When Federal welfare reform was enacted, little attention was paid to the 15 new reporting requirements that the law imposes on the States—everything from welfare recipients' race and citizenship status, to other Federal benefits they receive, to unemployment status and earnings.

California, like many other States, has no computer system in place to track and report all of this data. And without effective tracking and reporting, the Nation's largest State has no hope of enforcing the time limit and preventing welfare fraud. Contra Costa County's welfare director said that his county's ability to meet the reporting requirements of the bill is ''literally zip.'' This is a big county.

I think that the welfare law's reporting requirements are important, and I do not advocate relaxing them. But I do believe that the counties are going to require additional support in the form of computer assistance that is greater than that which is provided in the bill today, and that we ought not to be so fixed that we cannot take a look at it.

I make these comments at this time in the hope that someone might read them, or even see them, or take notice of them, and that this statement that there will be no amendments to this bill can perhaps be changed to ''Well, we will carefully consider amendments.''

I thank the Chair. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MOSELEY-BRAUN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. I thank the Chair.

(The remarks of Ms. MOSELEY-BRAUN pertaining to the introduction of S. 235 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. MOSELEY-BRAUN. I thank the Chair.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GREGG. Are we in morning business?

The PRESIDING OFFICER. Yes, we are.

(The remarks of Mr. GREGG pertaining to the introduction of S. 252 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

(Mr. FRIST assumed the Chair.)

THE BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. HATCH. Mr. President, I was pleased that the Senate Judiciary Committee reported out today, I think a little bit before 2 o'clock, the balanced budget constitutional amendment 13 to 5.

I want to personally express my appreciation to everybody on that committee for the cooperation that we had and for the effective debate that we had in getting that amendment out today. This will enable us to bring it up next week, if the leader so chooses. And I believe he does wish to bring the balanced budget amendment up next Wednesday. We will have the report filed by Monday. It is being circulated this afternoon. The minority will have 3 days to complete their remarks, or their position on the report, and then hopefully we will be in this battle next Wednesday. And I hope that we can have as much cooperation during the battle on the floor as we did in committee.

It is a tough issue, and there are people on all sides of it. We do have to fight it out the best we can here on the floor.

JUDICIAL ACTIVISM

Mr. HATCH. Mr. President, I rise today to speak on a subject which I have frequently addressed in the past, one that is extremely important to me and I think to every Member of this body—in fact, to everybody in this country: judicial activism.

We are witnessing today a rising tide of concern, shared not just by my Republican colleagues and myself, but indeed by an ever-growing segment of the public at large, about judicial activism and the prospect of filling the courts with more activists over the next 4 years. Today, when we talk about activists, we are talking about people who are substituting their own personal preferences for what the law really is—those who choose as unelected judges appointed for life to make laws from the bench and to usurp the powers of the legislative and executive branches of this Government. They are not elected to make the laws, but are appointed to interpret the laws.

Today, I would like to point out an especially egregious abuse of judicial power about which I have just learned. Judge Gladys Kessler, a Clinton appointee to the District Court for the District of Columbia—that is the U.S. district court for the District of Columbia—took the truly extraordinary step, and as far as I know, a step which is virtually unprecedented in our Federal judicial system, and actually issued an order to show cause to three sitting U.S. Fourth Circuit judges—Fourth Circuit Court of Appeals judges, judges that are above her in the Federal system: Judges Karen Williams, Frances Murnaghan, and senior Judge Butzner. Judge Kessler in effect is seeking to force those appellate judges to come before her, a U.S. district court judge, and justify a decision that they recently handed down. Judge Kessler's order was personally served on Judge Williams' law clerk just yesterday. Let me tell you about this shocking order, dated January 3, 1997, and issued in Civil Action No. 96–2875–GK.

In 1972, one Restoney Robinson pled guilty in North Carolina State court to first-degree murder.

