But as the Senator from Georgia has pointed out, this goes well beyond the cynicism of this administration, which has already been displayed in a most significant way in a variety of other instances relative to campaign financing and fundraising and what will be done by this administration to benefit people who contribute to them. It goes well beyond that cynical approach and abuse of power which has become almost a hallmark of this administration. It goes to the essence of the separation of powers on which our Government is structured.

This Congress is the Congress of the people. It is the Congress which is elected by the people. You may agree with it. You may disagree with it. But the fact is that the membership of this Congress is sent here for the purpose of writing the laws which govern the people whom we represent.

As the Senator from Georgia has so adequately pointed out, the President's power in the legislative process is that of a negative, not of a creator of that law. In fact, ironically, the President does not even participate as a negative on some of the most significant laws that affect this country.

For example, the budget of the United States is not signed or vetoed or subject to signature or veto by the President of the United States. It is purely a law driven by the body of the people of this country, which is the Congress. When a decision is going to be made to disenfranchise 89 percent of the people who presently participate in working for the Federal Government as contractors, that cannot be unilaterally done by the executive branch. That is a decision of such weight and of such importance that it is reserved clearly to the House of the people and to the Senate of the United States. And yet, this President has decided to do that and to, by fiat, by an arbitrary decision, put together who knows what.

It certainly was not put together through the process of a legislative hearing. It was not put together through a process of a legislative debate. It was not put together through a process of a legislative vote in a committee, and a legislative vote on the floor of the Senate, and a legislative vote in the House, and a legislative conference, creating a bill which is sent to the President.

No, it was put together by somebody sitting in a back row, writing an idea which was given to the Vice President of the United States, who went to a labor union annual meeting and announced, ''This will be the new law of the land.'' That is not the way we govern in a democracy.

For that reason, I strongly support the initiative today put forward by our leader in the Senate, Senator LOTT, which, said as I understand, the nomination of the Secretary of Labor shall not be brought before the body until this matter is cleared up, because that is our prerogative. That is our legal right as a representative of the people to advise and consent on the nominees for Cabinet positions. That is a legal and constitutional right. We have the legal and constitutional right to limit our advice and consent, and to not approve a member of this Cabinet, or to approve a member of the Cabinet.

In this instance, we certainly have a right to hold up that nomination until this arbitrary act of excess on the part of the executive branch, done for whatever reason, is clarified and withdrawn. And, in fact, it would be my view that we should hold up probably just about every nomination which the administration wants to proceed with, because if they are not going to proceed in good faith in governing, if they are going to proceed in a manner which clearly exceeds the bounds of authority of the executive branch, then it is incumbent upon us as the legislative branch, as the branch elected by the people, to govern and to legislate, to make it clear to the President that that type of action will not be tolerated and cannot be tolerated if we are to maintain a constitutional democracy, a democracy built on the concept of checks and balances, a democracy which was designed by Madison and has survived so well for so many years.

The issue has been laid out. The fight has been joined. I believe this Congress must assert its prerogative to retain its right as a legislative body of the people of this country.

I yield back the balance of my time.

Mr. COVERDELL. Mr. President, I thank the Senator from New Hampshire for his comments with regard to this very crucial and, in fact, constitutional issue.

We have been joined by my good colleague from Arkansas. I yield such time as the Senator from Arkansas desires to address this issue.

S. 606, THE OPEN COMPETITION ACT OF 1997

Mr. HUTCHINSON. Mr. President, I am pleased to introduce today an important piece of legislation which will guarantee to all Americans an equal opportunity to compete for the nearly $60 billion of Government contracts.

The Open Competition Act of 1997 ensures that no single special interest group will have an exclusive claim on Federal contracts, and would accomplish this by amending the National Labor Relations Act to simply prohibit discrimination in bidding for contracts funded by the Federal Government.

The Clinton administration, specifically the Vice President, recently announced their intent to issue an Executive order which would, in practice, create a union-only mandate for all Federal projects.

Upon closer examination, a disturbing connection exists between contributions made by big labor interests, the announcement of the proposed Executive order, and the individuals who actually drafted the language of this order.

