But notwithstanding those matters, I believe that Director Freeh is doing his job about as well as it can be done with that giant agency which is ever-expanding and taking on new worldwide assignments. But I do believe that Director Freeh is going to have to find out what went wrong here, take corrective action, including punitive measures, if warranted, and establish procedures to protect against its recurrence.

It is really not a very complicated matter. All that is required is an index of names like ''X'' who have connections with the Government of China and then to cross-check those names against people who have appeared in the news media as major contributors to candidates or campaign committees.

When I refer to this context, it is obviously not intended to be a comment on any special group. It is hard to understand why that cross-checking of a simple index was not done by the FBI. And it is even harder to understand why the Department of Justice investigators did not find out about it, if in fact they did not.

In a context where the Attorney General has consistently refused to petition the court for appointment of an independent counsel, it may well be that either consciously or subconsciously, those under her command may be less inclined to pursue, vigorously, leads which may embarrass the administration. After all, the fundamental purpose of appointing independent counsel was to have someone in charge who was not allied with the administration, not beholden to the administration, and not motivated in any way to favor the administration.

It is not unusual, as a matter of common experience, for subordinates to do what they think their superiors want whether or not they correctly speculate on their superior's wishes. Beyond giving a clear signal to all the subordinates, an independent counsel would be in a position to press hard on a continuing basis for people to make all searches and analyses which were not done here.

Leadership and intensity establish a tone and purpose. From numerous indicators, that tone and purpose are not present in the current Department of Justice.

The Attorney General said at last Thursday's briefing that she was ''not comfortable now'' to discuss cooperation with the Governmental Affairs Committee but would ''want to sit down and talk with the Department of Justice task force.''

There are two problems with her statement. First, she had ample time to discuss the matter with the task force since she had met with the Intelligence Committee the day before and certainly had some advanced knowledge prior to that meeting. Second, she has continually said she would be willing to consider our request, but consistently there has been no followup.

The Governmental Affairs Committee was further advised at last Thursday's briefing that if in the future the Department of Justice found information like that on ''X'', they would ''very seriously consider and talk about bringing that information to the committee.'' That is palpably insufficient.

An independent counsel should be appointed so that the individual can press to obtain all such information on a continuing basis and so that there is no doubt about the duty of all units in the Department of Justice, including the FBI and other governmental agencies, to follow the direction of the independent counsel.

In short, Mr. President, we have a situation here where the FBI has information in its files since September or October 1995—almost 2 years ago—and other information since January 1997. That information is very important in linking an individual who is reputed to be a major campaign contributor, as noted in many news accounts, with a plan of the Government of China. Yet, that information was not made available to the Governmental Affairs Committee, and on the representation of the FBI not even known to the FBI.

It came to light only because the FBI provides that information to the CIA. And the CIA had done an independent analysis at the request of Senator BENNETT. Absent that request by Senator BENNETT, absent the independent analysis of the CIA, today, we would not have that important link as we seek to understand the puzzle, put together the pieces on the so-called dotted lines, and understand what is going on in this matter.

If we had independent counsel vigorously pursuing these matters and a clear-cut understanding throughout the entire Department of Justice and all Federal agencies, then we would have a realistic opportunity to get to the bottom of whatever is going on and take the corrective action.

This is another link that I suggest is a very, very powerful link in the chain of evidence and circumstances really demanding appointment of independent counsel.

I thank the Chair and yield the floor.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with consideration of the bill.

AMENDMENT NO. 1188

Mr. ASHCROFT. Mr. President, I am aware there are other Members of this body who are going to be coming to the floor to speak on other amendments. However, because of the absence of debate at this moment, I will add additional thoughts to the thoughts I have already expressed regarding the need to cease funding the National Endowment for the Arts.

I have made my position clear here, and I hope I can add something by way of suggesting that there are a variety of reasons why it is time for us to stop spending the hard-earned resources of taxpayers to theoretically support or engender culture or the arts in this country.

I find it somewhat amusing for individuals to suggest we need to have a Federal subsidy in order for people to be artistic. For us to come to that conclusion involves us in what is a substantial repudiation of American heritage, culture and art.

We began as a nation long before the midnight ride of Paul Revere. As a matter of fact, we remember the poem:

'Twas late in April of '75.
Hardly a man is still alive
That can remember that special day and year
Of the midnight ride of Paul Revere.

