Too often we in Congress fail to recognize publicly the thousands of dedicated civil servants like Marshal Vokes who carry out the laws that we adopt. I am pleased to honor Marshal Vokes for his dedication to our Nation and its people. He is one of Pennsylvania's finest, and we have been honored to share his talents with the rest of the Nation. I know all my colleagues join me in wishing Marshal Thomas R. Vokes all the best in his retirement.

NOMINATION OF CONGRESSMAN PETE PETERSON TO BE AMBASSADOR TO VIETNAM

Mr. THOMAS. Mr. President, I come to the floor today as the chairman of the Subcommittee on East Asia and Pacific Affairs of the Foreign Relations Committee to outline for my colleagues a decision that I and the distinguished full committee chairman Mr. HELMS have made to postpone the nomination hearing of Congressman DOUGLAS ''PETE'' PETERSON to be Ambassador to the Socialist Republic of Vietnam (SRV).

At the outset let me say, as I did to Congressman PETERSON yesterday, that the reason for the postponement—and I will address this in greater detail in a moment—is the White House's failure to meet the constitutional requirements for the nomination; it has nothing to do with PETE PETERSON as a nominee. If the White House had avoided this oversight, we could have moved ahead with this nomination—a nomination I believe most of the committee would support—without all the fits and starts and delays.

The President nominated Congressman PETERSON for the position of Ambassador to the SRV on May 23, 1996. His file was received by the full committee in June and was finally complete and ready for consideration by the committee on June 25. The full committee scheduled a confirmation hearing on the Peterson nomination and three others for July 23, which I was to chair in my capacity as chairman of the subcommittee of jurisdiction. However, because of a series of conflicts with the Senate schedule, the hearing had to be postponed twice; first to July 29 and then to September 5, after the August recess.

But at the same time this series of postponements was taking place, the distinguished Senator from North Carolina [Mr. HELMS] and I were growing concerned over a legal issue which had come to our attention regarding to the nomination. On July 17, our legal staffs informed us that a provision of the Constitution might preclude Congressman PETERSON from serving as Ambassador. We contacted the White House, and asked for a detailed clarification of the issue from them. At the same time, we asked the Office of Senate Legal Counsel [SLC] to provide us with their opinion. Mr. Jack Quinn, Counsel to the President, provided us with a letter outlining the administration position on July 22; their legal opinion from the Office of Legal Counsel [OLC] at the Department of Justice followed after the close of business on July 26. The SLC opinion was delivered to us the same day.

After carefully reviewing the opinions of the OLC and the SLC over the August recess, and the legal authorities cited in them, we have concluded that the constitutional issue requires us to postpone Congressman PETERSON's nomination hearing until January next year in order to meet the requirements of the Constitution.

Mr. President, article I, section 6, clause 2 of the U.S. Constitution provides in part:

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time. . . .

In other words, this provision of the Constitution—called the ineligibility clause—prohibits a Member of Congress from being appointed to a civil position in the Government which was created, or for which there was a salary increase, during that Member's term of office.

The first time the ineligibility clause arose as an issue was during the Presidency of George Washington; the second was during the administration of President Arthur. In both cases, the President's interpreted the provision literally and it was concluded that the Constitution prohibited even the nomination of a Member of Congress to an office created during his term—thus equating nomination with appointment. As President Arthur's Attorney General stated:

It is unnecessary to consider the question of the policy which occasioned this constitutional prohibition. I must be controlled exclusively by the positive terms of the provision of the Constitution. The language is precise and clear, and, in my opinion, disables him from receiving the appointment. The rule is absolute, as expressed in the terms of the Constitution, and behind that I can not go, but must accept it as it is presented regarding its application in this case.

Under a literal reading, then, Congressman PETERSON cannot be even considered for the nomination until after January 3, 1997—the expiration of his present term. It would seem to me that if President Washington found a nomination similar to Congressman PETERSON's void from the outset because of the ineligibility clause, that reasoning should be good enough for the Clinton administration.

Even if we assume for the sake of argument that a literal construction of the clause is not warranted here—and that we have to determine exactly which act or series of acts constitutes an appointment under the clause—an examination of the facts in Congressman PETERSON's case yields the same conclusion. It has been argued that some precedent exists to support the conclusion that appointment requires both the acts of nomination and of confirmation by the Senate. For example, in Marbury versus Madison, Chief Justice Marshall wrote:

These . . . clauses of the Constitution and laws of the United States which affect this part of the case [governing the appointment of U.S. marshals] . . . seem to contemplate three distinct operations:

1. The nomination. This is the sole act of the President, and is completely voluntary.

2. The appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate.

3. The commission. To grant a commission to a person appointed might, perhaps, be deemed a duty enjoined by the Constitution. ''He shall,'' says that instrument, ''commission all the officers of the United States.''