For the American people to fully understand what prompted these actions by the Clinton administration, it is essential to understand exactly what big labor did for them during the 1996 election.

As widely reported after the November election cycle, labor unions spent between $300–400 million on the 1996 elections—Wall Street Journal, April 11, 1997.

This amount is even more astonishing when you consider that it was financed in large part by dues-paying union members who were never asked by the union leadership if this was how they wanted their hard-earned wages spent.

I firmly believe in the constitutional right to donate money to the political candidate of your choice. However, the problem here is what is asked for in return for this money, and even worse, what is given.

The question must be asked—What did the labor unions get in return for the incredible amount of money they spent in the 1996 election?

On February 18 of this year, at the AFL–CIO convention in Los Angeles, the Vice President pledged the administration's support for organized labor and announced several initiatives the administration would be launching in coming months.

''How you treat your employees and how you treat unions counts with us,'' said the Vice President—White House Press Release, February 18, 1997. He told the executive council of the AFL–CIO that the administration would issue an Executive order which would require Federal agencies to consider using project labor agreements on all Federal contracts—Bureau of National Affairs, February 19, 1997.

These project labor agreements require all contracts for a particular job to be awarded only to contractors who agree to recognize designated unions as the representatives of their employees on that job.

In addition, these agreements would require all contractors to use only union hiring halls to obtain workers, pay union wages and benefits, and obey the union restrictive rules, job classifications and arbitration procedures. The Open Competition Act would do away with this requirement and restore fairness to the bidding process.

Just 3 days ago, on April 14, the Vice President announced that the administration was prepared to offer an Executive order encouraging Federal agencies to use project labor agreements—again, which generally require union representation—on Federal construction projects.

His announcement was greeted by thunderous applause by almost 3,000 AFL–CIO trade union officials in Washington, DC.

This Executive order becomes very interesting when you consider the parties who had a hand in drafting the language. The language in the draft was jointly developed by the AFL–CIO, the

Clinton administration, and the Builders and Construction Trades Department.

I believe this is a clear indication that the money spent by big labor during the 1996 elections not only provided the catalyst for this Executive order, but also gave them a seat at the table when it was written.

Is this the way to build trust with the American worker?

The Clinton administration would have us believe their actions benefit the majority of the American work force. But when you consider the percentage of Americans who belong to labor unions, this is clearly not the case.

Of the total work force in America, only 14.5 percent belong to unions. When you consider just those workers in the construction industry, only 18.5 percent of those are union members.

The facts clearly show that if this Executive order is implemented, only a minority of American workers will benefit. The 81.5 percent of workers who do not belong to a labor union will be placed at a clear disadvantage to the 18.5 percent who do.

Essentially, this means 4 out of every 5 workers would face discrimination. This is clearly not the way to help the American worker.

I want to make it very clear to the American people the detrimental effect this action by the administration will have on the American work force.

The Open Competition Act which I am introducing today, will assure the vast majority of American workers that their government will not discriminate against them.

This proposed Executive order will have the effect of creating a union-only mandate for all Federal construction projects. In addition, it would directly attack the principle of open competition in Federal contracting by excluding from the bidding process four out of every five workers who have chosen not to be represented by unions.

The Federal Government should not be ordering discrimination against open shop companies which bid for federally-funded construction contracts. Rather, it should be encouraging competition for these contracts and promoting participation in the process by all companies who wish to bid.

The Open Competition Act of 1997 would make sure this occurs.

It would simply be unconscionable to institute a federal policy which would allow a special interest group to have an exclusive claim on Federal contracts based on their enormous political contributions to the current occupants of the White House.

This distinguished body has the obligation to insure that Federal contracts are awarded through full, open, and competitive procedures. The Open Competition Act which I am introducing today along with Senators LOTT, NICKLES, MACK, COVERDELL, CRAIG, THURMOND, JEFFORDS, COATS, GREGG, FRIST, ENZI, COLLINS, WARNER, MCCONNELL, ALLARD, BROWNBACK, HAGEL, KYL, and ROBERTS, guarantees that our constitutional prerogatives will not be infringed upon.