Those who say you have to have subsidies in order to have art or poetry would have to wonder how that poem ever came into existence. Or they might say you have to have a subsidy in order to have quality art. Well, I don't know, but I believe that some of the poems and some of the art and some of the literature of bygone days will stand inspection very well and stand in comparison very well with items that have been produced more recently.

So I want to say for the first several hundred years of this culture on this continent we managed to muddle through, but I don't think we muddled through it all. We mastered, through creating things that were truly artistic and truly things of value, the kind of art that would speak to people and that they could understand.

I was interested in noting an article by William Craig Rice, who is a poet and an essayist, who teaches expository writing at Harvard University. As an individual who went to a competing institution, I am not accustomed to citing Harvard University, but you would think if there would be anyone who would be able to have insight about this, it might be someone from Harvard University, and you might expect them to be uniform in their support of the NEA. He lists objections to the NEA. He says that the NEA refused to fund a conservatory in New York City because its students were required to master the human figure in drawing like the old masters did. They could actually draw people and not just put paint on paper. That disqualified the particular institution from participating in the NEA funding.

He points out that the NEA said that being able to draw people that looked like people would hamper the creativity of artists.

I wonder whether the NEA has this figured out. I don't believe that people are not creative because they can draw the human figure. I don't think you would want to say that Rembrandt was not a creative individual. I don't think you would want to say Thomas Hart Benton, from my home State, with his ability to capture people at work, people bringing this Nation into existence, people conducting themselves in a way that makes America strong—was not a creative individual. He showed people in the fields, he showed people in the Civil War, he showed people at play, but he showed America as America was and for the strength of it. I don't think being able to do that hampers creativity.

William Craig Rice, who is a poet and essayist, who teaches expository writing at Harvard, says, ''The NEA recently refused funding to an art colony on aesthetic and sociopolitical grounds and then made the inclusion of performance artists and installation artists a condition of future funding.'' So you start criticizing people because they are the wrong sociopolitical mix.

Here we have the National Endowment for the Arts taking taxpayers' resources, trying to impose on people some political correctness or sociopolitical correctness, the right kind of mix, in order to satisfy the bureaucracy. These kinds of things—denying funding because they insist that people learn how to draw so that they are recognizable figures, denying funding because there is an inappropriate sociopolitical mix among the artists—sound to me like Government management of what people are thinking and of the kind of people with whom they would associate. It seems to me that is not what we earn money for and pay taxes for: so Government could discriminate against someone because they were not of the right sociopolitical mix.

Mr. Rice, of Harvard University, further writes that ''Nowadays, NEA grants are weighted toward multiculturalism, a political cause.''

I wonder if, really, we as Americans want to try to foster and advance political causes through a subterfuge which we might label as the National Endowment for the Arts.

Now, his is not the only voice that has been raised in the arts community against the NEA. His is not the only voice which has alleged that the NEA is really an enemy of the arts, which he does say. He puts it this way: ''The marketplace, with its potential for democratic engagement and dissemination, is hardly the enemy of the arts. The burgeoning American theater of the 19th century owed nothing to Washington. In fact, any system of selective, expert-dictated federal support for the arts would have been anathema to the rollicking impresarios of that era.'' He says had we had a National Endowment for the Arts a century ago, it would have hurt the arts in America, it would have curtailed, it would have stifled the creativity of individuals in the arts community.

Responding to a written piece by Robert Storr and Lawrence W. Levine, Rice puts it this way: ''What both authors fail to recognize in their own examples is that the NEA actually harms artists and the arts by its methods of selective sponsorship and top-down control.''

America prides itself on the freedom of expression, free speech, the ability of people to stand and speak their mind, and America has also understood that speech is not merely what you say but it is your ability to communicate. If you want to communicate artistically, in poetry, graphically or pictorially, that is one of the privileges and rights of an American, within certain bounds of decency to protect children and others from obscenity. We say you are entitled to be able to express yourself. We have never thought that the Government should be meddling in the way people express themselves. It should not be subsidizing one person's expression as opposed to another person's expression.

Here is a good reason for it. Here the author says, ''The NEA actually harms artists and the arts by its methods of selective sponsorship and top-down control.''

We have to measure what is meant by free speech. I don't think we would say that one of the things included in free speech is top-down control. The control of speech is the kind of thing we associate with other cultures.