The acts appointing to office, and commissioning the person appointed, can scarcely be considered as one and the same; since the power to perform them is given in two separate and distinct sections of the Constitution.

Although that case is not controlling in the Peterson situation because it did not involve the ineligibility clause, assuming that it governed here would still preclude our taking up the Congressman's nomination before the expiration of his present term. Under the reasoning of Marbury, Congressman PETERSON would be appointed within the meaning of the ineligibility clause at the time the Senate were to give its advice and consent. Given the facts of his case, it would be unconstitutional for this body to confirm the Congressman by a floor vote prior to the next Congress.

Moreover, Chairman HELMS and I consider the nomination hearing to be an integral part of the process of advice and consent. It is, after all, the only time that the Senate as a body—through its Foreign Relations Committee—has a chance to personally examine and question the nominee and his qualifications for office. The committee then prepares a written report urging the full Senate to a particular course of action in voting for or against the nomination. We would, therefore, consider it constitutionally inadvisable to proceed with a hearing on a constitutionally ineligible nominee such as in this case until January next year—when the constitutional issue is no longer a problem.

Next, Mr. President, we must consider whether the office of ambassador is a ''civil office of the United States'' and thus is governed by the clause. The OLC opinion contends that ''there is a difficult and substantial question'' whether it is a civil office, and that the only precedent it could find ''assum[ed] (without discussion) that it should be considered to be such an office. In accordance with that precedence [sic], we shall assume here, without deciding, that the Ambassadorship to Vietnam would be a 'civil Office' within the meaning of the ineligibility clause.'' While the OLC opinion thus concedes

the point for purposes of this particular argument, I believe that an examination of the history of the ineligibility clause, as well as the nature of the office itself, clearly establishes that it is a civil office contemplated by the provision.

The early drafts of what became the ineligibility clause did not limit the prohibition to civil office, but encompassed all offices of the United States. During the debates at the Constitutional Conventions, however, the Framers came to realize the danger in having the clause prohibit what might be some of the most able military men in the country from serving in the Armed Forces in time of war. Many officers from the Continental Army had become Members of Congress; if a war had broken out, the fledgling country would have been deprived of much of its officer corps because the then-proposed ineligibility clause would have prevented their joining until the expiration of their respective terms of office. So the adjective ''civil'' was added, to distinguish it from the military. This is in line with the dictionary definition of civil: ''of ordinary citizen or ordinary community life as distinguished from the military or ecclesiastical.'' So as contemplated by the Framers, an ambassadorship is clearly ''civil'' in nature.

Similarly, an ambassadorship is clearly a Federal office, as that term is defined both in law and practice. For example, in United States versus Hartwell, the Supreme Court stated that ''a[] [Federal] office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties.'' Ambassadors are appointed by the President, and serve for the duration of a President's term or until they retire or are reassigned; they are paid from the Treasury; and they have a well-defined and customary series of duties they perform—all the criteria of a Federal office.

I would also note that article II, section 2 of the Constitution declares that ''the President shall nominate, and . . . shall appoint ambassadors . . . and all other officers of the United States.'' Note, Mr. President, the use of the term ''all other.'' This infers that ambassadors are part of the class of ''officers of the United States.'' In view of these facts, it can hardly be argued that an ambassadorship is not a civil office of the United States, and thus falls within the clause's prohibition.

Finally, Mr. President, the ineligibility clause requires us to determine whether the office of Ambassador to the SRV is one which was created during the Congressman's term of office. As I previously mentioned, Representative PETERSON was most recently elected on November 8, 1994, for a term that began on January 4, 1995, and that will end at noon on January 3, 1997. The President formally extended full diplomatic recognition to the SRV for the very first time in August 1995 and nominated Mr. PETERSON to be Ambassador to the SRV on May 23, 1996.

The White House has taken the creative position that:

...based on the facts and circumstances of this case, the office of Ambassador to Vietnam has not yet been created. If the Senate confirms Mr. Peterson, the President will not create the position of Ambassador to Vietnam until after noon on January 3, 1997. Therefore, so long as the Office is created at a time after Mr. Peterson's term of office . . . has expired, he can be appointed to the Office of Ambassador [without running into constitutional problems].

