By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Con. Res. 13. Concurrent resolution expressing the sense of Congress regarding the display of the Ten Commandments by Judge Roy S. Moore, a judge on the circuit court of the State of Alabama; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWNBACK (for himself, Mr. LIEBERMAN, Mr. DEWINE, and Mr. KOHL):

S. 471. A bill to amend the Television Program Improvement Act of 1990 to restore the applicability of that Act to agreements relating to voluntary guidelines governing telecast material and to revise the agreements on guidelines covered by that Act; to the Committee on Commerce, Science, and Transportation.

THE TELEVISION IMPROVEMENT ACT OF 1997

Mr. BROWNBACK. Mr. President, I would like to address the body today on legislation that I am introducing, along with Senator LIEBERMAN, Senator DEWINE, and Senator KOHL, an act called the Television Improvement Act of 1997. It is my sincere hope that this bill will help solve one of our nation's most troubling problems.

I am fresh off the campaign trail, as the Senator from Georgia is fresh off the campaign trail. Throughout the 1996 campaign, I traveled across the State of Kansas and talked with thousands of people. I came away from that experience convinced that the most important task that we as a Nation face today is renewing the American culture.

I can recall countless meetings where individuals, particularly parents, would come up to me worried about the future of the American culture, particularly as it affects their children, and they constantly felt they were having to fight the culture to raise their kids. They hearken back to a time when they didn't feel like they were so opposed by the nature of the American culture. They recall a time when the culture was supportive of what they were doing and helped them in raising a good and solid family. They were just pleading for help. ''Help us be able to come to a point where we can effectively raise our children. Don't make us have to constantly fight our culture.''

Hollywood is the center of gravity for the American culture and, increasingly, the world's culture. Hollywood has changed the culture in this country, and, unfortunately, it has led to a decline in our culture. Over the past 15 years, television has made our children think that violence is OK, that sexuality out of wedlock is expected and encouraged, and that criminal activity is OK. Well, these things are not OK, and it's time the industry changed television to make it easier for parents to raise children.

The Television Improvement Act of 1997 is intended to encourage the broadcasting industry to make raising children easier. What it intends to do is to allow the broadcast industry—the television, cable, and motion picture industries to enter into, again, a code of conduct comparable to the one they used until 1983. They would once again be able to say that there is a standard below which they will not go, and they can collaborate to establish that standard without running afoul of Federal antitrust laws.

Previously, the NAB had a self-imposed code of conduct that governed television content. The code recognized the impact of television on our children as well as the responsibility that broadcasters shared in providing programming that used television's influence carefully. However, in 1983, a Federal district court determined that some of the advertising provisions of the code violated Federal antitrust laws.

Although the court did not rule that any of the code's programming standards violated antitrust laws, the NAB decided to stop using the entire code. The past 15 years have demonstrated that the code of conduct is sorely missed. Television has declined over the past 15 years, in no small part due to the absence of the code. I don't think anybody in this body could argue—or in this country who would disagree—that the nature of American television has declined over the past 15 years.

Let me read for the body a statement that is from the old code of conduct that the National Association of Broadcasters used until 1983. It sounds almost quaint today. But listen to the content of what the industry itself had before. It says:

> Above and beyond the requirements of the law, broadcasters must consider the family atmosphere in which many of their programs are viewed. There shall be no graphic portrayal of sexual acts by sight or sound. The portrayal of implied sexual acts must be essential to the plot and presented in a responsible and tasteful manner.

I do not think there would be many people today who would say that this reflects the nature of television today. But I think many Americans today would say, ''That is what I want television to be today so I don't have to always fight the TV to raise my kids.''

It is not enough for everybody to say, ''Just turn it off.'' My wife and I are raising three children. It is a little tougher than just saying, ''Turn it off.'' It is about being there all the time. We are trying. One of us is there all the time. It is also not enough to say, ''Well, we have a rating code so you know what is on television.''

We are pleading with the industry, saying, ''Let's go back to that time when you used a code because television was better then and it so directly impacts the culture and the soul of America.'' The average American spends 5 hours a day watching TV. Most would liken it to a stovepipe of black soot going into the mind and into the soul. Why don't we change that back to the way it used to be, and have it as a well of fresh spring water going into the mind and into the soul?

The industry is fully capable of doing this. Witness some of the current shows, especially ''Touched by an Angel,'' which is a leading show by CBS today. It is a good, positive, and uplifting show. But, sadly, there are far more that are far more degrading that would lead one more to the stovepipe analogy rather than the fresh spring well water.

We are pleading with the industry with this bill. This bill provides no additional authority to the Federal Government; not an ounce of additional authority to the FCC. It is a plea to the industry to help us. We are having trouble. The American family has been under attack. In many places it has disintegrated. In our inner cities we have 70 percent of our children born to single moms. In many places we no longer have families, one of the basic tenets of culture.

We are asking by this very simple act and pleading with the industry. ''Let's go back to the time when television did not hurt our lives.'' And we are not suggesting censorship. If we have a better product coming out of this industry, we will have a better American culture. We will have a better world culture because Hollywood is the center of gravity for not only this culture but increasingly the world's culture. It is coming up time and time again.

So we are introducing this bill today, a bipartisan bill, requesting that the industry negotiate and work together on a code of conduct the like of which it had before.

We will be holding hearings in the Governmental Affairs Committee. We have been joined by the chairman and the ranking member of the appropriate Judiciary subcommittee who are cosponsoring this bill. We anticipate that they will have hearings on it as well. It is a follow-on to Senator Simon's work in this area in 1990. We hope that it will be much more successful. If it is not, there will be further action coming to try to address this corrosive effect that, unfortunately, television has on our society and, indeed, on the world.

So, Mr. President, we are introducing this bill today asking the industry for help to lead our culture back to a brighter and a better time. They can do it. They are capable of doing it.

Mr. President, again, let me say that I am pleased to introduce today with Senators LIEBERMAN, DEWINE, and KOHL, the Television Improvement Act of 1997, a bill that I believe will help solve one of our Nation's most troubling problems. Throughout the 1996 campaign, I traveled across the State of Kansas and talked with thousands of

people. I came away from that experience with the conclusion that the most important task that we as a nation face today is renewing the American culture.

People are desperately worried about the decline of our culture and about the decline of the American family. Many of the parents that I spoke with during the summer and fall believe that they increasingly have to fight their culture to raise their children. These parents feel that American culture in the 1990's actually makes it more difficult to raise children.

Hollywood is the center of gravity for the American culture and increasingly the world's culture. Hollywood has changed the culture in this country, and, unfortunately, it has led to a decline in our culture. Over the past 15 years, television has made our children think that violence is OK, that sexuality out of wedlock is expected and encouraged, and that criminal activity is OK. Well, these things are not OK, and it's time the industry changed television to make it easier for parents to raise children.

Previously, the National Association of Broadcasters had a self-imposed code of conduct that governed television content. The code recognized the impact of television on our children as well as the responsibility that broadcasters shared in providing programming that used television's influence carefully. However, in 1983, a Federal district court determined that some of the advertising provisions included in the code violated Federal antitrust laws.

Although the court did not rule that any of the code's programming standards violated antitrust laws, the NAB decided to stop using the entire code. The past 15 years have demonstrated that the code of conduct is sorely missed. Television has declined over the past 15 years, in no small part due to the absence of the code.

For this reason, Senators LIEBERMAN, DEWINE, KOHL, and I are introducing this bill to make perfectly clear that the broadcast industry is not violating Federal antitrust laws if its members collaborate on a code of conduct that includes voluntary guidelines intended to alleviate the negative impact that television content has had on our children and to promote educational and otherwise beneficial programming.

In drafting this legislation, we have built upon Senator Simon's Television Program Improvement Act of 1990. Unlike that law, however, the Television Improvement Act of 1997 would not include a sunset provision, and we have expanded the scope of the antitrust exemption to enable the industry to tackle such issues as the proliferation of programming that contains sexual content and condones criminal behavior.

Senator LIEBERMAN and I plan to hold hearings in the Governmental Affairs Committee's Government Management and Restructuring Subcommittee, which I chair and on which Senator LIEBERMAN serves as the ranking Democrat. The hearings will explore the impact that the Federal Government has had on the ability of the television industry to broadcast more inspirational and less harmful programming. We will examine whether the application of Federal antitrust laws to a collaboration by the broadcasters to promote better programming hinders the industry's ability to police itself and has resulted in a decline in television broadcasting. The Federal Government should not be impeding any voluntary effort by the industry to improve the quality of programming; the Government should be encouraging such an effort.