Now, we know about what happened in Eastern Europe, we know what used to happen in the Soviet Union, and we abhor what we hear about the control of communication in China. Yet we have an arts bureaucracy which is saying to the arts community, if you want to have the favor of your Government, you have to be willing to participate in a system of selective sponsorship and top-down control.

To put it additionally, Jan Breslauer, of the Los Angeles Times, in a special to the Washington Post said it this way: The effect on the American art system is ''pigeonholing artists and pressuring them to produce work that satisfies a politically correct agenda rather than their best creative instincts.''

You have to understand, it takes me a minute to put this in perspective. Artists might operate at their best creative instincts in one system and they might distort or twist what they would otherwise say in order to satisfy something else in the other. She is saying that the National Endowment for the Arts pigeonholes artists, it gets them to create within a very confining space, a space they didn't create, but a place where they would be put if they wanted to satisfy the bureaucracy. Then it says it pressures them to produce work that is politically correct rather than work that is the best of what they can offer.

America succeeds when it operates at its highest and best. America fails when it accommodates or induces people to operate at their lowest and least. I think it is tragic that we have in the National Endowment for the Arts what is confessed by the art critic of the Los Angeles Times, the person who spends her endeavors studying art and commenting on art, a situation where artists are pigeonholed and pressured to produce work that satisfies a politically correct agenda rather than producing work that reflects their best creative instincts. I think that is a pretty serious charge.

I think there are other reasons why the National Endowment for the Arts ought to be zeroed out in funding. It does not spend money well. It is not really something authorized under the Constitution. The founders of this country considered it, they voted on it, they rejected it. Somehow, the elasticity that some people find in the Constitution is supposed to now grow with the document to include something that no one ever voted to ratify as part of the Constitution but somehow it is appropriate now but it was not appropriate back then.

The National Endowment itself is not an efficient organization. It spends 20 percent of its resources on overhead, so that by sending the money to Washington, DC, we get a 20 percent shrink factor immediately just by including the bureaucracy in that which we are pursuing.

So my judgment is that we ought to think carefully about saying what the House has said. Let's stop. This thing was never intended as a governmental responsibility by those who constructed this country and founded it and developed the Constitution to limit what we would do. This was not to be within the limits. Let's stop the waste of money. Let's stop the frivolous things that are done.

I was interested to see one of the projects, and I mentioned this before. This represents a poem funded by the National Endowment for the Arts. This is not the title for the poem, this is the entirety of the poem. I had represented earlier that I think this is the English version of the poem but because this is not a word which I recognize in the English dictionary, it could be some other language version of the poem. This poem cost taxpayers $1,500 to write. So it would be about $214 a letter we paid for this poem. I wonder if this deserves what some Members of this body have called the need for the Federal Government to be placing the Good Housekeeping Seal of Approval on various art projects.

It is obvious to me that the average American is not smart enough to recognize this as genius and it may take the special imprimatur of the U.S. Government to tell us just how profound this is—whatever it is—and that we should support this because, well, because Government says to support it.

There are those who came to the floor yesterday who said we need the National Endowment for the Arts not because it is a big part of arts funding—they recognize it is 1 percent or

less. The truth of the matter is 99 percent of arts funding comes from other sources. They said we need it because when the National Endowment for the Arts funds something, it tells everybody that it is something good and that by putting that sort of Good Housekeeping Seal of Approval on it, it lets people know to support it as opposed to people being able to make up their own minds.

I have to concede the argument is partly correct. I don't think the average American would think this is worth $1,500 unless he was told it was by his Government. It may be that, once told by Government that these seven letters are worth $214 apiece, the average American citizen will nod in complete complicity and agreement, and say, ''Well, Thelma, I never thought of it that way before, but now that the Federal Government has told me of the value of those letters, whatever they mean, I sure hope we get a chance to do that over and over again.'' Well, as a matter of fact, they do get a chance to do it over and over again.

But the truth of the matter is, there is something more profound than the light that I would make of this poem—would I be making light of light poetry? I don't know whether that means light or not. The truth is—and it is a fundamental truth—that the values are not to be ascertained in this culture by Government and then imposed on the people. The genius of America is that the values are to be developed by the people and imposed on the Government. The genius of a democracy is that people have values that they say should be reflected in their Government and not that the Government has values that it imposes upon citizens.