Rather than paraphrase the OLC argument, Mr. President, I ask unanimous consent the relevant portions be printed in the RECORD.

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

EXCERPT FROM OFFICE OF LEGAL COUNSEL OPINION

III.

We think it fair to say that the patterns of constitutional practice that we have described do not conclusively answer the question when the office of an ambassadorship is created. Nonetheless, we think that the legal and historical materials strongly point towards a particular answer, and we find that answer to be considerably more persuasive than any of the alternatives. Based on our survey of the materials, including the 1814 debate, we believe that the following tests are appropriate in determining when, for purposes of the Ineligibility Clause, the President has created the office of ambassador to a particular foreign State, in cases when such an ambassadorship has not existed before or (as in the case of Vietnam) has lapsed or been terminated:

1. In the usual course, the office is created at the time of appointment of the first ambassador to a foreign State once the President establishes diplomatic relations with that State. All that precedes the appointment—offering to establish normal diplomatic relations, receiving the foreign State's agreement to receive a particular person as the United States' ambassador, nominating and confirming that individual as ambassador—are all steps preparatory to the creation of the office. If the President ultimately declines to appoint an ambassador, the ''office'' is never created.

2. The President, nonetheless, retains the power to alter the ordinary course of events, and to create the office at some other time—or not at all. The act of creating the office must be distinguished from the preparatory steps leading to its creation. The preparatory acts indicate that the President intends to create the office; they do not in themselves constitute its creation. Indeed, in the ordinary course, the President should be understood to intend to create the office of ambassador upon the appointment of the individual as the first ambassador to the receiving State.

We turn now to the application of these tests to the ambassadorship to Vietnam.

IV.

The process by which the United States have been normalizing its relations with Vietnam has been underway for several years. The Republic of Vietnam (''RVN'') was constituted as an independent State within the French Union in 1950, and the United States sent a Minister to that State. (The United States did not recognize the Democratic Republic of Vietnam (''DRVN''), which had earlier declared itself to be an independent State.) Thereafter, on June 25, 1952, the United States appointed an Ambassador to the RVN, and upgraded the United States Legation in Saigon to Embassy status. In 1954, Vietnam was partitioned into what came commonly to be called ''North'' and ''South'' Vietnam. Despite an international agreement calling for the reunification of Vietnam, that did not occur; instead, the RVN, functionally, became South Vietnam, and the DRVN, functionally, North Vietnam. The United States maintained an ambassadorial post in the RVN from 1952 onwards. The last United States Ambassador left his post in Saigon on April 29, 1975.

After the Communist victory over South Vietnam in April, 1975, it became the position of the United States that ''[t]he Government of South Vietnam has ceased to exist and therefore the United States no longer recognizes it as the sovereign authority in the territory of South Vietnam. The United States has not recognized any other government as constituting such authority.'' *Republic of Vietnam* v. *Pfizer, Inc.*, 556 F.2d 892, 895 n.4 (8th Cir. 1977) (quoting letter from State Department).

During the present Administration, several successive and carefully measured steps were taken with a view to improving, and perhaps normalizing, relations between the United States and Vietnam. On July 2, 1993, President Clinton announced that the United States would no longer oppose the resumption of aid to Vietnam by international financial institutions. On February 3, 1994, the President announced the lifting of the United States' embargo against Vietnam. He also announced an intent to open a liaison office in Hanoi in order to promote further progress on issues of concern to both countries, including the status of American prisoners of war and Americans missing in action. His statement emphasized, however, that ''[t]hese actions do not constitute a normalization of our relationships. Before that happens, we must have more progress, more cooperation and more answers.'' On May 26, 1994, the United States and Vietnam formally entered into consular relations within the framework of the 1963 Vienna Convention on Consular Relations, to which both States were party. The United States, however, continued to condition diplomatic relations on progress in areas of concern to it. On January 28, 1995, the United States and Vietnam signed an agreement relating to the restoration of diplomatic properties and another agreement relating to the settlement of private claims. On July 11, 1995, the President announced an offer to establish diplomatic relations with Vietnam under the Vienna Convention on Diplomatic Relations—an offer that Vietnam accepted on the following day. In announcing that offer, the President stated that from the beginning of his Administration, ''any improvement in relationships between America and Vietnam has depended upon making progress on the issue of Americans who were missing in action or held as prisoners of war.'' Soon thereafter, the United States Liaison Office in Hanoi was upgraded to a Diplomatic Post.