He was sentenced to life in prison, and he has since been imprisoned in North Carolina—which is located within the Fourth Circuit Court of Appeals' jurisdiction. After losing all of his appeals in the State courts, this convicted murderer, Mr. Robinson, has apparently been peppering the Federal district court for the middle district of North Carolina with frivolous petitions and, appealing the denials of those petitions to the higher court, the Fourth Circuit Court of Appeals. I understand that Mr. Robinson has brought more than 80 such actions.

This past October, a panel of fourth circuit judges, comprised of Judges Williams and Murnaghan and Senior Judge Butzner, denied Robinson's most recent frivolous appeal. In what can only be described as a truly bizarre, indeed lawless, action, Judge Kessler not only entertained the habeas corpus petition from Mr. Robinson, a petition over which she had absolutely no jurisdiction whatsoever, since Mr. Robinson is imprisoned in North Carolina, but had the gall to issue an order to those fourth circuit judges—requiring them within 30 days to come before her and explain to her, and to Mr. Robinson, the convicted murderer, why he should not be released from prison.

Indeed, I am told that just yesterday the U.S. marshals in Orangeburg, SC, personally served this order on Judge Williams' law clerk. I have a copy of the order right here, and I ask unanimous consent that it be printed in the RECORD.

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

United States District Court for the District of Columbia

Restoney Robinson, Petitioner vs. Murnaghan and Williams, Respondent(s)

Civil Action No. 96–287

ORDER DIRECTING RESPONDENT TO SHOW CAUSE

It is this 3rd day of January, 1997,

ORDERED that the respondent(s), by counsel, shall within 30 days of service of a copy of this Order and the Petition herein file with the Court and serve on petitioner a statement showing why the Writ of Habeas Corpus should not issue.

The Clerk of Court is directed to furnish a copy of the Petition and a certified copy of this Order to the United States Marshal for the purpose of making service on the respondent(s) and the U.S. Attorney's Office.

GLADYS KESSLER,
United States District Judge.

Mr. HATCH. I have been critical of the activism of many of President Clinton's judges, and let me tell you I have read many an activist decision in the last few years, but I have never ever seen, nor heard of, a district court judge requiring circuit court of appeals judges to justify their decision, let alone circuit court of appeals judges from an altogether different circuit. In fact, we have consulted with a number of Federal court scholars who have told the committee that to their knowledge such an action is unprecedented. I should hope so.

In short, Judge Kessler's order can only be explained as a blatant abuse of judicial authority and disregard for the basic structure of our Federal courts, or perhaps at the very least a gross oversight. But in any event, it is confounding and it is dumbfounding. That Judge Kessler apparently believes she somehow has the power to review fourth circuit judges' opinions is, quite frankly, nothing short of appalling and represents the worst short of judicial hubris.

Perhaps Judge Kessler does not appreciate the gravity of her actions or perhaps she is trying to make a statement. Either way, however, her order is very disturbing because it represents either a fundamental disregard for, or ignorance of, the most basic limits on judicial power.

Mr. President, when Republicans point out the activism of Clinton nominees, we are accused of using selective criteria. But as Clinton judges issue more and more activist decisions, it is becoming clear that a great number of them are—by any criterion—activist judges.

Now, I have asked that the show cause order be printed in the RECORD. I hope people will read that. It is an astounding document. I do not know how anybody, any judge sitting for the district court, could have issued that kind of order. Nevertheless, it is just evidence of some of the things we have been going through in this country.

Mr. D'AMATO. Will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to yield.

Mr. D'AMATO. First, let me, if I might, say that I commend the Senator for taking the time to bring to the attention of the Congress and of the Senate such a glaring, incredible abuse of judicial authority. It is obvious that that is the case. But let me ask—I am confused as to how it is that the district court judge here in Washington would assert jurisdiction. What was her jurisdiction?

Mr. HATCH. There is none. It is absolutely astounding. Here is a Federal district judge, trial court judge in the District of Columbia, who has absolutely no connection to the Fourth Circuit Court of Appeals, telling appellate judges that they must come before her and explain why this murderer's frivolous appeal was denied.

Mr. D'AMATO. Was the crime committed here in DC?