Similarly, when they said that we need this kind of guidance from Government so that we will know what to support in the marketplace, that smacks of marketplace planning of other economies. You know, communism is the system whereby the government decided what should be produced and what should not be produced. It allocated the resources of the culture. It said, well, we are going to have this many potatoes and airplanes, and we are going to have this many chairs, and we are not going to allow the marketplace to operate. They tried that for 70, 80 years. Cuba is still trying it; so is North Korea, and their people are in serious distress, and we hear the subject of relief over and over again to try to give them something to eat. But in this country, we have all said that the marketplace should determine this, and we don't believe Government should decide how to allocate resources.

Finally, most of the world has come to that conclusion. The Soviet system tried to manage production based on the values of the central government and say how money ought to be spent, and it collapsed. And when it came down, it wasn't long before the Berlin wall fell, too. Thankfully, the people are free there, and they are rejoicing over their freedom, and the government that was at the center of things no longer tells them what to produce or what not to produce. It is their privilege as free citizens to decide about how things ought to be produced and when and where. The marketplace either rewards them or punishes them. If they don't produce things that are particularly good, they don't sell well. That has a way of suggesting that they should change their minds.

Here we have the National Endowment for the Arts with the argument or suggestion that it is a good thing to have Government telling people from the center of the Nation what they should or should not reward with their own support. Well, frankly, that is a failed system. I could understand short memories, but it seems to me that while we are continually reminded of the poverty of that system and the abject failure of that system by countries like North Korea and Cuba, we should at least remember long enough to know that we should not be embracing some sort of resource allocation strategy in the United States of America whereby we put a Good Housekeeping Seal of Approval on seven letters that may make some sense somewhere, and say, folks, with our help, you can learn to recognize a real buy in art when we tell you that it is a real buy.

I appreciate the opportunity to make these remarks. I appreciate the opportunity for the debate to go forward on the National Endowment for the Arts. I think it is time to say to the American people, who are taxed at a higher level than ever before, we believe you work hard for your resources and we should not take your hard-earned dollars and try to tell you what to support and what not to support artistically. We should let you have some of those resources to spend, believing you can spend your resources better on your own family than we can to subsidize what the Government has decided is art.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Ms. Collins). The Senator from Washington is recognized.

Mr. GORTON. Madam President, I note the presence on the floor of Senator CAMPBELL, who is the chairman of the Committee on Indian Affairs. He and I and Senator STEVENS, Senator INOUYE, Senator DOMENICI, and Senator MCCAIN have had extensive discussions over sections 118 and 120 of this bill, both of which relate to appropriations for or conditions under which Indian tribes operate in our American system. Both are of considerable importance.

We have reached agreement with respect to the bill and with respect to what will take place after this bill has passed. In that connection, I think it will be a matter of some intense relief to many of my colleagues that what we are going to do is not require a rollcall vote at this point. So it does seem to me, in the absence of any Member here who is willing to send up an amendment that will require a rollcall vote, that we should go through this matter. Two of the Senators are present on the floor. I believe others are coming.

With that, I yield the floor and hope that the Chair will recognize Senator CAMPBELL.

Mr. CAMPBELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. Madam President, I have an amendment, but before I send it to the desk, I want to make a few remarks on H.R. 2107, the fiscal year 1998 Interior spending bill. I certainly want to commend the managers, Senator GORTON and Senator BYRD, for their efforts in constructing a spending bill that balances the competing interests of the approximately 27 different agencies and programs included under the jurisdiction of this committee. As the chairman of the Committee on Indian Affairs, I want to acknowledge both Senator GORTON's and Senator BYRD's efforts in funding Indian programs that are administered through the Bureau of Indian Affairs and Indian Health Service at the levels that meet or exceed the President's fiscal year 1998 budget request.

Overall, the funding for these two agencies, which accounts for the great bulk of Federal spending on Indian-related programs, is significantly increased over fiscal year 1997 enacted levels to the tune of about $150 million. The committee has given priority to funding basic services that are provided to Indian communities through tribal priority allocation [TPA] of the BIA and through direct services provided by the Indian Health Service, while also funding several important construction initiatives, of which there is currently a tremendous backlog.

While I have supported the priorities given to funding Indian programs, I have shared my concern with many colleagues over two provisions that remain in the bill. Senator GORTON has alluded to those two sections, section 118 relating to the means testing of TPA funding, and section 120 relating to the broad waiver of immunity imposed on tribal governments. Both are broad policy-related items that I felt should not be included in this spending measure.