On May 8, 1996, the Government of Vietnam gave its agreement (''agreement'') to the United States' proposal that Representative Peterson be Ambassador Extraordinary and Plenipotentiary of the United States to Vietnam. On May 23, 1996, the President submitted Mr. Peterson's name to the United States Senate for its advice and consent to that appointment.

In our judgment, while this pattern of activity demonstrates that the President fully intends and expects to create the office of ambassador to Vietnam, it does not establish

that he has, in fact, yet done so. The establishment of diplomatic relations does not entail the establishment of a diplomatic mission or the creation of the office of an ambassador. See Vienna Convention on Diplomatic Relations, art. 2. Moreover, the existence of diplomatic relations with Vietnam does not require (although it may normally assume) an exchange of ambassadors, since relations may be conducted at a lower diplomatic level. Further, we do not think that Vietnam's agreement to receive Mr. Peterson as ambassador establishes that that office exists for constitutional purposes. Nor (although the question is closer) does the President's decision to submit Mr. Peterson's name to the Senate for confirmation. Even if Mr. Peterson is confirmed, the President would retain the discretion not to send an ambassador to Vietnam, or otherwise not to create that office. In view of the facts that the United States has not had an ambassador to Vietnam since 1975 (and has never had an ambassador to the present government), that the process of normalizing relations between the United States and Vietnam has been a complex and protracted one, and that contingencies, however unlikely, may yet arise that would lead the President to conclude that it was not in the United States' best interests to appoint and send an ambassador, we do not think that the office of ambassador to Vietnam can be said to exist unless and until the President actually completes the process by appointing an officer to that position. Accordingly, if the President decides not to appoint Mr. Peterson to that office until after the expiration of the present term of Congress on January 3, 1997, we do not think that Mr. Peterson is constitutionally ineligible for that appointment.

In the interests of clarity, we repeat that we are not maintaining that an ''appointment'' within the meaning of the Ineligibility Clause does not occur until the appointee is actually commissioned by the President. Whatever the merits of that view as an original proposition (and they are substantial),[31] we are not writing on a clean slate. Accordingly, we follow the centuries-old teaching and practice of the Executive branch in assuming that the nomination of an ineligible individual is itself a constitutional nullity, even if the commissioning of that individual were to occur after the term of his or her ineligibility. Our position is that, in the singular circumstances of this case, the relevant office—the Ambassadorship to Vietnam—has not yet been ''created,'' so that no ineligibility exists. Thus, both the President's act of nominating Mr. Peterson, and the Senate's act of confirming him (if it does), are constitutionally valid.

Mr. THOMAS. Mr. President, I must say that this is one of the least straightforward legal arguments that I have seen. In effect, the administration is saying ''go ahead and hold a hearing on the fitness of this nominee to occupy and conduct the duties of an office which we have not yet created but will create at some time in the future.'' I believe that the clear and serious problems with that argument are self-evident.

Mr. President, what the OLC proposes raises a serious constitutional separation of powers issue in my mind. The Senate's advice and consent function requires a review not simply of the nominee, but of his or her qualifications and fitness to fill a particular office. To call for Senate confirmation of a nominee before the creation of the office that he would fill would deprive the Senate of that complete inquiry.

The OLC has sought to brush aside the problems created by asking us to hold a hearing on an uncreated office by stating that ''[e]ven if that particular ambassadorship has yet to be created, the duties and responsibilities of an ambassador are of course perfectly familiar to the Senate.'' But hypothetically, Mr. President, if we were to confirm an ambassador for an as-yet uncreated office, what is there to assure us that a President could not simply change the nature or duties of the office at his whim after the fact, leaving us—having given our consent—with no constitutional recourse? The Framers of the Constitution did not envision a carte blanche for the State Department in circumstances such as these.

To hold a hearing under these circumstances would set an unadvisable precedent for the Senate. Although the OLC states that there is precedent for our confirming a nominee for which the office did not yet exist, their two examples are not applicable to the facts in the Peterson case. First and foremost, none involved the position of ambassador. Second, both involved executive-branch bodies that were legislatively created—the Occupational Safety and Health Review Commission, and the Department of Health, Education and Welfare. The legislation creating each office had already become law, but provided that the particular respective offices and their holders —in these cases OSHRC Commissioner and Secretary of HEW—were to become effective at a later specific date. So OLC overlooks the fact that the offices had therefore already been created, but they were just not yet functional at the time the nominees were confirmed. An unfilled office is hardly the same thing as an uncreated office.