Let me just reiterate that we are not calling for a government mandate to be imposed upon the industry, nor are we providing the FCC with an ounce of additional authority with respect to broadcasting. What we are doing is trying to encourage the industry to do what it did prior to 1983—broadcast less programming that harms our kids and more programming that helps us raise our kids. We want Hollywood to start producing, and we want the broadcasters to start airing, better programming.

I ask that the bill be appropriately referred.

Mr. LIEBERMAN. Mr. President, I am proud today to join with my colleagues Senator BROWNBACK, DEWINE, and KOHL in introducing the Television Program Improvement Act of 1997, a bill we believe will help directly address the public's concerns about the declining standards of television and that will hopefully lead the television industry to exercise more responsibility for the programming it puts on the air.

The industry has tried in part to respond to the concerns of parents about the negative influence television is having on children by creating a rating system for sex, violence, and vulgar content. This system is a good start, but there is a general consensus it does not go far enough in providing parents with the information they need to make wise choices for their children.

When I recently testified before the Senate Commerce Committee on this issue, I tried to get this point across by comparing the industry's system to putting up a sign in front of shark-infested waters that said ''Be careful when swimming.'' That is to say that, while these ratings provide a warning to the viewer, they don't tell us why we need to be warned.

But I also used this metaphor to make a larger point, which is regardless of how informative the ratings are, what parents really want is to get the sharks out of the water, to improve the quality of programming on the air, and make it safe for their kids to go swimming again.

The intent of the legislation we are introducing today, the Television Program Improvement Act of 1997, is to reiterate that message and to urge the industry to focus on what's at the heart of this debate over the TV rating system—a very real, broadly-felt concern that television has become a destructive force in our society and it is doing substantial damage to the hearts, minds, and souls of our children.

This bill really amounts to a plea on our part to the industry for their help. Moreover, it is an attempt to move this debate beyond the question of rights, which we all accept, acknowledge and support, and begin talking more about responsibilities.

Specifically, the kind of responsibility that broadcasters once embraced through a comprehensive code of conduct, in which they acknowledged the enormous power they commanded and the need to wield it carefully, and in which they recognized that they had an obligation under the law to serve the public interest. I would urge my colleagues to take a look at some of the standards the Nation's broadcasters set for themselves in the old NAB TV Code, which we've excerpted in the findings of our legislation, and you'll see that they are quite remarkable statements of responsibility.

After reading these principles, I would urge my colleagues to compare them to some of the comments made recently by industry leaders, such as the network official who proclaimed ''it is not the responsibility of network television to program for the children of America,'' or the MTV executive who said his network ''is not safe for kids'' but markets it directly to them anyway.

Watch what these programmers are bringing into our homes today, and it is clear that the face of television has changed dramatically since the industry abandoned the old NAB Code in 1983 and abandoned the ethic undergirding it. It is also clear that while the networks have profited from the resulting competition downward, it is the American family who is paying the price—in the form of the awful daytime talk shows that parade the most perverse forms of behavior into our living rooms and teach our children the worst ways to settle conflicts, and the excesses of prime-time comedies that amount to little more than what we used to call dirty jokes.

The rise of these programs leave little doubt that this debate is about much more than the threat of violence—which was the reason for the original Television Program Improvement Act sponsored by Senator Simon in 1990—although this threat remains a serious problem. What is driving so much of the public's concern is the deluge of casual sex and vulgarities that characterizes so much of television today. The collective force of these messages leaves parents feeling as if they are in a losing struggle to raise their own children, to give them strong values, to teach them right from wrong and guide them to acceptable forms of behavior.

With the bill we're introducing today, we are asking the television industry to do no more than what it did as recently as the early 1980's, and that is to draw some lines that they will not go below, to declare, as author and noted commentator Alan Ehrenhalt has said, ''that some things are too lurid, too violent, or too profane for a mass audience to see.''

If the industry is not willing to refill that responsible role, there will be increasing pressure on the Government to do it for them. One of the most telling polls I've seen recently appeared in the Wall Street Journal, which showed that 46 percent of Americans favor more Government controls on television to protect children. It's not a coincidence that there are bills being prepared in Congress that would in fact censor what is on the air.

Our legislation is designed to help us avoid reaching that point. It will ideally remind the industry of its obligations to the public we both serve, and that changing the subject, as some in the industry prefer to do, won't change the minds of the millions of American families who want programming that reflects rather than rejects their values. Again, to return to my metaphor, we are simply making a plea to the industry to take the sharks out of the water, and make it safe for our kids to go swimming, or perhaps more aptly, to go channel-surfing again.

Mr. President, in closing, I ask unanimous consent that the full text of my remarks be included in the appropriate place in the RECORD to accompany this legislation. I also ask unanimous consent that a summary of the Television Program Improvement Act of 1997 be printed in the RECORD. And to provide my colleagues with some additional background on the old NAB Television Code and what has happened to television since it was abandoned, I ask unanimous consent that a factsheet my staff has prepared be included in the RECORD. This factsheet helps summarize the bill's findings and put them into some historical context.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

SUMMARY OF THE TELEVISION PROGRAM IMPROVEMENT ACT OF 1997—TPIA

WHAT IS THE PURPOSE

The TPIA is an attempt to persuade the television industry to directly address the public's growing concerns about the negative influence television is having on our children and our country today. Rather than calling for any form of censorship or government restrictions on content, this legislation would encourage industry leaders to act more responsibly in choosing what kinds of programming they produce and when it is aired. The nation's broadcasters once embraced this kind of responsibility in the form of a comprehensive code of conduct, which featured a widely-followed set of baseline programming standards and which showed a special sensitivity to the impact television has on children. This code was abandoned in 1983, and the TPIA would ideally open the door to the reintroduction of a similar set of standards, one that is geared toward making television more family-friendly for 1997 America.

WHAT THE BILL WOULD DO

This proposal builds on the original Television Program Improvement Act of 1990, which created an antitrust exemption for the broadcast and cable industries that allowed them to collaborate on a set of ''voluntary guidelines'' aimed at reducing the threat of violence on television. The TPIA of 1997 would permanently reinstate that antitrust exemption (which expired at the end of 1993) and then broaden it. The new exemption would permit the television industry to collaborate on an expanded set of guidelines designed to address the public's concerns about the broad range of programming—not only violence but also sexual content, vulgar language, and the lack of quality educational programs for children.

WHAT THE BILL WOULD NOT DO

This proposal would not give the government any authority to censor or control in any way what is seen on television. Any guidelines or programming standards the industry chose to adopt would be purely voluntary and could not be enforced by the government in any way or result in any form of economic boycott. Nor would the TPIA result in the ''whitewashing'' of television or prevent networks from showcasing sophisticated, mature-themed works such as ''Schindler's List'' and ''NYPD Blue.'' Last, the television industry could not use the antitrust exemption to fix advertising prices or engage in any form of anticompetitive behavior.

TELEVISION CODE OF CONDUCT BACKGROUND SHEET

THE NAB TELEVISION CODE

The first broadcaster TV code was implemented in 1952, to provide broadcasters with guidelines for meeting their statutory obligation to serve the public interest.

The NAB required all members to follow the code, which was enforced by a committee called the NAB Code Authority. Stations that adhered to the code were permitted to display a seal of approval on screen known as the ''NAB Television Seal of Good Practice.'' Those members that were found to have violated the code could be suspended and denied the ability to display the seal.

The NAB Code was abandoned in 1983 following an antitrust challenge brought by the Reagan Justice Department.

In that case, Justice filed a motion for summary judgement in the D.C. Federal District Court in 1982 challenging three provisions restricting the sale of advertising. These provisions limited: 1) the number of minutes per hour a network or station may allocate to commercials; 2) the number of commercials which could be broadcast in an hour; and 3) the number of products that could be advertised in a commercial. The court ruled that one of the provisions—the multiple product standard—constituted a per se violation of the antitrust laws, and granted Justice's motion for summary judgement on those grounds.

In November 1982, the NAB entered into a consent decree with Justice and agreed to throw out the advertising guidelines being challenged. Then, claiming that the TV Code in general left it vulnerable to antitrust lawsuits, the NAB threw out the entire code in January of 1983.

The programming standards contained in the code were never found to violate any antitrust laws during the code's 31-year existence.

THE FAMILY HOUR CASE

In 1975, after being prodded by FCC Chairman Dick Wiley, the NAB added a family viewing policy to its TV code. This policy said that entertainment programming inappropriate for a general family audience should not be aired between the hours of 7 p.m. and 9 p.m. EST.

In October of 1975, the Writers Guild of America (led by Norman Lear) filed a lawsuit challenging the family viewing policy on First Amendment grounds, alleging that the NAB had been coerced by the government into adopting the policy.

The District Court struck down the family viewing provision in the code in 1976, concluding that FCC Chairman Wiley had engaged in a ''successful attempt . . . to pressure the networks and the NAB into adopting a programming policy they did not wish to adopt.''