I am happy to announce that after several meetings—and Senator GORTON alluded to one we had yesterday afternoon—with concerned Members on these provisions, an acceptable accommodation has been made with regard to both of these provisions. At the appropriate time, I will offer an amendment that will reflect this agreement.

I want to speak briefly to each of these provisions and why, as presently written, they would adversely impact tribal government activity to a degree that is all but unknown.

As I informed my colleagues on the Appropriations Committee prior to

markup, these two provisions constitute a dramatic departure from existing Federal Indian policy, which is based on promoting tribal economic development, tribal self-sufficiency, and strong tribal governments. Sections 118 and 120 would seek to condition the receipt of TPA funding, requiring in section 120 that Indian tribal governments unilaterally waive their immunity from any and all lawsuits. Further, section 118 would require all tribal governments that receive TPA funding to be subjected to a form of means testing analysis of all the available tribal resources as a determining factor in future TPA funding allocations.

The nature of these provisions would suggest that because TPA funding constitutes approximately $760 million, or over half of the overall BIA operating budget, there needs to be some higher level of accountability to the Congress and to the taxpayer over how these funds are allocated and that the appropriate means to this end is the proposed blanket waiver of immunity and an imposed means testing formula allocation.

I want to be very clear and try to inform my colleagues that the impacts of these provisions, if enacted, have yet to be fully contemplated. We can't begin to contemplate what effect they would have on the native American people.

For example, with regard to a broad waiver of immunity, as proposed in section 120, we could ask several questions:

What are the potential liabilities that would be incurred by the executive branch agencies who serve as the Federal trustees to Indian tribal governments and, therefore, would have to defend the tribal governments in lawsuits?

What specific actions would become the purview of the Federal courts under a broad waiver of immunity? Is it limited to non-Indian disputes with Indian tribes, or could any and all intertribal disputes also be heard in Federal court?

More importantly, what will be the impact on the Federal courts as a result of section 120? Would it simply clog the courts with more litigation?

Further, regarding section 118, we should ask:

What resources should be included in any analysis of how to better allocate TPA funding?

Could the BIA begin to implement any alternative allocation method beginning in fiscal year 1998, which begins in just 2 weeks, without any public input or hearings?

These are very practical problems that arise when addressing both of these provisions. It is for these reasons that I have strongly advocated that the appropriate authorizing committees be involved in finding practical solutions to these very complex issues. As the chairman of the Committee on Indian Affairs, I have made it very clear that I am committed to examining these issues through the hearing process. I have told that to Senator GORTON and have followed it with a letter to him guaranteeing that we would hear a bill and we would also attempt to have a markup by April 30, 1998.

Madam President, I want to thank my colleagues for their wisdom in supporting this accommodation.

I ask unanimous consent that the pending amendment be temporarily set aside.

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

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 52, line 16.

The excepted committee amendment is as follows:

SEC. 118. (a) No funds available in this Act or any other Act for tribal priority allocations (hereinafter in this section ''TPA'') in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs and internal transfers pursuant to other law) may be allocated or expended by the Bureau of Indian Affairs (hereinafter in this section ''BIA'') until sixty days after the BIA has submitted to the Committee on appropriations of the Senate and the Committee on Appropriations of the House of Representatives the report required under subsection (b).

(b) The BIA is directed to develop a formula through which TPA funds will be allocated on the basis of need, taking into account each tribe's tribal business revenues from all business ventures, including gaming. The BIA shall submit to the Congress its recommendations for need-based distribution formulas for TPA funds prior to January 1, 1998. Such recommendations shall include several proposed formulas, which shall provide alternative means of measuring the wealth and needs of tribes.

(c) Notwithstanding any other provision of law, the BIA is hereby authorized to collect such financial and supporting information as is necessary from each tribe receiving or seeking to receive TPA funding to determine such tribe's tribal business revenue from business ventures, including gaming, for use in determining such tribe's wealth and needs for the purposes of this section. The BIA shall obtain such information on the previous calendar or fiscal year's business revenues no later than April 15th of each year. For purposes of preparing its recommendations under subsection (b), the BIA shall require each tribe that received TPA funds in fiscal year 1997 to submit such information by November 1, 1997.

(d) At the request of a tribe, the BIA shall provide such technical assistance as is necessary to foster the tribe's compliance with subsection (c). Any tribe which does not comply with subsection (c) in any given year will be ineligible to receive TPA funds for the following fiscal year, as such tribe's relative need cannot be determined.