I ask my colleagues to join me in supporting this legislation and guarantee to the American worker that their own Government will not discriminate against them.

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. 606

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 ''Open Competition Act of 1997''.

SEC. 2. PROHIBITION REGARDING CONSIDERATION OF CERTAIN LABOR RELATIONS POLICIES OF OFFERORS ON FEDERALLY FUNDED CONTRACTS.

Section 8(e) of the National Labor Relations Act (29 U.S.C. 158(e)) is amended by adding at the end the following: ''Notwithstanding any other provision of this Act, no person may be discriminated against when bidding on a prime contract, funded in whole or in part with funds provided by the Federal Government, where such discrimination is based in whole or in part on a requirement that such person enter into or adhere to a collective bargaining agreement or any similar agreement as a condition of performing work under the contract.''.

SEC. 3. CONSTRUCTION.

The amendment made by section 2 shall not be construed—

(1) to apply to subcontractors, or

(2)(A) to prohibit a contractor from voluntarily entering into a lawful agreement with a labor organization; or

(B) to discourage contractors who have entered into such an agreement from bidding on Federal contracts.

SEC. 4. APPLICATION.

The amendment made by section 2 shall apply to contracts made directly with any agency of the Federal Government and to contracts made with any entity that is managing or operating a facility owned or controlled by the Federal Government on behalf of the Federal Government.

Mr. COVERDELL. Mr. President, I thank the Senator from Arkansas not only for his statement and understanding of the issue but for taking the initiative affirmatively to correct it. I only wish it had not been the case that the legislative branch has engaged in legislation to protect its constitutional rights.

If I might, I will take just a moment to describe by precedent the sequence of events that are occurring here. In the 1992 campaign for President, President Clinton took a position on striker replacement which had been in labor law since the mid-1930's, which, under certain circumstances, would allow a company meeting certain criteria to replace strikers who were striking not over economic matters. This has been a contentious issue. The President said he would support legislation that would prohibit that, even though it has been in labor law for over three decades.

He was thwarted in that. Even though he controlled the Congress—he controlled the White House and he had a majority in the Senate and the House—and he could not secure consensus on that pledge that he had made. So the beginning of this new concept began to unfold, even in the early days of this administration. The President issued an Executive order on striker replacement because, as I said, he had promised this in his campaign, could not get the Congress to agree.

After wooing labor during the election with promises of a ban, President Clinton made good on his pledge on March 8, 1995, when he issued Executive Order 12954, titled, ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts.'' The order authorized the Secretary of Labor to debar a contractor after finding that the contractor has permanently replaced lawfully striking employees, thus, making the contractor ineligible to receive Government contracts.

As I said, Congress had rejected this legislatively. So the President ignored the will of the people, ignored the Congress, and imposed it through an Executive order. Now, what happened? Well, back to the ingeniousness of the forefathers. There is an executive, legislative, and judicial branch. Quite properly—I repeat, properly—a Federal appeals court unanimously declared that the Executive order exceeded the President's authority. He had overreached. He was governing by decree. This is not a part of the American republic.

Now, here we come again, another Presidential campaign is carried out, commitments are made, but the President is finding a people's branch, the legislative branch, that will not accept an egregious command that excludes 80 percent of the work force. So according to the Bureau of National Affairs publication, it says, ''The proposed Executive order would encourage Federal agencies to consider requiring the use of a project labor agreement for federally funded construction projects.'' This is interesting language in the draft: ''The Executive order was jointly developed by the Building and Construction Trades Department, the AFL–CIO, and the Clinton administration,'' according to Robert A. Geogine, BCTD President, the President of that union.

Here we have this new Senate Chamber, opened in 1859, and the House on the other side, the House and the Senate and the legislative process; but one trade union drew this law that would be imposed on all the American people and that would exclude 80 percent of the work force from having an opportunity to engage in these contracts.

Mr. President, to add to this sequence of events, making it a little clearer—this is a new form of making laws in the American Republic, far from these hallowed Halls. This is a memo to the national and international union presidents from John J.