However, the court decision did not rule that a voluntary family viewing policy would be unconstitutional, and said that networks were free to implement a family hour policy on their own.

In the end, the District Court's decision was vacated and remanded on appeal in 1979, on the grounds that the District Court was not the proper forum for the initial resolution of a case relating to broadcast regulation. The case was returned to the FCC for judgement, and in 1983 the FCC concluded that the family viewing policy did not violate the First Amendment, ruling that Chairman Wiley's actions amounted to permissible jawboning and not coercion.

No court has ever ruled that a voluntary family hour violates the First Amendment rights of broadcasters or of producers.

THE ORIGINAL ''TELEVISION PROGRAM IMPROVEMENT ACT''

Senator Paul Simon (D–IL) sponsored legislation in 1989 to create a temporary antitrust exemption that would allow the television industry to collaborate on a set of guidelines designed to ''alleviate the negative impact'' of television violence. The exemption had a life of three years.

This legislation was passed by Congress in the waning days of the 1990 session as part of the Judicial Improvements Act (a federal judgeships bill).

When the Simon bill first moved through the Senate in 1989, the Judiciary Committee approved an amendment that would broaden the bill's scope to cover guidelines relating to the glamorization of drug use.

The version passed by the Senate also was broadened to cover sexual content. Senator Jesse Helms (R–NC) succeeded in passing an amendment relating to sexually explicit material by a vote of 91–0.

The language relating to sexual content and the depiction of drug use was stripped from the bill that came out of conference after House Democrats objected to broadening the scope of the exemption beyond violence.

THE INDUSTRY RESPONSE TO THE SIMON BILL

A few months prior to the passage of the Simon bill, the NAB issued new ''voluntary programming principles'' in four areas: children's television, indecency and obscenity, drugs, and violence. These principles were general statements resembling several provisions in the old NAB Code, but they were strictly voluntary and unenforceable.

After the Simon bill passed, the broadcast and cable industries held a few meetings in 1991, but with no discernible results.

As concern about television violence mounted, the networks felt increasing pressure to produce some results. In December of 1992, the major broadcast networks agreed to adopt a new set of joint standards on the depiction of violence.

Although billed as being ''new,'' the networks made clear that these guidelines tracked closely with their own individual

programming standards. The joint guidelines were broadly-worded and did not make any specific statements regarding the time shows with graphic violence should be aired, noting only that the composition of the audience should be taken into consideration.

In June of 1993, the networks took the additional step of agreeing on a set of ''parental advisories'' that would be applied to programs with violent content.

With criticism from the public and Congress continuing to grow, the four major networks and the cable industry announced in February of 1994 that they would conduct separate monitoring studies to measure the level of violence in their programming. The first of these studies was done in 1995.

THE SIMON LEGACY ON VIOLENCE

The results of the Simon legislation could accurately be described as mixed.

On the one hand, the 1996 UCLA violence study suggested that the amount of violence on broadcast television had declined somewhat since it peaked a few years earlier, and industry observers generally acknowledge that primetime series television has become less violent. The UCLA study also found that the networks had taken some steps to reduce the violence in on-air promotions. ''The overall message is one of progress and improvement,'' the UCLA study concluded. ''The overall picture is not one of excessive violence.''

On the other hand, the UCLA study still found that there is still a serious problem with violence on broadcast television. It singled out the high number of violent theatrical movies, five primetime series that ''raised frequent concerns,'' and the disturbing rise of ''reality'' shows (such as Fox's ''When Animals Attack'') that often feature graphic violence.

In addition, the National Television Violence Study, the comprehensive review sponsored by the cable industry, is scheduled to release its 1996 report later this month, and it is generally expected to show that the kinds of violence depicted on both broadcast and cable television still presents a real threat to viewers.

THE CURRENT SITUATION

When asked about reviving a code of conduct, some television industry leaders have expressed concern about potential antitrust lawsuits that might arise.

The Justice Department, however, has issued rulings since the Simon exemption expired that strongly suggest that a voluntary code of conduct would not run afoul of any antitrust laws.

In a ''business review'' letter released in November 1993, the Justice Department told Simon that additional steps the industry took to reduce the threat of violence ''may be likened to traditional standard setting efforts that do not necessarily restrain competition and may have significant procompetitive benefits.''

Justice repeated this finding in another business review letter sent to Senator LIEBERMAN in January 1994 regarding the video game industry's efforts to develop a rating system for violent and sexual content.

Some in the television industry also contend that a code of conduct is unnecessary because the major broadcast networks and most local stations and cable networks all have individual programming standards to which they adhere.

The reality, however, is that few people know that these standards even exist. That's largely because they are often hidden from public view. Of the big four networks, only CBS will release its programming standards to the public. ABC, NBC, and Fox have refused to do so.

By Mr. CRAIG (for himself, Mr. GRAHAM, Mr. D'AMATO, Mr. TORRICELLI, Mr. AKAKA, Mr. MACK, Mr. ALLARD, Mr. THOMAS, Mr. REID, Mr. BREAUX and Mr. WARNER):

S. 472. A bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes; to the Committee on Energy and Natural Resources.

THE PUERTO RICO SELF-DETERMINATION ACT OF 1997

Mr. CRAIG. Mr. President, I am proud to join with my colleague from Florida today in the introduction of the Puerto Rico Self-Determination Act.

In the 104th Congress, I joined as a cosponsor of S. 2019, with a bipartisan effort in the Senate to deal with this issue. I know that some of my colleagues will question the need for Congress to take up this issue. The most common reaction is that we should let Puerto Ricans decide the issue for themselves. The problem with that approach is that there are two parties in that relationship: Congress, due to its constitutional plenary power expressly vested in it by the territorial clause of article IV, section 3, clause 2, on the one hand and the people of Puerto Rico who have U.S. citizenship but are not yet fully self-governing on the other.

When Congress failed to approve legislation to provide a status resolution process in 1991, the Puerto Ricans conducted a status vote, and the commonwealth option was defined on the ballot in the terms most favorable to its approval, to the point that it promised a lot more than Congress could ever approve. Even with the ballot definition that would significantly enhance the current status, the existing commonwealth relationship received less than a majority of the vote. So there is a serious issue of the legitimacy of the current less-than-equal or less-than-full self-governing status, especially given the U.S. assertion to the United Nations in 1953 that Puerto Rico was on a path toward decolonization.

That is why the legislature of Puerto Rico passed Concurrent Resolution 2, on January 23, 1997, requesting Congress to sponsor a vote based on definitions it would be willing to consider, if approved by voters. With timely approval of this legislation, 1997 will be the year Congress provides the framework for the resolution of the Puerto Rican status question, through a three-phase decisionmaking process that will culminate during the second decade of the next century. It will be a process with respect to the right of residents of Puerto Rico to become fully self-governing, based on local self-determination, and, at the same time, recognizes that the United States also has a right of self-determination in its relationship to Puerto Rico.

Consequently, resolution of the status of Puerto Rico should take place in accordance with the terms of a transition plan that is determined by Congress to be in the national interest. Acceptance of such a congressionally approved transition plan by the qualified voters of Puerto Rico in a free and informed act of self-determination will be required before the process leading to change of the present status will commence.

The bill that I am introducing today, joined in by nine other colleagues, and my colleague from Florida, creates an evenhanded process that can lead to either separate sovereignty or statehood, depending on whether Congress and the residents of Puerto Rico approve the terms of the implementation of either of the two options of full self-government. Preservation of the current status also will be an option on the plebiscite ballot. However, the existing unincorporated territory status, including the commonwealth structure of local government, is not a constitutionally guaranteed form of self-government. Thus, until full self-government is achieved for Puerto Rico, there will be a need for periodic self-determination procedures as provided in this legislation.

Whichever new status proves acceptable to Congress and the people of Puerto Rico, final implementation of the new status could be subject to approval by Congress and the people of Puerto Rico, at such time in the first or second decade of the next century as a transition process is completed.

This explanation of the bill should dispel any concern in this body or the House that empowerment of the people of Puerto Rico to exercise the right of self-determination will impair the ability of Congress to work its will regarding the status of Puerto Rico.

Mr. President, in 1956, 4 years after Congress and the people of Puerto Rico approved the Constitution of the Commonwealth of Puerto Rico, the U.S. Supreme Court considered the constitutional nature and status of unincorporated territories such as Puerto Rico. In its opinion in the case of *Reid* v. *Covert* (354 U.S. 1), the Supreme Court confirmed that the territorial clause of the U.S. Constitution—article IV, section 3, clause 2—confers on Congress the power, in the court's words, ''. . . to provide rules and regulations to govern temporarily territories with wholly dissimilar traditions and institutions . . .''

