NOT VOTING—4

Bond	Jeffords
Inhofe	Smith

So the amendment (No. 1490) was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COVERDELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## VOTE ON AMENDMENT NO. 1491, AS MODIFIED

The PRESIDING OFFICER. The question is now on amendment No. 1491, as modified, offered by the Senator from Georgia [Mr. NUNN].

Mr. COVERDELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Georgia, as modified. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND], the Senator from Oklahoma [Mr. INHOFE], the Senator from Vermont [Mr. JEFFORDS], and the Senator from New Hampshire [Mr. SMITH] are necessarily absent.

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

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 298 Leg.]

## YEAS—60

Abraham	Brown	Conrad
Ashcroft	Burns	Coverdell
Baucus	Campbell	Craig
Bennett	Coats	D'Amato
Bingaman	Cochran	DeWine

Dole	Hatfield	Nickles
Domenici	Heflin	Nunn
Dorgan	Helms	Packwood
Exon	Hollings	Pressler
Faircloth	Hutchison	Robb
Feingold	Kassebaum	Rockefeller
Feinstein	Kempthorne	Santorum
Frist	Kerrey	Shelby
Gorton	Kyl	Simpson
Graham	Lott	Snowe
Gramm	Lugar	Specter
Grams	Mack	Thomas
Grassley	McCain	Thompson
Gregg	McConnell	Thurmond
Hatch	Murkowski	Warner

## NAYS—36

Akaka	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Inouye	Murray
Breaux	Johnston	Pell
Bryan	Kennedy	Pryor
Bumpers	Kerry	Reid
Byrd	Kohl	Roth
Chafee	Lautenberg	Sarbanes
Cohen	Leahy	Simon
Daschle	Levin	Stevens
Dodd	Lieberman	Wellstone

## NOT VOTING—4

Bond	Jeffords
Inhofe	Smith

So, the amendment (No. 1491), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COVERDELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

## EXPLANATION OF ABSENCE

● Mr. BOND. I regret that I was unavoidably absent from the votes today. I was away from Washington to participate in a court-ordered appearance. If I had been present, I would have supported both the Abraham and the Nunn-Coverdell amendments.●

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, after more than a decade, it is about time that we are starting to work on regulatory reform. We have a very good bill going through the House of Representatives. Hopefully, we will be able to get just as good a bill through the U.S. Senate. I am glad that we are able to do this under the leadership of our majority leader, Senator DOLE, because this is a historic comprehensive regulatory reform. This bill, S. 343, is a response to the informal rulemaking that has exploded in the last 50 years that was not contemplated in the original Administrative Procedure Act which passed in 1946.

S. 343 involves a number of major regulatory reforms. These include cost-benefit analysis, risk assessment, petition reopener, judicial review, congressional review, peer review, and improvements to the Regulatory Flexibility Act.

S. 343 is the latest product of a long-term evolutionary process. The foundation for S. 343 comes from the 97th Congress in the form, which we passed at

that time 94 to 0, of S. 1080. S. 1080 was the culmination of over 20 years of work in the Senate to reform the regulatory process. Unfortunately, that year, in the 97th Congress, the House leadership, then under the control of the Democratic Party, did not believe that regulatory reform was needed, because they believed in the regulatory state. So the House leadership neglected to follow through on that bill, and the bill was never considered by the other body.

Regulatory relief was a major issue in the congressional elections this year. It was part of our Contract With America. S. 343 is part of the fulfillment of the mandate that voters gave to the new leadership in Congress to bring about more effective and less costly rules and regulations.

As chairman of the Judiciary Subcommittee on Administrative Oversight and the Courts, I began the Judiciary Committee's efforts in what has become an extensive legislative process. Beginning last February, my subcommittee held hearings over 2 days and then held a markup where I offered a substitute, which was adopted and reported to the full committee.

Chairman HATCH then held another hearing before the full committee to consider the issue in even more detail. After a number of delays to accommodate the Democratic side of the aisle, the committee held 3 days of markup over a period of 3 weeks, and so the committee finally reported the bill last April 26.