Mr. HATCH. No. If I understand it, the crime was in North Carolina.

Mr. D'AMATO. So if the crime was in North Carolina, the prisoner is in the Carolinas, the question is total lack of jurisdiction. So the thing that becomes shocking is what is to prevent this judge from issuing or entertaining a case, let us say, from Utah where a Utah judge and court had ruled; she is claiming that she could ask that judge to come here and to explain to her why the judge made that decision.

Mr. HATCH. Or from New York. If we can have judges, district court judges, trial court judges in the District of Columbia issue an order to appellate judges in the Fourth Circuit Court of Appeals, then the structure and rationality of our Federal judicial system would be thrown into disarray.

Mr. D'AMATO. Has the Justice Department involved itself in this matter?

Mr. HATCH. I do not know that they know about it, but they certainly are going to know about it after we finish here today, because it is unbelievable.

Mr. D'AMATO. Is it the intent then of the Senator to bring this to the attention of the Justice Department and ask them, would it not be correct, to seek an order from a higher court right here to quash this? This is incredible.

Mr. HATCH. We intend to let the Justice Department know, but, more importantly, I think, I am serving notice around here that we are not going to continue to sit back and tolerate these activist judges. Nobody has been more fair to the Clinton judicial nominations than I have. But many of these nominees have come in here and said we are not going to be activist judges; we are not going to usurp the powers of the executive and legislative branches of Government; we are going to do what judges should do, and that is interpret the laws that are made by those who are elected. All of them mouth that kind of language, but when it comes right down to it, a significant number of them are, one on the bench, engaging in patently activist judging and usurping powers that they do not have.

So I am just serving notice that we are on to the games these nominees are playing, and do not intend to let this game go on. We are going to do what it takes to weed out those nominees who pay lip service to judicial restraint, but then think they can do anything they want to once they don their robes.

There are limitations to the judiciary. The judiciary can preserve itself and keep the high opinion of the American people by not acting as activists, by not usurping the powers of the other two separated branches of Government, and by living within the limits of the Third Branch.

I do not care whether activism comes from the right or whether it comes from the left. It is wrong, and I have never seen a more flagrant case of something that is wrong than this case. That is why I wanted to bring it to the attention of the Senate and also serve notice that we are going to treat the judgeship nominees over the next 4 years with the utmost diligence and scrutiny.

We appoint Federal judges for a lifetime, and accordingly expect them to live up to the high calling of the judiciary; to appreciate the inherent limits on judicial power, and not to substitute their own policy preferences for that which the law requires.

I hope that this sends a message to everybody, and I am serious about it. As one who has taken a lot of abuse from both sides on judges—including my own Republican colleagues—I am serving notice that we do not intend to allow this rising tide of judicial activism to continue. The integrity of our judiciary, and our very right to self-government is at stake.

I thank my colleague. I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I thank the chairman of the Judiciary Committee, Senator HATCH, for bringing to the attention of the Senate and to the Nation as a whole, I think, a very serious situation. Because this portends the kind of thing that may take place, I think notice has to be served by those within the court itself.

Clearly, this case goes well beyond the realm of someone having a difference of legal opinion. The question of jurisdiction alone is a frightening one and how someone could reach well beyond and entertain a matter—are we going to say any Federal judge in any Federal jurisdiction can review matters that do not legally come before them or within their purview or power?

(The remarks of Mr. D'AMATO pertaining to the introduction of S. 249 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. D'AMATO. I yield the floor and I thank the Chair.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I ask unanimous consent that I be added as a cosponsor of Senator D'AMATO's legislation.

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

Mr. FORD. Mr. President, how much time am I allotted?

The PRESIDING OFFICER. Ten minutes.

Mr. FORD. I will not take that long.

(The remarks of Mr. FORD pertaining to the introduction of S. 250 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RULES OF PROCEDURE FOR THE COMMITTEE ON ARMED SERVICES

Mr. THURMOND. Mr. President, today I am reporting to the Senate the