While the Reid case was not a territorial status decision, it is significant that the Supreme Court's opinion in this case recognizes the temporary nature of the unincorporated territory status defined by the high court in an earlier line of status decisions known as the Insular Cases. For even though Puerto Ricans have had statutory U.S. citizenship since 1917, and local constitutional self-government similar to that of the States since 1952, it has become quite clear that U.S. citizens residing in an unincorporated territory cannot become fully self-governing in the Federal constitutional system on the basis of equality with their fellow

citizens residing in the States of the Union.

Specifically, unincorporated territorial status with the commonwealth structure for local self-government cannot be converted into a permanent form of union with constitutionally guaranteed U.S. citizenship, or equal legal and political rights with citizens in the States including voting rights in national elections and representation in Congress. At the same time, Congress cannot abdicate, divest or dispose of its constitutional authority and responsibility under the territorial clause or be bound by a statutory conferral of special rights intended to make the citizens of a territory whole for the lack of equal rights under the Federal constitution.

The concept of an unalterable bilateral pact between Congress and the territories is politically implausible and constitutionally impermissible. A mutual consent based relationship would amount to a local veto power over acts of Congress and would give the territories rights and powers superior to those of the States. Indeed, I am not certain what the results would be if the States were given the option of trading in representation in Congress and the vote in Presidential elections for the power to veto Federal law, but it is a prospect inconsistent with American federalism.

Thus, altering our constitutional system to attempt to accommodate the unincorporated territories in this way would be a disproportionate, inequitable, and politically perverse remedy for the problems the territories are experiencing due to the lack of voting in Federal elections or representation in Congress.

Moreover, the concept of enhancing a less-than-equal status so that the disenfranchisement of U.S. citizens in the Federal political proces becomes permanent would arrest the process of self-determination and decolonization that began when the local constitution was established by Congress and the voters in the territory in 1952.

It would reverse the progress that has been made toward full self-government to attempt to transform a temporary territorial status into a permanent one, although that is precisely what has been attempted by some in Puerto Rico for the last 40 years. Some in Congress have facilitated and promoted the fatally flawed notion that Puerto Rico could become a nation within a nation—if only at the level of partisan politics while being careful never to formally accept or commit that it could be constitutionally sustained.

In reality, Puerto Rico is capable of becoming a State or a separate nation, or of remaining under the territorial clause if that is what the people and Congress prefer. But a decision to retain territorial status must be based on acceptance that this is a temporary status under the territorial clause, which can lead to full self-government outside the territorial clause only when Congress and the voters determine to pursue a recognized form of separate nationhood or full incorporation into the Federal political process leading to statehood.

Thus, the question becomes one of how long can a less-than-equal and non-self-governing status continue now that Puerto Rico has constitutional self-government at the local level and has established institutions and traditions which are based upon, modeled after, and highly compatible with those of the United States? How long is temporary when we consider that Puerto Rico has been within U.S. sovereignty and the U.S. customs territory for a century?

The proposals in the past that the self-determination process be self-executing may have had the appearance of empowering the people to determine their destiny. However, any attempt to bind Congress and the people to a choice the full effect and implications of which cannot be known at the time the initial choice is made is actually a form of disempowerment. For self-determination to be legitimate it must be informed, and a one-stage binding and self-executing process prevent both parties to the process—Congress and the people—from knowing what it is they are approving.

Any process which does not enable Congress and the voters to define the options and approve the terms for implementation through a democratic process which involves a response by each party to the freely expressed wishes of the other as part of an orderly self-determination procedure is a formula for stagnation under the status quo.

That is why the legislation defining a self-determination process for Puerto Rico must be based on the successful process Congress prescribed in 1950 through which the current constitution was approved by Congress and the voters in 1952. That process empowered the people and Congress to approve the process itself, then approve the new relationship defined through the process.

As explained below, this is the most democratic procedure possible given the complicated dilemma faced by the United States and Puerto Rico. For only when the people express their preference between status options defined in a manner acceptable to Congress can the United States inform the people of the terms under which the preferred option could be accepted by Congress. This would empower the people to then engage in an informed act of self-determination, and it would empower Congress to define the national interest throughout the process.

In the 104th Congress, S. 2019, was a response to Concurrent Resolution 62, adopted by the Legislature of Puerto Rico on December 14, 1994, and directed to the U.S. Congress, requesting a response to the results of a 1993 plebiscite conducted in Puerto Rico under local law. See, CONGRESSIONAL RECORD S9555–S9559, August 2, 1996. Like a similar locally managed vote in 1967, the 1993 vote did not resolve the question of Puerto Rico's future status, in large part because of pervasive confusion and misinformation about the legal nature of Puerto Rico's current status.

The problem of chronic nonproductive debate in Puerto Rico and in Congress with respect to definition of the current status of Puerto Rico, as well as the options for change, is examined carefully in House Report 104–713, part 1, July 26, 1996, pp. 8–23, 29–36. In addition to responding to Resolution 62 by introducing legislation addressing the subject matter of that request by the elected representatives of the residents of Puerto Rico, S. 2019 was intended to complement and support the efforts of a bipartisan group of knowledgeable Members in the House to address the troubling issues raised in House Report 104–713, part 1.

S. 2019 was a companion measure to H.R. 3024, the United States-Puerto Rico Political Status Act, which was the subject of House Report 104–713, part 1. Although H.R. 3024 was scheduled for a vote by the House in the last days of the 104th Congress, and overwhelming approval was expected, a vote was delayed due to ancillary issues. However, important amendments to H.R. 3024 were agreed upon by participants in the House deliberations, and some of these should be incorporated in any measure to be considered in the 105th Congress.

For example, because the debate in the 104th Congress and in the 1996 elections in Puerto Rico clarified certain fundamental issues regarding definition of status options, it may now be appropriate to include a three-way array of ballot options in any future status referendum. Thus, commonwealth, independence, and statehood should appear side-by-side on the ballot the next time there is a status vote in Puerto Rico.

In the 104th Congress I concurred in the bipartisan position that developed in the House deliberations in support of a two-part ballot, separating the question of preserving the current unincorporated territory status from the two options for change to a permanent form of full self-government—separate sovereignty or statehood. However, the agreed upon House bill amendments and this new Senate bill make it clear that separate nationality or statehood remain the two paths to full self-government, and that commonwealth is a territorial clause status. I believe this approach will result in a free and informed act of self-determination by the residents based on accurate definitions.

This will simplify the structure of the ballot, and make it all the more imperative that the definitions of status options also remain as simple and straightforward as possible. All the options presented on the ballot in a future status referendum must be based on the objective elements of each status option under applicable provisions

of the U.S. Constitution and international law as recognized by the United States.

In this connection, it must be noted that in the last four decades every attempt by Congress and territorial leaders to define the status options and establish a procedure to resolve the status question has failed. The last process which produced a tangible result and advanced Puerto Rico's progress toward self-government was that which Congress established in 1950 to allow the residents of Puerto Rico to organize local constitutional government.

Thus, instead of trying to revisit battles of the past over any of the bills considered by Congress in 1990 and 1991, a better model for taking the next step in the self-determination process for Puerto Rico is the one employed by Congress to authorize and establish the current commonwealth structure for local self-government based on consent of the voters. The process established under Federal law in 1950 was based on a three-stage process through which the proposed new form of self-government was defined, approved and implemented with consent of both the United States and the residents of the territory at each stage.

In the successful 1950 process, Congress set forth in U.S. Public Law 600 an essentially three-phase procedure as follows:

Congress acted first, defining a framework under Federal law for instituting constitutional self-government over local affairs. An initial referendum was conducted in which the voters approved the terms for instituting constitutional self-government as defined by Congress.

A second referendum was conducted on the proposed constitution and the President of the United States was required under Public Law 600 to transmit the draft constitution approved in that second referendum to Congress with his findings as to its conformity with the criteria defined by Congress.

Congress approved final implementation of the new local constitution with amendments which were accepted by the locally elected constitutional convention and implemented on that basis by proclamation of the Governor.

We should adopt a similar procedure for taking the next step to complete the process leading to full self-government which began with enactment of Public Law 600 in 1950. Such a three-stage process would be one through which:

First, Congress defines the procedures and options it will accept as a basis for resolving the status question. In an initial referendum the voters then approve a status option they prefer.

Second, the President transmits a proposal with recommended terms for implementing the choice of the voters consistent with the criteria defined by Congress, and upon approval by Congress a second referendum is held to determine if the voters accept the terms upon which Congress would be willing to implement the new status.

Third, both Congress and the voters must act affirmatively to approve final implementation once the terms of the transition plan have been fulfilled.