Since that time, Members and staff have worked extensively with those who had questions or problems with the bill, even including the White House. We received, in fact, a number of very positive suggestions. And because they were positive, meant to be helpful, and it showed cooperation by the other side, including the administration, many of these were included in the bill.

S. 343 deals with two overall topics directly relevant to regulatory reform. The first major topic is regulatory analysis, including cost-benefit determinations for new and existing major rules or regulations of the Federal Government and, where relevant, Mr. President, risk assessment criteria and procedures.

The second major topic involves changes to the Administrative Procedure Act and other Federal statutes which contain equivalent provisions. These changes are in the procedures that the agencies are required to follow in rulemaking and also in the standards of judicial review and appeals of agency action.

Through these provisions, Congress will give Federal agencies new substantive and procedural guidelines on how the agencies are to use the legislative powers which Congress has given them through other statutes to regulate. The ultimate objective in our legislation is for better Federal rules and regulations, and by better rules, we

mean, very broadly speaking, rules that are to do social and economic good, where the benefit outweighs the harm.

A second objective is to make the rulemaking process more rational and more open and to give persons who are the intended beneficiaries of the rule and those who are more likely to bear its costs greater opportunity to participate in the agency's proceedings. No one should reject the proposition that people who are to be affected by the regulations ought to have a part in the process of the agency's consideration of those, and also, once that process is over, through judicial review, to have a means of assuring that agencies, in effect, obey the law. S. 343 does that.

These changes were designed then to supplement and to strengthen the regulatory analysis requirements of S. 1080, which is the core of the regulatory analysis that is in this new bill before us.

I view the overall primary focus of this bill to be accountability. The essence of Government is accountability. The essence of lawmaking is accountability. The public holds us accountable through the regular election process. The regulatory scheme of things in the administrative branch of Government is somewhat removed from citizen participation, and the extent to which it is, I believe people who are regulators and people who make the regulations and rules tend to be less accountable.

This bill, not as perfectly as is done through the election process affecting those of us in Congress, intends to bring accountability to the process of the regulation and rulemaking of the faceless bureaucrat. This means agency accountability to the people as well as to Congress who has delegated its authority to the agencies. It also means congressional accountability to the people because we are ultimately responsible for the laws that we pass. We should not punt to the agencies and to the courts to make very important determinations that ought to be made right here. Unfortunately, there will be those who will try to misrepresent our intentions by arguing that this bill will be used to gut our Nation's health, safety, and environmental laws.

This argument, of course, is a sham, because there is not one among us who does not want to do everything that we reasonably can to protect the lives of our people and who recognize the need for sound and effective regulations. We all breathe the air, eat the food, and drink the water.

We all want our children and grandchildren to be as safe as possible. To suggest otherwise, as some in this body are doing, and particularly as the media likes to popularize, is just downright shameful. We are concerned about the lives of people. This does not compromise that principle whatsoever. What it means to do is that regulation and rulemaking be accountable; that

people take into consideration alternatives; that there is not one way to do something, and that there ought to be a relationship between cost and benefit, and there ought to be a scientific basis for regulation. The fact is that many rules and regulations have become too rigid and costly. These rules themselves could actually threaten our Nation's limited resources, as well as public support for the necessary rules.

At a later time in this debate I am going to go into more specific detail about how ridiculous and onerous many regulations have become.

Mr. President, Majority Leader DOLE is to be commended for taking the initiative on this legislation and following through on what the American people want and expect. He is the leader of our party. Our party had a mandate in the election to do that, and he is carrying that out in the responsibility that he has. The efforts that are being made in the debating of this bill, in the consideration of this bill, is to make sure that our performance in office is commensurate with the rhetoric of the campaign. I think this bill is about as close as you can get to having that be a possibility.

As others have said, we have to find ways to do things smarter and cheaper. As the committee report points out, we have become hostage to the unregulated regulatory process. S. 343 will help us out of this quagmire by requiring sound, effective, fair, reasonable regulation that will do the job the people intend that they do.

We have all heard today very real stories of agencies gone mad. Well, I want to relate one story here today where bureaucrats got out of control. This story, and many others we will be hearing about, will underscore the need for commonsense reform. This story happens in my State. S. 343 is about reasonableness and responsibility. The American people are inspired by reasonable decisions. When the Government acts in the best interest of the majority of its citizens, the American people are encouraged by the Government's responsible actions.