Given all this, Mr. President, I feel that the Constitution presently precludes our giving our advice and consent regarding the Peterson nomination. Moreover, I believe that it is inadvisable—in view of the Senate's constitutional role in the nomination process—to move ahead with the nomination hearing. If we accept for the sake of argument the White House position that, as the State Department spokesman put it, the office of ambassador is not created until the nominee actually takes up that office, we would be holding a hearing on confirming an individual for a position that does not yet exist. I have just mentioned the problems I have with that conclusion. How then would we exercise what is basically our constitutionally mandated oversight function? How would we determine whether the nominee is fit for the office to which he has been nominated if that office—and consequently its constituent functions and duties —has not come into being?

Given all these substantial problems, I and the chairman have concluded that it would be better to postpone the hearing on Representative PETERSON's nomination until after January 3, 1997, when his term—and the constitutional issue—expire. I pledge to my colleagues, and more importantly to Congressman PETERSON, that if I am chairman of the East Asia Subcommittee in the next Congress my very first hearing will be on this nomination. And I will, in any case, do everything I can to expedite the nomination process for him.

Mr. President, in closing let me stress what our decision to postpone the hearing is not about. First, as I mentioned at the beginning of my statement today it is not about PETE PETERSON. I have never heard any Member, regardless of their position on normalization of relations with the SRV, have anything but praise for the Congressman. He has an exemplary record of service to his country spanning several decades of which I believe all my colleagues are aware. As an Air Force captain, he was flying a combat mission in September 1966 when a North Vietnamese surface-to-air missile struck his Phantom jet fighter. He ejected free of the plane, but parachuted into a tree in the dark breaking an arm, leg, and shoulder. He was captured by the Vietnamese and spent 6½ years as a POW. He first came to Congress in 1991. When his nomination comes before the committee and the full Senate, I intend to vote in favor of it.

It is unfortunate, frankly, that Congressman PETERSON has become the victim of what I would charitably characterize as administration bungling. The administration completely failed to address this issue until our staffs brought it to their attention in mid-July. But it should not have come as a surprise to them, Mr. President—the issue has come up several times in previous administrations and even once in this administration with the nomination of Senator Lloyd Bentsen to be Treasury Secretary. Sadly, the only mention of the issue in the Administration prior to our raising the issue was the following one-page memo dated May 17, 1996, which somewhat ironically only addresses the emoluments portion of the clause—the only portion of the clause not applicable in Congressman PETERSON's case. Mr. President, I ask unanimous consent that the full text of the memo be printed in the RECORD.

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

U.S. DEPARTMENT OF STATE,
Washington, DC, May 17, 1996.

Memo for the file.

Subject: Nomination of Congressman Pete Peterson to be Ambassador to Vietnam.

In response to a question from the Executive Clerk at the White House, Mary Beth West, L/LM, and her staff researched the possible impact on Congressman Peterson's ambassadorial nomination of Article 1, Section 6, of the Constitution which states:

''No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have

been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.''

In consultation with the Office of Legal Counsel at the Justice Department and the White House Counsel's Office, it was determined that this constitutional requirement only prohibits the appointment of a Senator or Representative to a civil office if an act of Congress has created, or increased, the emoluments of that office during that Senator's or Representative's current term of office. In Congressman Peterson's case, there have been no salary increases covering ambassadors during his current term of office.

Mr. THOMAS. Had the administration done its job, Congressman PETERSON would have been spared the surprise and awkwardness of having his hearing postponed for several months. It is unfortunate that he has become a victim of this administration's unfortunate tendency to be reactive, rather than proactive, in its foreign policy decisions.

In some other circumstances, Mr. President, I might worry about a delay in sending an ambassador to a particular country and the effect such a delay might have on our foreign policy. Since May the State Department has been strongly urging the Senate to take up the Peterson nomination at the earliest possible date because ''it is vital to U.S. interests that we have an Ambassador in place there.'' With that sense of urgency, the Department was continually requesting that the nomination be placed on a fast track. That sense of urgency is unabated, but the White House has terminally undercut its own argument by stating that even if the Senate gave its advice and consent in this session to avoid a constitutional problem it would not officially commission and send him to Hanoi until after the expiration of his present term—in other words not until next January—to avoid constitutional complications. It seems to make little sense to hold a hearing now on a nominee who all sides agree is constitutionally barred from taking office until the next Congress convenes. Thankfully for Congressman PETERSON, our delay will not appreciably add to the time he will now be kept from his new position.