Sweeney, president of the AFL–CIO. It says: ''Support for a proworker Federal procurement reform * * *'' dated March 25, 1997. What it doesn't say is it's support for 20 percent of the workers, in a very select category, and to the exclusion of the others. And it says: ''As you may recall, the Clinton administration recently announced its intention to undertake several initiatives that will,'' in his words, ''protect workers' rights and workplace standards * * *''—he is talking about the workers that belong to his union, not the rest of the workers—''* * * while improving Federal Government procurement and contracting practices * * *''—which means that the practices are designed to benefit his interest but not the other 80 percent. It says: ''If properly implemented, these initiatives will affect the expenditure of * * *''—his words—''hundreds of billions of dollars every year.'' In any given year, Federal contracts total as much as $200 billion, and Federal contractors and subcontractors employ approximately one-fifth of the labor force.

He goes on in the memorandum to say, ''The Government will be issuing proposed regulations that will accomplish three reforms. First, the Government will evaluate whether a bidder for a Government contract has a satisfactory record of labor relations.''

Well, who makes that decision? I guess it would be made in the same room in which these procurement regulations were written, and that they would become the arbitrators of what is a satisfactory performance, just like they are the authors of this law that is being placed on the people of America, without any lawmaker ever voting on it.

He goes on to say: ''Second, the Government will not reimburse Federal contractors for the costs they incur in unsuccessfully defending against an unfair labor practice suit.''

This has been an argument in the Labor Relations Board for over 30 years, as I said.

''Third, the Government will not reimburse contractors for the money they spent to fight unionization.'' Perhaps, but this is where we make these decisions, not wherever this room was. This goes on to say—and this is a very pertinent paragraph in this memo of March 25: ''President Clinton will also issue an Executive order directing all Federal departments to consider using a project labor agreement when they undertake Government-funded construction projects. This order is not subject to notice and comment, or other administrative steps.'' I repeat, ''This order is not subject to notice and comment, or other administrative steps.'' In other words, fiat, decree, governance by decree. And then it goes on and meticulously points out how the recipients of this memorandum should begin building cases. Lawyers should provide citations to the National Labor Relations Board and copies of all decisions, settlement agreements, et cetera. Organizers should provide information about campaigns and work sites. And lobbyists should review their files where local unions and other internal bodies have requested intervention, et cetera, et cetera, et cetera.

Decree—written in some room between the Building Construction Trade Department, the AFL–CIO, and the President. It is a new way of writing law, Mr. President.

I yield up to 10 minutes to my good colleague from Idaho, Senator CRAIG.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, let me thank the Senator from Georgia for the time he has taken today to bring this critical issue to the floor and for an open discussion among Senators and, hopefully, the American people on a proposed Executive order that our President is at least talking about at this moment, and that the Vice President has pledged that the administration will act upon, which would significantly change the dynamics of Federal contracting.

Without doubt, open competition in a free enterprise environment is the only way the Government of this country and the taxpayers can expect fair treatment of the tax dollar when it comes to buying the goods of Government or the projects of Government for the citizens of this country. We spend hundreds of billions of dollars a year in this business of contracting.

As Government provides services and, of course, provides capital expenditures for construction of roads, bridges, and buildings, that are a part of what we think is necessary, for the President to suggest a whole new dynamics as to how that contracting ought to come about, significantly skewing it toward organized labor is, at best, not being responsible to the taxpayers and, at worst, if I can simply say it, paying off for the great service provided in the last election by organized labor to the Democrat party.

Is that a blunt and cold statement? Well, it is. But it falls on the heels of hundreds of millions of dollars worth of expenditures, targeted specifically at members of the Republican Party. And now I must say that it appears that union bosses were literally sitting inside the offices of this administration to help craft what we believed would be a significant change in the way the bidding process of a fair and competitive market would work on Government contracts. ''Require Federal departments and agencies to evaluate whether a bidder for a Government contract has a satisfactory record of labor relations and other employment practices, in determining whether or not the bidder is a responsible contractor, eligible to receive a particular Government contract.''