S. 343 is a responsible action which is in the best interest of the majority of Americans. One of the main problems this bill addresses is unreasonable regulations and overzealous regulators.

This problem is clearly evident when it comes to agencies like the Environmental Protection Agency. The EPA was instituted and developed to promote policy advancing a clean environment at reasonable costs with fair and rational oversight. Fair and rational oversight, though, has not been exhibited recently by the EPA. Presently, the EPA exhibits arrogance and overzealous behavior while enforcing the agency's adversarial relationship with small business and farmers.

Innocent citizens are easy prey for presumptuous EPA bureaucrats. I know this to be true because, as I have



said, I have a constituent who has personal scars from unjustified hardships resulting from brash EPA officials.

This example happened outside a little town in the northwest corner of my State of Iowa. The name of that community is Akron, IA. It was business as usual that day at the Higman Gravel Company. Harold Higman, the owner, was outside topping off his pickup truck at the gas pump on his property. Mavis Hansen, a trusted employee of 20 years, was inside the office tending to the books, as she regularly did. Every other employee was working at their normal business responsibilities that early morning at 9 o'clock. You might say the morning routine had just begun.

Suddenly, in a violent breach of the morning's routine, nearly a dozen unmarked cars roared onto the yard of the premise of that gravel business. They screeched to a halt in cadence. Forty agents poured from the cars and surrounded Mr. Higman, cocking their guns in unison.

One agent, who was clad in a bullet-proof vest, leveled his shotgun at Higman. The agent pumped the gun once to load it. As Mr. Higman, the owner, gulped and his knees quivered, the agent fumbled for his badge, and as Mr. Higman groped for words and he voiced a demand for an explanation, the agent responded with a "shut up" right in Mr. Higman's face.

Meanwhile, another agent stormed the office. There he found the trusted employee of 20 years, the accountant, Mavis Hansen, at her desk tending to the books, as you would expect her to be doing at 9 o'clock in the morning. The agent stormed in with his gun and yelled "freeze" with his gun cocked and left it aimed right at Mavis Hansen's head.

Poor Mavis Hansen sat frozen with shock, fear, and bewilderment. Now, Mr. President, to this very day, she still has nightmares and bouts of nervousness due to what happened that horrible day.

Obviously, there must have been a reason for 40 agents to appear, shoving their shotguns down the throats of the owner and the bookkeeper of this gravel business in the small town of Akron in northwest Iowa. You might wonder, was it some kind of a drug operation? Was there a cache of weapons? None of those, Mr. President. What the agents were looking for were two so-called toxic chemicals that were allegedly stored at the Higman Gravel Co. grounds, supposedly buried in barrels.

Now, this is what they had been told. They had been told this, Mr. President, by a paid informant. But it turns out that this paid informant was also a disgruntled former employee of the Higman Gravel Co. He had given the EPA a bum lead, and after 15 months of misery and ordeal, a jury in a criminal case finally decided that Higman was innocent. Mr. Higman and others were acquitted of charges stating that he had knowingly stored illegal toxic chemicals on his property.

That decision and the 15 months of litigation cost Mr. Higman \$200,000 in legal fees, lost business, and what is even more important in my State, Mr. President, it gave this very responsible business person a damaged reputation.

It also cost the bookkeeper, Ms. Hansen—the woman that had the shotgun leveled at her as she was at her desk doing her books—two months leave of absence due to a nervous disorder, which still persists to this day.

Mr. President, the moral of this story must be prefaced with a poignant question: How in the world does the EPA justify such outrageous behavior?

It is the regulatory state gone out of control. They acted, as I have said, on rumor and innuendo. When the rumors did not pan out, they pressed ahead anyway, costing innocent citizens financial and psychological fortunes.

I will not go through all of the details in this case, Mr. President. But I think it behooves us as a society to take a broad view of this case and see what lessons can be learned.

To begin with, the EPA used a force of 40 men comprised of Federal and local agents. They used a force equipped to attack a mountain when it was only a molehill.