Second, the postponement it is not about what I view as the administration's hurried move to normalize relations with the SRV. It will not come as a surprise to anyone that as a Senator I have opposed normalization in the past. My opposition was not based on my dislike of that country's communist dictatorship, or even its brutal repression of its own people—although in this administration's somewhat hypocritical view these two bases seem sufficient to deny diplomatic recognition to other countries such as Cuba, North Korea, and Burma. Rather, I did not believe that we should reward Hanoi with normalization when, in my opinion and the opinion of many other Members of this and the other body, Hanoi had not been sufficiently forthcoming with information about our country's missing and dead servicemen.

I acknowledge that the President has wide latitude in the conduct of foreign policy, he has made the decision to normalize relations, and the Congress has more or less decided to go along with that decision. I have repeatedly stated that I will not stand in the way of that process simply because I disagree with the original decision.

Third, the decision to postpone is decidedly not—I repeat not—about politics. While it has become somewhat ''normal'' in the Senate for a committee controlled by one party to hold up action on the nominees proposed by a President from the opposing party at the close of an election year, such is not the case in this committee this year. The distinguished full committee chairman, Mr. HELMS, made it clear several months ago that it is his intention to move all matters pending before the committee—whether nominations, legislation, or treaties—out to the full Senate in time for them to be acted upon before the Senate adjourns sine die sometime in October; I fully support that position.

In addition, I have never managed issues within the jurisdiction of my subcommittee in anything less than a fully bipartisan spirit. I firmly believe that to be effective, U.S. foreign policy is an issue that should be insulated from the currents and eddies of partisan politics. Toward that end, I have never raised objections to an ambassadorial nominee solely because he or she was a Democrat, or a political, as opposed to a career, nominee. First, I would not have scheduled, and then rescheduled, this nomination hearing if I had not had every intention of moving forward with it. Nor would I go on record as publicly committing myself to make the Peterson nomination my first of 1997.

Fourth, this is not a question of the committee making a mountain out of a molehill. It is not some arcane issue to which we can turn a blind eye. It exists in black and white in the Constitution, the very document that many Members of this body carry with them daily and which all of us have sworn to uphold.

Some might ask, ''What would it harm to simply overlook the problem?'' What would it harm, Mr. President? Simply put, I believe strongly that it would harm the Constitution and the Senate. There is an enormous temptation to chisel at the margins of the Constitution. The temptation becomes almost irresistible when the corner chiseled at is deemed a nuisance and the likelihood is very remote that anyone would bring a lawsuit against those holding the chisel. The ineligibility clause would seem to fall into this category.

But a constitutional violation is no less a constitutional violation simply because the offended provision is perceived to be a minor one, or because of the absence of a judicial ruling to that effect. The President has taken an oath to uphold the Constitution; so have I, and I take that oath very seriously. The duty extends to every part of that document, not just to those portions that are considered convenient or more expedient than others. We should not turn our backs on the Constitution simply because we agree Congressman PETERSON is a good candidate or because the State Department would rather that he have his hearing now as opposed to later. Given the Constitution or the administration's convenience, the choice is clear.

INNOVATIVE BUSINESS PRACTICES AT NORFOLK NAVAL BASE

Mr. NUNN. Mr. President, in an article entitled ''An Admiral Turns Big Guns on Waste at Norfolk, VA, Base'' last month, Wall Street Journal reporter John Fialka described some of the new business practices that the Navy is employing to improve the efficiency of its base operations. I will ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks for the benefit of my colleagues who may have missed it.

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

(See exhibit 1.)

Mr. NUNN. This article documents a number of innovative initiatives undertaken by the Navy at Norfolk Naval Base—energy audits; joint agreements with civilian port terminals to increase the Navy's railroad access and terminal capacity; and lease arrangements with private real estate developers to increase the quality and quantity of housing for Navy members and their families. Mr. President, this kind of aggressive and innovative approach to reducing infrastructure costs is essential if our military services are going to have the funds to invest in the new systems and equipment need to modernize our forces.

According to the Wall Street Journal, the individual most responsible for these efforts at Norfolk Naval Base is Adm. William J. ''Bud'' Flanagan, the Commander of the Atlantic Fleet. Many of my colleagues remember Admiral Flanagan from his tour as head of the Navy's Office of Legislative Affairs in the late 1980's. Following that assignment, Admiral Flanagan commanded the Navy's Second Fleet before taking over as Commander of the Atlantic Fleet.

Mr. President, I have known and worked with Admiral Flanagan for many years. He is an extremely capable naval officer, and I am not at all surprised to see that he is also an energetic and creative business manager who is bringing innovative practices to the Navy's base operations. I hope that he keeps up the good work, and that others throughout the military services follow his good example.