This regulation, if it were to become regulation under Executive order, would require the companies bidding for Federal contracts to have a spotless record of compliance throughout the Federal regulatory spectrum, including collective bargaining, wages, benefits, equal opportunity, health, and safety.

In an era of regulatory overkill, when OSHA can issue a $13,200 fine to a roofing company for having a broken shovel in the back of a truck, my guess is there is hardly a potential contractor out there today that can meet all of this criteria. And now we have added dramatically to it a second possibility, ''to prohibit Government reimbursement of Federal contracts for the costs they incur in unsuccessfully defending against or settling unfair labor practice complaints brought against them by the NLRB.'' ''Prohibit Government reimbursement of contractors for money they spend to fight unionization of their employees,'' and so on and so forth.

Why is it significant that we talk about this today? The Executive order that we are concerned about has not yet been issued. Well, here is the reason why we talk about it and think it is extremely important. It wasn't very long ago that the Vice President went before organized labor and suggested to them that there would be an Executive order sent forward on worker replacement, and it was. It took a Federal court action to strike down this particular action on the part of the administration as simply being outside the law in relation to the National Labor Relations Board and its ability to make decisions. And, therefore, it was an illegal act, or certainly an act outside the law, and the decision was struck down.

Now, it is interesting that our Vice President would follow the same process. I think that we can suggest to the courts that this kind of an Executive order would fall under very similar kinds of guidelines that the one of a year ago did, because it probably falls under the Supreme Court's decision of 1986 of Wisconsin Department of Industries.

I think what concerns all of us is the use of Executive order and rule and regulation on the part of this administration, instead of coming to the Congress of the United States and saying this is good policy. Do you mean this policy can't be debated on the floor of the Senate and voted on as a part of the law for contracting of Government programs? It should be, if that is how we are going to make public policy instead of by Executive order of the kind and the nature that is being talked about in this potential Executive order. Union-only subject agreements clearly have an exclusive and an anti-competitive nature to them. It is not for me to give an anti-union speech. Clearly, companies that are unionized ought to have every right to bid. But other companies that meet reasonable standards can compete over good bids, and do it in a fair and responsible way and provide the service to the Government as expected. They ought to have

a right in that same market. That is exactly what George Bush said when he said it very clearly in 1992 in an Executive order requiring all Federal agencies to use an open competitive process for all Federal contracts. President Clinton's executive order would revoke this basically. That was revoked in 1983, and this would go even further to narrow it and define who could bid. It just so happens that only a limited few could bid. Last year, if this Executive order, as we understand it, were in place—I guess it is a contract for fiscal year 1993—it would have been well over 13 percent more of them at about $182 billion.

In addition to contracts with major corporations, a study identified with contracts with Duke University, with Loyola University, and others, would fall subject to them and could well shut them off from their kind of contracts for research and development in the area of AIDS research in one and biomedical research in another.

Mr. President, what our President proposes and what the Vice President has openly talked about to be expected this next week is in itself, in my opinion, a travesty of the way Government works and the way the executive and the legislative branch come together to build good public policy. This is special interest group legislating in the worst form. It is very bold, and it is very open. But, then again, hundreds of millions of dollars worth of campaign contributions later, I guess they can figure they can be that bold and that open because, certainly, in the shadow of what has occurred in the last election, this appears to be a response to those kinds of levels of participation.

I thank my colleague and the Senator from Georgia for bringing this issue to the floor. It must be talked about. It must be understood openly by the American people. And, as I say, what the American people want for their tax dollar, its expenditure for and purchase of Government services and the need for capital expenditure within the Government is a fair and open bidding process and a good product in the end. Certainly, the President at this moment may well be accused of attempting to skew that into less competitive and most assuredly a less open process.

I yield the floor.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I thank the Senator from Idaho for his usual contribution. He has contributed substantively to this discussion.

PRIVILEGE OF THE FLOOR—S. 495

Mr. President, I ask unanimous consent that Jeanine Esperna, staff member, and David Stephens, fellow for Senator KYL, be granted privileges of the floor this afternoon during consideration of S. 495.