Second, the EPA's advanced scouting of the situation was disgraceful. They charged ahead with full force, though uninformed about the facts. They did not look before they leaped.

All too often, Mr. President, I hear of such overzealous and heavy-handed enforcement of our Nation's environmental laws. Yet, there is rarely accountability. This situation cannot continue. A presumption of guilt is formed. It is a foreign concept in our land. It should be a foreign practice as well.

The purpose of the EPA is certainly commendable. The purpose is to protect the Nation from environmental pollutants and toxins. The EPA is supposed to work to make our water clean and our air pure, and there is no one who would argue with those worthwhile goals. But the heavy-handed tactics are inconsistent with EPA's worthy objectives. In fact, such policy erodes whatever moral authority the EPA may hope to have to detect and deter pollution and polluters. Their image in the public's eye will only suffer and the public's confidence in the EPA's fairness will be shaken.

We certainly hope, Mr. President, that this reform will cause the EPA to reconsider its we-versus-they mentality, with respect to American small business. This bill will not overturn existing environmental law. The Comprehensive Regulatory Reform Act will require the EPA to reexamine existing rules and force them into revisions, but only, let me emphasize, where regulations are based on bad science or where a less costly alternative exists that achieves the statutory requirements. Small businesses certainly share the goal of a clean environment at reasonable costs, with a fair and rational

oversight by the U.S. Government. Most, if not all, businesses want to comply with environmental laws and regulations.

Mr. President, it is my hope that this reform will change the EPA policy to promote a worthy social objective that fosters reconciliation and cooperation. This reform will help eliminate the heavy-handed tactics and threats against innocent citizens like Mr. Higman and Ms. Hansen. Through this reform the EPA could once again return to its original purpose of promoting policy which advances a clean environment through fair and rational oversight.

Mr. DASCHLE. Mr. President, I want to use this time to remark briefly on the pending measure, which will be the subject of a vigorous debate over the next several days, and the focus of our work today and in the days to follow.

The primary subject of this debate is the bill that was reported by the Judiciary Committee in a very controversial markup which was later modified through negotiations with Senator JOHNSTON and other colleagues.

I am grateful for the attention that Members have given the bill since it was reported by the Judiciary Committee, for I believe, over time, real improvements have already been made.

Nevertheless, throughout these negotiations, these clear differences have emerged among those who advocated changes in the way Federal agencies issue regulations. It has become apparent that a new, more reasonable and judicious approach is needed if we are to enact responsible, regulatory reform, without causing gridlock in the Federal agencies.

There remain a number of problems with S. 343 which argue against adoption in its current form. First, its passage will likely result in a more convoluted, bureaucratic, and confusing system that practically invites manipulation and litigation by the best lawyers money can buy. It would allow, and even encourage, appeals and litigation throughout the regulatory development process.

The multifaceted petition process will create massive burdens on Federal agencies at a time when we are attempting to cut budgets and limit the size of Government.

The bill's \$50 million threshold will drag hundreds of additional rules into this process, further burdening agencies. It also forces Federal agencies to choose the cheapest option, even if other alternatives are more cost effective and therefore more economical.

In sum, it would impose costs on Federal agencies that cannot be met under current budget constraints. The Office of Management and Budget estimates that S. 343 would cost Federal agencies an additional \$1.3 billion and 4,500 full time employees each year simply to implement all its provisions. The Federal Government simply does not have

the resources to absorb those requirements. Nor should it.

In addition to overburdening Federal agencies, S. 343, as currently written, would roll back some of the most important laws that protect our environment, our health, and our safety.

For the first time in my lifetime, we are contemplating a comprehensive retreat from the progress achieved in reducing air pollution, in cleaning up our rivers and lakes, in taking steps to ensure that the food we eat and the water we drink is safe and clean. In the past, this effort has been embraced by leaders Republican and Democratic. Whether it was President Nixon, Ford, Carter, Reagan, Bush, or President Clinton, this Nation has realized great benefits from an extraordinary bipartisan commitment on these matters.