This would track the successful model of Public Law 600, except that it improves upon it by requiring Congress and the voters to approve final implementation. This is more democratic than the procedure followed in 1952, in which Congress amended the Constitution and the revisions were accepted by the constitutional convention and put into effect by proclamation of the Governor.

To ensure that there is no ambiguity about the new relationship as there was after the current local constitution was implemented in 1952, the Congress and the voters themselves, again, should have the last word on implementation. This prevents the local political parties from attempting to exploit ambiguity and convert it into a political platform, as has been the case with the current commonwealth structure for local self-government.

In this regard, I note that there are those who continue to suggest that definitions of status options for a political status referendum should be based upon the formulations adopted by the political parties in Puerto Rico. This approach is urged in the name of consensus building. However, the history of attempts to address this problem—including the approval of H.R. 4765 by the House in 1990—makes it clear that the illusion of consensus has been achieved on status definitions in the past only by sacrificing the constitutional, legal, and political integrity of the process.

Recognizing the principle of consent by the qualified voters through an act of self-determination to retain the current status or seek change under definitions acceptable to Congress is very different from the idea that legislation to make self-determination possible cannot be enacted unless there is consent by local political parties to both the form and content of what is proposed. The qualified voters of Puerto Rico, not the local political parties, are Puerto Rico for purposes of the self-determination process.

No sleight-of-hand gimmicks or disclaimers disguised as good-faith commitments will substitute for intellectually honest status definitions. We must approve legislation that makes it clear that Congress will propose a transition plan on terms it deems to be in the best interests of the United States, and when it does the people qualified to vote in Puerto Rico will have to decide if the terms prescribed by Congress are acceptable.

If the terms for a change of status defined by Congress are not acceptable to the voters, then the right of self-determination can be exercised thereafter in an informed manner based on that outcome. There should be no stated or implied commitment to a moral obligation to consider any status definition—no matter who might propose it—which is deemed unconstitutional or unacceptable to Congress. That would be misleading and dishonest, and no clever caveat could redeem such a breach of the institutional integrity and constitutional duty of the Congress.

In 1997, Congress must take responsibility for informing the people of Puerto Rico of what the real options are based on congressional definition of the status formulations which Congress determines to be consistent with the national interest and the right of self-determination of both the United States and the people of Puerto Rico. This represents an opportunity and challenge as we seek to define our Nation in the next century, and there is an obligation for all concerned to ensure that the voters in Puerto Rico are given an opportunity for a free and informed act of self-determination.

If we accomplish that, then whatever the outcome may be will vindicate 100 years of democratization and development for Puerto Rico through its evolving relationship with the United States and the self-determination of its people.

Mr. GRAHAM. Mr. President, I rise today to introduce the Puerto Rico Self Determination Act of 1997. I am proud to cosponsor this important legislation with Senator LARRY CRAIG and a bipartisan coalition of eight other distinguished colleagues.

Mr. President, on December 10, 1898, through the Treaty of Paris that ended the Spanish-American War, Puerto Rico became part of the United States. Next year marks the 100th anniversary of this union.

Mr. President, there is no better way for us to commemorate this special occasion than to give the U.S. citizens of Puerto Rico the same right that their counterparts in all 50 States and the District of Columbia enjoy—the right to choose their political destiny.

In 1917, the Jones Act gave the people of Puerto Rico U.S. citizenship, but it was less than complete. Though they are citizens, Puerto Ricans can only vote in Presidential elections if they are registered in a State or the District of Columbia. They have a delegate in Congress—a position currently held by Congressman CARLOS ROMERO-BARCELÓ—who does not have voting privileges.

But this lack of political rights is not due to a lack of communication. Throughout their history as part of the United States, Puerto Ricans have expressed their desire to achieve full political rights. They have on various occasions let Congress know of their desire to be full participants in our democracy. And their actions speak even louder than their words.

Puerto Ricans have contributed in all aspects of American life,—in the arts, in sciences, in sports, and especially in service to the Nation. Their record of service to this country speaks for itself. In World War II alone, more than

65,000 Puerto Rican men and women served in the Armed Forces. In Vietnam, over 60,000 served. The first United States soldier killed in Somalia was Puerto Rican. One of the airmen shot down over Libya in 1986 was Puerto Rican. And it was a soldier from Puerto Rico who sounded the alarm—and saved lives—in the 1983 bombing of the Marine barracks in Beirut.

I recently received a letter from retired U.S. Army Lt. Col. Dennis Freytes, a Puerto Rican who resides in Orlando. He states in his letter:

As an American Puerto Rican, who has proudly served our country, I think that Puerto Rico's political status should be promptly resolved, so we don't have second class citizens in our democratic form of government.

Puerto Ricans voluntarily joined our Armed Forces and have given their lives in defense of our country and democratic way of life. I emphasize ''our'' because U.S. citizens must have the same rights no matter where they were born or where they choose to live.

In 1996 and 1997, the Legislature of Puerto Rico, the democratically elected representatives of 3.7 million U.S. citizens, overwhelmingly approved resolutions requesting that the Congress and the President of the United States respond to their legitimate democratic aspirations. They requested that a plebiscite be held not later than December 31, 1998, almost exactly 100 years after Puerto Rico gained territorial status. There have been similar referendums in the past, but those were locally mandated—Congress gave no direction as to how, if at all, the results might affect Puerto Rico's political status.

It is time for the people of Puerto Rico to have a referendum process which defines the choices in a manner which are constitutionally valid, and that Congress is willing to uphold.

Mr. President, I want to particularly stress this latter point. Congress needs to understand that if it passes this bill—and I share the hope of my friend and colleague, Senator CRAIG that we will and that we will do so expeditiously—it is assuming an important political, and moral obligation to the American citizens of Puerto Rico.

This is not a bill without significant consequences. If Puerto Ricans ask to remain a Commonwealth, we need to respect their wishes. If they want to become a State, we must begin the process of incorporation. And if they desire independence, we must take steps to meet that request. To do otherwise would be to seriously undermine our credibility with the 3.7 million citizens of Puerto Rico and the nearly 300 million residents of Latin America.

Mr. President, for the last 100 years, the United States had given Puerto Ricans status as citizens but withheld some of the rights, privileges, and responsibilities that come with that privilege. It is time for that to end. Puerto Ricans do not deserve second-class political status. For all that they have done to enrich our culture and defend our Nation from external threats, they have earned the right to decide their own political destiny.

Mr. President, since the early 1900's, self-determination has been a cornerstone principle of our Nation's foreign policy.

As we approach the century mark of the union between Puerto Rico and the United States, this bill will serve as a model of American democracy at its best—providing citizens with their right to decide their own futures.

By Mr. BOND (for himself and Mr. NICKLES):

S. 473. A bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

THE INDEPENDENT CONTRACTOR TAX REFORM ACT OF 1997

Mr. BOND. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 473

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Independent Contractor Tax Reform Act of 1997''.

SEC. 2. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

''SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—For purposes of this title, if the requirements of subsections (b), (c), and (d), or the requirements of subsections (d) and (e), are met with respect to any service performed by any individual, then with respect to such service—

''(A) the service provider shall not be treated as an employee,

''(B) the service recipient shall not be treated as an employer,

''(C) the payor shall not be treated as an employer, and

''(D) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

''(2) AVAILABILITY OF SAFE HARBOR NOT TO LIMIT APPLICATION OF OTHER LAWS.—Nothing in this section shall be construed—

''(A) as limiting the ability of a service provider, service recipient, or payor to apply other applicable provisions of this title, section 530 of the Revenue Act of 1978, or the common law in determining whether an individual is not an employee, or

''(B) as a prerequisite for the application of any provision of law described in subparagraph (A).

''(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO THE SERVICE RECIPIENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

''(1) has the ability to realize a profit or loss,

''(2) incurs unreimbursed expenses which are ordinary and necessary to the service provider's industry and which represent an amount at least equal to 2 percent of the service provider's adjusted gross income attributable to services performed pursuant to 1 or more contracts described in subsection (d), and

''(3) agrees to perform services for a particular amount of time or to complete a specific result or task.

''(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) has a principal place of business,

''(2) does not primarily provide the service at a single service recipient's facilities,

''(3) pays a fair market rent for use of the service recipient's facilities, or

''(4) operates primarily with equipment not supplied by the service recipient.

''(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the service provider are performed pursuant to a written contract between such service provider and the service recipient, or the payor, and such contract provides that the service provider will not be treated as an employee with respect to such services for Federal tax purposes.