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

Mr. COVERDELL. Mr. President, I want to first make it clear—and I think Senator CRAIG alluded to this—that this is a constitutional confrontation. There is a growing propensity on the part of the administration, faced with a Congress that the people elected that are of a majority of the other party, to try to obviate the legislative branch through two courses: By Executive order or decree—and we have certainly seen the abuses of that throughout the world, which is why the Republic is so carefully constructed; and by regulation, which is something that has become unique in our own development in this country, where more and more regulators are lawmakers. You can't blame this administration alone for that kind of activity, but it has certainly accelerated.

I want to point out that I have already pointed out that the U.S. appellate court struck down the President's last attempt at this kind of reconstruction of the Republic. But there are other judicial precedents.

Mr. President, I am going to yield the remainder of my time in just a moment. I see my good friend from Alabama. They are dealing with the logistics of time here in terms of trying to deal with the Chemical Weapons Convention.

I will close by simply saying there is a growing outrage in the Congress with regard to these attempts to reconstruct lawmaking. Lawmaking in America cannot be done in an isolated room with just special interests. Obviously, all interests have a rising ability to contribute their thoughts so long as they are debated and aired ultimately in the people's body and not bypassed. This is a clear attempt to bypass the legislature, and I do not believe it will be successful. Perhaps the administration needs to take counsel with itself with regard to the suggestions they have put forward—that major labor law would be written somewhere other than the Congress of the United States.

Mr. President, I yield back all remaining time to the Senator from Alabama.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

CHEMICAL AND BIOLOGICAL WEAPONS THREAT REDUCTION ACT

Mr. SHELBY. Mr. President, I rise in support of the Chemical and Biological Weapons Threat Reduction Act.

With the end of the cold war, we live in a much safer, but still unstable, world. Without the bi-polar domination of two superpowers, we now face a world comprised of many nations that have gained power on the world stage by producing a relatively inexpensive means of war.

Among the most deplorable methods of war-making known to the world, chemical and biological weapons are horrific tools of mass destruction.

Long ago, the United States discontinued and dismantled its biological weapons program and is currently unilaterally destroying its stockpile of poison gas. We would hope that other nations would follow suit, and destroy these weapons as well.

However, there are rogue States that are pursuing dangerous weapons programs contrary to international norms against the use and stockpiling of biological and chemical weapons.

Some countries are even suspected of pledging to ratify international agreements, while secretly continuing to develop and stockpile these lethal weapons.

One significant problem in the fight against chemical and biological weapons is the stunning lack of enforcement of existing international protocols.

International agreements, such as the 1925 Geneva Protocol and the 1972 Biological and Toxin Weapons Convention, ban the use of poison gas in war and prohibit the acquisition, development, production, and stockpiling of biological weapons. However, they have not been used as an effective deterrent.

For example, as the world watched with horror and disbelief when Iraq used poison gas against its own nationals, the community of nations failed to punish the perpetrators of this act.

In addition, there is currently no U.S. law which provides criminal or civil penalties relating to the use of these weapons in the United States.

Therefore, with the hope of reinforcing U.S. international leadership on chemical and biological weapons, I am proud to be a cosponsor of the Chemical and Biological Weapons Threat Reduction Act.

This legislation demonstrates our firm commitment to destroy U.S. chemical weapons, setting a strong example for other countries to follow.

Further, this initiative reinvigorates U.S. efforts to enforce existing international prohibitions against chemical weapons, provides strong deterrence, and sends a clear message to nations around the world that the United States will not tolerate the use of these weapons.

Specifically, the Chemical and Biological Weapons Threat Reduction Act sets out civil and criminal penalties for the acquisition, possession, transfer, and use of chemical and biological weapons.

This legislation mandates the death penalty where the use of these weapons leads to the loss of life and provides for a $100,000 penalty for civil violations.

The Chemical and Biological Weapons Threat Reduction Act requires enhancements to U.S. chemical and biological defenses to protect our military men and women. Further, it would require U.S. sanctions, termination of foreign assistance, and suspension of diplomatic relations against any country that uses chemical and biological weapons against another country or its own people.

The Chemical and Biological Weapons Threat Reduction Act provides