Mr. President, last year 2-year-old Cullen Mack of my home State of South Dakota fell ill from eating beef contaminated with the E. coli bacteria. As a result of experiences like Cullen's, I held a number of hearings in the Agriculture Committee and the Department of Agriculture developed regulations which would help prevent recurrences of this problem. The rules would modernize the meat inspection process, using sensitive scientific techniques to detect contamination and prevent spoiled meat from making its way into our food supply.

This much-awaited rule will be held up by this bill. It will be delayed and perhaps even stopped. That is unacceptable and represents one of the problems with this bill in its current form.

In its attempt to reform the regulatory process, the bill overreaches—I believe, to the long-term detriment to the American people, including businesses. In South Dakota as in many other States, not only will the public benefit from tough new meat inspection rules, but so will the farmers and ranchers who raise the livestock and who benefit from the assurance that their products will reach the market in the best condition possible. The Senate should not support a process that would compromise that objective.

I want to make clear that I'm not suggesting that somehow the proponents of S. 343 are advocating the degradation of our environment, or have set out to contaminate our drinking water, or that they are unconcerned with a child's potential exposure to toxins. But passage of this bill will make those results more likely. And that is not a result that I can endorse.

I know that some of my colleagues will be taking the floor to make that case in detail, and to offer amendments which will attempt to ameliorate the most harmful provisions of the bill. And I know that some of my democratic colleagues have signed onto S. 343.

I also want to make it clear that there is a better alternative and that a number of amendments will be offered

which will improve the bill and which I hope all Members will give their serious consideration.

The comprehensive alternative will produce commonsense reform without wholesale harm. I am hopeful that after some healthy debate on this matter, and in light of the amendment process that will begin today, my colleagues can be persuaded to support our amendments and the alternative developed by Senators GLENN and CHAFFEE, should it be offered. That is the best, most defensible path to regulatory reform, because it does not sacrifice the environmental, health, and safety standards that American families have a right to expect and demand from their Government.

Mr. President, I can state with some confidence that no Member of this body will argue for a regulatory status quo. No Member of this body believes that every Federal rule is sacred. No Member will defend every law we've passed as perfect in its real-world application. There are too many regulations in general, and, in particular, too many that make no sense.

It is my strong hope that during this debate, we can come to agreement on a bipartisan regulatory reform bill that achieves serious, meaningful change, but does so recognizing the budgetary realities facing the Federal Government, recognizing the desire to prevent unnecessary and expensive litigation, and recognizing the fundamental importance of ensuring that Federal agencies should be able to issue those commonsense regulations which protect public health and safety, the environment, and other matters that most of us agree should be the subject of responsible Federal oversight.

Mr. President, I yield the floor.

#### MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

#### REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NOS. 104-12 AND 104-13

Mr. HATCH. As in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Investment Treaty with Latvia (Treaty Document No. 104-12) and the Investment Treaty with Georgia (Treaty Document No. 104-13) transmitted to the Senate by the President on July 10, 1995; and the treaties considered as having been read the first time; referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and ordered that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

#### *To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Latvia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 13, 1995. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Treaty.

The bilateral investment Treaty (BIT) with Latvia will protect U.S. investors and assist Latvia in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthening the development of the private sector.

The Treaty is fully consistent with U.S. policy toward international and domestic investment. A specific tenet of U.S. policy, reflected in this Treaty, is that U.S. investment abroad and foreign investment in the United States should receive national treatment. Under this Treaty, the Parties also agree to international law standards for expropriation and compensation for expropriation; free transfer of funds associated with investments; freedom of investments from performance requirements; fair, equitable, and most-favored-nation treatment; and the investor's or investment's freedom to choose to resolve disputes with the host government through international arbitration.

I recommend that the Senate consider this Treaty as soon as possible, and give its advice and consent to ratification of the Treaty, with Annex and Protocol, at an early date.

WILLIAM J. CLINTON.

THE WHITE HOUSE, July 10, 1995.

#### *To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Georgia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on March 7, 1994. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Treaty.

The bilateral investment Treaty (BIT) with Georgia was the eighth such treaty between the United States and a newly independent state of the former Soviet Union. The Treaty is designed to protect U.S. investment and assist the Republic of Georgia in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthen the development of its private sector.