''(e) BUSINESS STRUCTURE AND BENEFITS REQUIREMENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) conducts business as a properly constituted corporation or limited liability company under applicable State laws, and

''(2) does not receive from the service recipient or payor benefits that are provided to employees of the service recipient.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a) or 6041A(a) with respect to a service provider, then, unless the failure is due to reasonable cause and not willful neglect, the safe harbor provided by this section for determining whether individuals are not employees shall not apply to such service recipient or payor with respect to that service provider.

''(2) BURDEN OF PROOF.—For purposes of subsection (a), if—

''(A) a service provider, service recipient, or payor establishes a prima facie case that it was reasonable not to treat a service provider as an employee for purposes of this section, and

''(B) the service provider, service recipient, or payor has fully cooperated with reasonable requests from the Secretary or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

''(3) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, the references to 'service provider' in subsections (b) through (e) may include such entity, provided that the written contract referred to in subsection (d) is with such entity.

''(g) DETERMINATIONS BY THE SECRETARY.—For purposes of this title—

''(1) IN GENERAL.—

''(A) DETERMINATIONS WITH RESPECT TO A SERVICE RECIPIENT OR A PAYOR.—A determination by the Secretary that a service recipient or a payor should have treated a

service provider as an employee shall be effective no earlier than the notice date if—

''(i) the service recipient or the payor entered into a written contract satisfying the requirements of subsection (d),

''(ii) the service recipient or the payor satisfied the applicable reporting requirements of section 6041(a) or 6041A(a) for all taxable years covered by the agreement described in clause (i), and

''(iii) the service recipient or the payor demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(B) DETERMINATIONS WITH RESPECT TO A SERVICE PROVIDER.—A determination by the Secretary that a service provider should have been treated as an employee shall be effective no earlier than the notice date if—

''(i) the service provider entered into a contract satisfying the requirements of subsection (d),

''(ii) the service provider satisfied the applicable reporting requirements of sections 6012(a) and 6017 for all taxable years covered by the agreement described in clause (i), and

''(iii) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(C) REASONABLE CAUSE EXCEPTION.—The requirements of subparagraph (A)(ii) or (B)(ii) shall be treated as being met if the failure to satisfy the applicable reporting requirements is due to reasonable cause and not willful neglect.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting any provision of law that provides an opportunity for administrative or judicial review of a determination by the Secretary.

''(3) NOTICE DATE.—For purposes of this subsection, the notice date is the 30th day after the earlier of—

''(A) the date on which the first letter of proposed deficiency that allows the service provider, the service recipient, or the payor an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

''(B) the date on which the deficiency notice under section 6212 is sent.

''(h) DEFINITIONS.—For the purposes of this section—

''(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs a service for another person.

''(2) SERVICE RECIPIENT.—Except as provided in paragraph (4), the term 'service recipient' means the person for whom the service provider performs such service.

''(3) PAYOR.—Except as provided in paragraph (4), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipient does not pay the service provider.

''(4) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity in which the service provider owns in excess of 5 percent of—

''(A) in the case of a corporation, the total combined voting power of stock in the corporation, or

''(B) in the case of an entity other than a corporation, the profits or beneficial interests in the entity.

''(5) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to the operation of the service provider's trade or business.

''(6) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

''(A) the office is the location where the service provider's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the service provider, and

''(B) the office is necessary because the service provider has no other location for the performance of the essential administrative or management activities of the business.

''(7) FAIR MARKET RENT.—The term 'fair market rent' means a periodic, fixed minimum rental fee which is based on the fair rental value of the facilities and is established pursuant to a written agreement with terms similar to those offered to unrelated persons for facilities of similar type and quality.''

(b) CLARIFICATION OF RULES REGARDING EVIDENCE OF CONTROL.—For purposes of determining whether an individual is an employee under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), compliance with statutory or regulatory standards shall not be treated as evidence of control.

(c) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

''Sec. 3511. Safe harbor for determining that certain individuals are not employees.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by, and the provisions of, this section shall apply to services performed after the date of enactment of this Act.

(2) DETERMINATIONS BY SECRETARY.—Section 3511(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to determinations after the date of enactment of this Act.

(3) SECTION 530(d).—The amendment made by subsection (c) shall apply to periods ending after the date of enactment of this Act.

By Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HUTCHINSON, Mr. GRASSLEY, and Mr. JOHNSON):

S. 474. A bill to amend sections 1081 and 1084 of title 18, United States Code; to the Committee on the Judiciary.

THE INTERNET GAMBLING PROHIBITION ACT OF 1997

Mr. KYL. Mr. President, I rise to introduce the Internet Gambling Prohibition Act of 1997. It will outlaw gambling on the Internet. I believe it will protect children from logging on to the Internet and being exposed to activities that are normally prohibited to them. And for those people with a gambling problem, my bill will make it harder to gamble away the family paycheck.

Gambling erodes values of hard work, sacrifice, and personal responsibility. Although the social costs of gambling are difficult to quantify, research indicates they are potentially staggering. Gambling is a growing industry in the United States, with revenues approaching $550 billion last year—three times the revenues of General Motors Corp. In 1993, more Americans visited casinos than attended a major league baseball game.

The problem can only grow worse with online casinos. Now it is no longer necessary to go to a casino or store where lottery tickets are sold. Anyone with a computer and a modem will have access to a casino: Internet users can access hundreds of sites for blackjack, craps, roulette, and sports betting. Gambling addiction is already on the rise. Online gambling will only increase the problem.

Why is this bill necessary? It dispels any ambiguity by making clear that all betting, including sports betting, is illegal. Currently, nonsports betting is interpreted as legal. The bill also clarifies the definition of bets and wagers. This ensures that those who are gambling cannot circumvent the law. For example, virtual gaming businesses have been known to offer prizes instead of money, in an attempt to evade the law.

Additionally, my bill clarifies that Internet access providers are covered by the law. As the National Association of Attorneys General [NAAG] task force on Internet Gambling reported, ''this is currently the most important section to State and local law enforcement agencies, because it provides a civil enforcement mechanism.'' FCC-regulated carriers notified by any State or local law enforcement agency of the illegal nature of a site are required to discontinue services to the malfeasor. NAAG believes that this can be a very effective deterrent. The bill includes interactive computer-service providers among those entities required to discontinue such service upon notice. Federal, State, and local law enforcement entities are explicitly authorized to seek prospective injunctive relief against continued use of a communications facility for purposes of gambling.

The Internet Gambling Prohibition Act makes explicit the intent of Congress to create extraterritorial jurisdiction regarding Internet gambling activities. Too often, illicit operators of virtual casinos set up shop in friendly jurisdictions beyond the direct application of U.S. law. It will also require the DOJ to report on the difficulties associated with enforcing the statute. Finally, it places some burden on the bettor.

The Internet has great potential to promote both educational opportunities and business expansion in this country. At the same time, the Internet is fast becoming a place where inappropriate activities such as gambling, pornography, and consumer fraud thrive. Recently, many businesses have welcomed law enforcement's involvement in cracking down on consumer fraud. We must find a constitutional way to deal with the other problems raised by this revolution in communications. I believe that it is possible to impose some conditions, as we have in other areas, without violating free speech rights.

There is growing support for changes to current law. As I mentioned, the NAAG has a task force on Internet gambling, and the report of the task

force—authored by Attorneys General Dan Lungren and Hubert Humphrey—called for a legislative remedy to stem the tide of gambling electronically. NAAG has endorsed my bill.

Mr. President, the Internet Gambling Prohibition Act of 1997 ensures that the law will keep pace with technology and keep gambling off the Internet. I urge my colleagues to pass the bill.

● Mr. GRAHAM. Mr. President, I join my friend and colleague from Arizona, Senator KYL, in cosponsoring the Internet Gambling Prohibition Act introduced today, which is intended to address a growing problem in the United States as our technology continues to modernize our modes of communication.

This legislation is an attempt to take a step forward in meeting the needs of State law enforcement organizations and officials.

With the development of the Internet World Wide Web, the ability of Americans to access information for their personal and professional use has taken a quantum leap. It is safe to say that the Internet is one of the more important technological advances of the late 20th century with respect to the influence that the technology can have on the lives of so many Americans.

The number of American Internet users has grown from 1 million in 1992 to over 50 million today. This number is expected to grow to several hundred million users by the year 2000. As we bring Internet technology into our schools, we will see greater use of the Internet particularly among our youth, many who are already adept at using their home computers and surfing the Internet for educational and recreational purposes.

With this convenience and easy access to a variety of information sources, many of which are of great educational, cultural and professional value, come certain expected problems. The one that I want to speak to briefly is that of the increasing use of the Internet for the purposes of gambling.

The National Association of Attorney Generals has recently studied the problem of Internet gambling. In a 1996 report, ''Gambling on the Internet,'' the Association cited the following:

> The availability of gambling on the Internet * * * threatens to disrupt each State's careful balancing of its own public welfare and fiscal concerns, by making gambling available across State and national boundaries, with little or no regulatory control.
>
> There are literally hundreds of gambling-related sites on the Internet. Dozens more are being added monthly.

Let me make several key distinctions that must be understood with respect to this legislation.

First, it is important to note that the number of actual online gambling operations are few at this time due to electronic commerce and technical limitations. Advancements in technology, however, make such shortcomings temporary. Only 6 months ago, there were only 17 active Internet gambling sites on the World Wide Web. Today, there are over 200. And, today, there are hundreds of advertisements for gambling as well as informational how-to sites on the Internet. In short, the Internet's ability to serve as an information conduit for the gambling industry has been recognized.

Second, States have historically been the primary regulator of gambling activities. However, the widespread use of the Internet and its potential to serve as a conduit of gambling activities across national and State borders, serves to undermine States' regulatory control. Our legislation is not intended to disrupt this prerogative, but rather to assist States' ability to enforce its own gambling laws.

Finally, the legislation would not hold Internet access providers—such as America Online—liable for gambling activities that occur on the Internet. However, the Internet access providers are required, once notified by a State or law enforcement agency of the illegal activity, to discontinue Internet services to the malfeasor.

Mr. President, there is growing awareness of the importance of this issue in my State of Florida. The attorney general of the State of Florida wrote me on February 17, 1997, urging strong support of this legislation. I am committed to providing strong support in the Congress for Florida law enforcement concerns.

It is timely and necessary for the Congress to assist States on this growing problem which undermines States' jurisdiction and control. We should support the efforts of our State and local law enforcement officials so that they can prevent the growth of activities which are illegal in that State.

I thank my colleague from Arizona for his work in drafting this important legislation. I look forward to working with him this year in support of passage of this bill.

Mr. President, I ask my colleagues in the Senate to join us in supporting this measure.●

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. D'AMATO, and Mr. MOYNIHAN):

S. 475. A bill to amend the Internal Revenue Code of 1986 to clarify the excise tax treatment of draft cider; to the Committee on Finance.

TAX TREATMENT OF HARD APPLE CIDER LEGISLATION

● Mr. JEFFORDS. Mr. President, I am introducing tax legislation designed to increase opportunities for the apple industry in the United States. I am pleased that Senators LEAHY, D'AMATO, and MOYNIHAN are joining me as original cosponsors of the bill.

Our bill clarifies the excise tax treatment of fermented apple cider. Current Federal tax law unfairly taxes fermented apple cider at a much higher rate than beer despite the two beverages similar alcohol levels. Currently, fermented apple cider, commonly known as draft cider, is subject to a tax of $1.07 per wine gallon, despite its alcohol level. This bill lowers the excise tax on draft cider containing not more than 7 percent alcohol to equal the beer tax rate of 22.6 cents per gallon.

I believe this small tax change would allow draft cider producers to compete more fairly in the market with comparable beverages. As draft cider becomes more competitive the market will likely grow. This will greatly benefit the apple growers throughout this Nation, by expanding the use and need for their product.

The production of draft hard cider comes from apples that are culls, processing apples or apples that are not usable in the fresh market. The conversion of culled apples into high value processed products such as draft cider is important to growers as well as to processors.

Cider and other apple byproducts are important to Vermont's economy, providing a market for otherwise unmarketable fruit. Of Vermont's average annual crop of 1.1 million bushels, approximately 20 percent, or 220,000 bushels, are graded out as culls, or processing apples. Apple production has a long history in Vermont, and is an integral part of agriculture in our State as it is in many States.

Many States have recognized the potential benefits to their apple farmers by lowering the tax on draft cider to equal the beer tax rate. State Departments of Agriculture, farm bureaus, and representatives from the apple industry across this Nation have voiced their support for lowering the cider tax rate.

This bill that I introduce today is similar to legislation that I introduced along with my friend from Vermont, Senator LEAHY, and my colleagues from New York in the last Congress. The same bill was successful in the Senate last Congress as part of the Small Business Job Protection Act of 1996, H.R. 3448. Unfortunately, the language was not included in the conference report of H.R. 3448.

Mr. President, it is my hope that this legislation will again pass in the Senate and be signed by the President. I ask my colleagues to support this legislation.●

● Mr. LEAHY. Mr. President, I am pleased to join my friend from Vermont, Senator JEFFORDS, in introducing tax legislation designed to stimulate the apple industry in the United States. I am pleased that Senators D'AMATO and MOYNIHAN are joining me as original cosponsors of the bill.

Our bill revises the Federal excise tax on fermented apple cider, more commonly known as draft cider, to beer tax rates. As one of the senior members of the Senate Agriculture Committee, I believe this small tax change will be of great benefit to cider makers and apple growers across the country.

Draft cider is one of the oldest categories of alcoholic beverages in North America. Back in colonial times, nearly every innkeeper served draft cider to

his or her patrons during the long winter. In fact, through the 19th Century, beer and draft cider sold equally in the United States.

Recently, draft cider has made a comeback in the United States and around the world. Our tax law, however, unfairly taxes draft cider at a much higher rate than beer despite the two beverages sharing the same alcohol level and consumer market. This tax treatment, I believe, creates an artificial barrier to the growth of draft cider. Our legislation will correct this inequity.

Present law taxes fermented cider, regardless of its alcohol level, as a wine at a rate of $1.07 per gallon. Our bill would clarify that draft cider containing not more than 7 percent alcohol and marketed in various size containers would be taxed at the beer rate of 22.6 cents per gallon. I believe this tax change would allow draft cider producers to compete fairly with comparable beverage makers. As draft cider grows in popularity, apple growers around the nation should prosper because draft cider is made from culled apples, the least marketable apples.

The growth of draft cider should convert these least marketable apples, which account for about 20 percent of the entire U.S. apple production, into a high value product, helping our struggling apple growers. Indeed, I have received letters from officials at state agriculture departments from across the nation—Arizona, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Vermont and Virginia—supporting the taxing of draft cider at the beer rate because this change would allow apple farmers in their States to reap the benefits of an expanded culled apple market.

I have also heard from the Northeast McIntosh Apple Growers Association, the New York Apple Association, the New England Apple Council and many apple farmers, processors and cider producers that support revising the excise tax on draft cider.

This bill is identical to legislation I introduced with Senators JEFFORDS, D'AMATO and MOYNIHAN in the last Congress. That bill passed the Senate as part of the Small Business Job Protection Act of 1996, H. R. 3448, but was not included in the conference report on H.R. 3448. I am hopeful that with the leadership of Senators JEFFORDS, D'AMATO and MOYNIHAN, we can enact into law this small tax change that will have a large positive impact on the Nation's apple industry.

I urge my colleagues to support this legislation.●

By Mr. HATCH (for himself, Mr. BIDEN, Mr. STEVENS, Mr. GREGG and Mr. KOHL):

S. 476. A bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000; to the Committee on the Judiciary.

BOYS AND GIRLS CLUBS OF AMERICA LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce a measure to further the commitment of the Republican Congress to support the expansion of the Boys and Girls Clubs of America, one of the best examples of proven youth crime prevention. I am pleased to be joined in introducing this bill by a bipartisan group of Senators, including Senator BIDEN, the ranking Democrat on the Youth Violence Subcommittee, Senator STEVENS, the chairman of the Senate Appropriations Committee, Senator GREGG, the chairman of the Commerce, Justice, State Appropriations Subcommittee, and Senator KOHL, who serves on the Judiciary Committee.

Our legislation addresses our continuing initiative to ensure that, with Federal seed money, the Boys and Girls Clubs of America are able to expand to serve an additional 1 million young people through at least 2,500 clubs by the year 2000. The dedication of all of these Members demonstrates our commitment to both authorize and fund this effort.

Last year, in a bipartisan effort, the Republican Congress enacted legislation I authored to authorize $100 million in Federal seed money over 5 years to establish and expand Boys and Girls Clubs in public housing and distressed areas throughout our country. With the help of the Appropriations Committee, we have fully funded this initiative.

The bill we are introducing today streamlines the application process for these funds, and permits a small amount of the funds to be used to establish a role model speakers' program to encourage and motivate young people nationwide.

It is important to note that what we are providing is seed money for the construction and expansion of clubs to serve our young people. This is bricks and mortar money to open clubs, and after they are opened they will operate without any significant Federal funds. In my view, this is a model for the proper role of the Federal Government in crime prevention. The days are over when we can afford vast never-ending federally run programs. According to a GAO report last year, over the past 30 years, Congress has created 131 separate Federal programs, administered by 16 different agencies, to serve delinquent and at-risk youth. These programs cost $4 billion in fiscal year 1995. Yet we have not made significant progress in keeping our young people away from crime and drugs.

What we can and must afford is short-term, solid support for proven private sector programs like the Boys and Girls Clubs that really do make a difference. Boys and Girls Clubs are among the most effective nationwide programs to assist youth to grow into honest, caring, involved, and law-abiding adults.

We know that Boys and Girls Clubs work. Researchers at Columbia University found that public housing developments in which there was an active Boys and Girls Club had a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime. Members of Boys and Girls Clubs also do better in school, are less attracted to gangs, and feel better about themselves.

Distinguished alumni of Boys and Girls Clubs include role models such as actor Denzel Washington, basketball superstar Michael Jordan, and San Francisco 49ers quarterback Steve Young.

More important, however, are the uncelebrated success stories—the miracles performed by Boys and Girls Clubs every day. At a Judiciary Committee hearing today, we have some of these miracles with us. Amador Guzman, from my State of Utah, told us how he believes the club in his neighborhood saved his life, by keeping him from gangs, drugs, and violence.

The reason Boys and Girls Clubs work, and the Republican Congress wants to do more for them is because they are locally run, and depend mostly on community involvement for their success.

Never have our youth had a greater need for the positive influence of Boys and Girls Clubs, and never has the work of the clubs been more critical. Our young people are being assaulted from all sides with destructive messages. For instance, drug use is on the rise. Recent statistics reconfirm that drugs are ensnaring young people as never before. Overall drug use by youth ages 12 to 17 rose 105 percent between 1992 and 1995, and 33 percent between 1994 and 1995; 10.9 percent of our young people now use drugs on a monthly basis, and monthly use of marijuana is up 37 percent, monthly use of LSD is up 54 percent, and monthly cocaine use by youth is up 166 percent between 1994 and 1995.

Our young people are also being assaulted by gangs. By some estimates, there are more than 3,875 youth gangs, with 200,000 members, in the Nation's 79 largest cities, and the numbers are going up. Even my State of Utah has not been immune from this scourge. In Salt Lake City, since 1992, the number of identified gangs has increased 55 percent, from 185 to 288. The number of gang members has increased 146 percent, from 1,438 to 3545; and the number of gang-related crimes has increased a staggering 279 percent, from 1741 in 1992 to 6611 in 1996. Shockingly, 208 of these involved drive-by shootings.

Every day, our young people are being bombarded with cultural messages in music, movies, and television that undermine the development of core values of citizenship. Popular culture and the media glorify drug use, meaningless violence, and sex without commitment.

The importance of Boys and Girls Clubs in fighting drug abuse, gang recruitment, and moral poverty cannot

be overstated. The clubs across the country are a bulwark for our young people and deserve all the support we can give.

Indeed, Federal efforts are already paying off. Using over $15 million in seed money appropriated for fiscal year 1996, the Boys and Girls Clubs of America opened 208 new clubs in 1996. These clubs are providing positive places of hope, safety, learning, and encouragement for about 180,000 more kids today than in 1995. In my state of Utah, these funds have helped keep an additional 6,573 kids away from gangs, drugs, and crime.

The $20 million appropriated for fiscal year 1997 is expected to result in another 200 clubs and 200,000 more kids involved in clubs. We need now to redouble our efforts. The legislation we introduce today demonstrates our commitment to do that. I urge my colleagues to support it.

By Mr. HATCH (for himself and Mr. BENNETT):

S. 477. A bill to amend the Antiquities Act to require an Act of Congress and the consultation with the Governor and State legislature prior to the establishment by the President of national monuments in excess of 5,000 acres; to the Committee on Energy and Natural Resources.

THE NATIONAL MONUMENT FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, along with my colleague, Senator BENNETT, I am pleased to introduce the National Monument Fairness Act of 1997. This act will promote procedural fairness in the creation of national monuments on Federal and State lands under the Antiquities Act of 1906 and further congressional efforts in the area of environmental protection. Identical legislation is being introduced today in the House of Representatives by Congressman JIM HANSEN with the support of Congressmen MERRILL COOK and CHRISTOPHER CANNON.

As my colleagues know, on September 18, 1996, President Clinton invoked the Antiquities Act of 1906 to create the Grand Staircase/Escalante Canyons National Monument. The 1.7 million acre monument, larger in size than the States of Rhode Island and Delaware combined, locks up more than 200,000 acres of State lands, along with vast energy reserves located beneath the surface.

Like the attack on Pearl Harbor, this massive proclamation came completely without notice to the public. Although State officials and members of the Utah congressional delegation were told that the Administration would consult us prior to making any change in the status of these lands, the President's announcement came as a complete surprise. The biggest Presidential land set-aside in almost 20 years was a sneak attack.

Without any notification, let alone consultation or negotiation, with our Governor or State officials in Utah, the President set aside this acreage as a national monument by the stroke of his pen. Let me emphasize this point. There was no consultation, no hearings, no town meetings, no TV or radio discussion shows, no nothing. No input from Federal managers who work in Utah and manage our public lands. As I Stated last September, in all my 20 years in the U.S. Senate, I have never seen a clearer example of the arrogance of Federal power than the proclamation creating this monument. It continues to be the mother of all land grabs.

We in Utah continue to work with the hand President Clinton has dealt us. That is, we are attempting to recognize and understand the constraints placed upon the future use of the land and resources contained within the monument's boundaries. We are trying to identify the various adverse effects this action will have on the surrounding communities.

Personally, while I would have preferred a monument designation considerably smaller in scope, I could have enthusiastically supported a monument designation for the area covered by the proclamation had I been consulted prior to last September and invited to work with the President on a designation that was tailored to address the many concerns we have heard over the years on this acreage. Two of these concerns involve the 200,000 acres of school trust lands captured within the monument boundary and the locking up of 16 billion tons of recoverable, low-sulfur, clean-burning coal.

Remember, our wilderness bill considered last year proposed designation of approximately one-quarter of this land as wilderness. I wanted to protect most of it; the people of Utah wanted to protect most of it. But, we were not consulted; we were not asked; our opinion was not sought. Rather, in an effort to score political points with a powerful interest group 48 days before a national election, President Clinton unilaterally acted.

In taking this action in this way, the President did it all backwards. Instead of knowing how the decision would be carried out—and knowing the all ramifications of this implementation and the best ways to accommodate them—the President has designated the monument and now expects over the next 3 years to make the designation work. The formal designation ought to come after the discussion period. It is how we do things in this country. Unfortunately, however, the decision is now fait accompli, and we will deal with it as best we can. I hope the President will be there to help our people in rural Utah and our school system as the implementation of the designation order takes place.

The legislation we are introducing today, the National Monument Fairness Act, is designed to correct the problems highlighted by the Clinton Antiquities Act proclamation in Utah. It will do this in two significant ways.

First, the act makes a distinction between national monument proclamations greater in size than 5,000 acres, and those 5,000 acres and less. The President retains his almost unfettered authority under the Antiquities Act over monument designations 5,000 acres and less. Specifically, the Antiquities Act delegates to the President discretion to declare as a national monument that part of Federal land that contains historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest—but only as long as the declared area is confined to the ''smallest area compatible with proper care and management of the objects to be protected.'' The 5,000 acre limitation will give effect to this ''smallest area compatible'' clause, which both the courts and past Presidents have often ignored.

For areas larger than 5,000 acres, the President must consult, through the Secretary of Interior, with the Governor of the State or States affected by the proposed proclamation. This consultation will prevent executive agencies from rolling over local concerns—local concerns that, under the dictates of modern land policy laws such as the Federal Land Policy and Management Act of 1976 [FLPMA] and the National Environmental Policy Act, certainly deserve to be aired.

The National Monument Fairness Act also provides time constraints on the consultation requirement. From the date the Secretary of Interior submits the President's proposal to the appropriate State Governor, the Governor will have 90 days to respond with written comments. Ninety days after receiving the Governor's comments, the Secretary will then submit appropriate documentation, along with the Governor's written comments, to the Congress. If the Governor fails to comment on the proposal, the Secretary will submit it to the Congress after 180 days from the date of the President's proposal. These time constraints assure that the process will be fair. It will prevent State officials from unnecessarily delaying proposed proclamations, but will allow appropriate time for State and localities to voice their concerns through the Governor's comments on the President's actions.

Consequently, the consultation requirement ensures that large monument designations will be made fairly, and in a manner that allows the participation, through their Governor, of the people most directly affected by the proclamation.

Second, the National Monument Fairness Act allows all citizens of the United States to voice their concerns on large designations through Congress. The act provides that after the Secretary has presented the proposal, Congress must pass it into law and send it to the President for his signature before the proposal becomes final and effective. Thus, the Nation, through its elected representatives, will make the decision whether certain