(e) For the purposes of this section, the term ''tribal business revenue'' means income, however derived, from any venture (regardless of the nature or purpose of the activity) owned, held, or operated, in whole or in part, by any entity (whether corporate, partnership, sole proprietorship, trust, or cooperative in nature) on behalf of the collective members of any tribe that has received or seeks to receive TPA, and any income from license fees and royalties collected by any such tribe. Payments by corporations to shareholders who are shareholders based on stock ownership, not tribal membership, will not be considered tribal business revenue under this section unless the corporation is operated by a tribe.

(f) Notwithstanding any provision of this Act or any other Act hereinafter enacted, no funds may be allocated or expended by any agency of the Federal Government for TPA after October 1, 1998 except in accordance with a needs-based funding formula that takes into account all tribal business revenues, including gaming, of each tribe receiving TPA funds.

AMENDMENT NO. 1197 TO THE EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16

(Purpose: To provide for tribal priority allocations.)

Mr. CAMPBELL. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. CAMPBELL] proposes an amendment numbered 1197 to the excepted committee amendment beginning on page 52, line 16.

Mr. CAMPBELL. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 52 beginning on line 16, strike all through page 54, line 22, and insert in lieu thereof the following:

SEC. 118 Any funds made available in this Act or any other Act for tribal priority allocations (hereinafter in this section ''TPA'') in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs, internal transfers pursuant to other law, and proposed increases to formula driven programs not included in tribes' TPA base,) shall only be available for distribution—

(1) to each Tribe to the extent necessary to provide that Tribe the minimum level of funding recommended by the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs Report of 1994 (hereafter ''the 1994 Report'') not to exceed $160,000 per Tribe; and

(2) to the extent funds remain, such funds will be allocated according to the recommendations of a Task Force comprised of two (2) representatives from each BIA area. These representatives shall be selected by the Secretary with the participation of the tribes following procedures similar to those used in establishing the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs. In determining the allocation of remaining funds, the Task Force shall consider the recommendations and principles contained in the 1994 Report. If the Task Force cannot agree on a distribution by January 31, 1998, the Secretary shall distribute the remaining funds based on the recommendations of a majority of Task Force members no later than February 28, 1998.

Mr. CAMPBELL. Madam President, I am very pleased to offer this substitute amendment that our colleagues have worked on, which accomplishes several things.

First of all, it holds the tribes harmless to the fiscal year 1997 TPA levels; it follows the recommendations of the 1994 Joint Tribal/DOI/BIA Task Force report by providing funding to the 309 small and needy Indian tribes; it provides $15.5 million for fixed costs and internal transfers; it provides for $17.1 million in increases to formula-driven programs; instead of having the BIA or the Congress allocate the remainder, it

creates a mechanism comprised of Interior and BIA officials and tribal representatives from around the country to distribute the remaining $27.8 million.

I think that is probably all we need for an explanation.

With that, I move the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Madam President, first of all, I want to express my appreciation and high regard for the leadership of my friend from Colorado, Senator CAMPBELL, on this issue. In his role as chairman of the Indian Affairs Committee, he has taken an active and vigorous role on Native American affairs. I am proud of the job he is doing. I know I reflect the view on both sides of the aisle on the outstanding job that he is doing. We all recognize he is uniquely qualified—uniquely qualified, Madam President—to address the issues that affect Native Americans in our society today.

Second, I thank the Senator from Washington, Senator GORTON. He has strongly held views on these issues, as we know. Senator GORTON's issues have been made clear to those of us on the Indian Affairs Committee, of which he is a distinguished member. He has worked very hard on these issues. We have significant and profound philosophical differences, but our debate and discussions on these issues have been characterized by respect for each other's views. I have the utmost regard not only for his views, but Senator GORTON has long experience in these issues dating back to when he was attorney general of the State of Washington and tried cases before the U.S. Supreme Court regarding Native Americans.

I understand his advocacy, and, frankly, sometimes his frustration. I am very pleased to see the path of the agreement is that the chairman of the Indian Affairs Committee has agreed to hold hearings to consider Senator GORTON's legislation, which is the proper way to carry out our legislative work.

I did point out to Senator GORTON—and he knows full well—that his proposal will probably not receive the majority approval of the Indian Affairs Committee. But the purpose of hearings and the purpose of the debate and discussion is to educate our colleagues. I am very pleased that Senator GORTON will withdraw that provision which would have provoked profound, intense, and emotional debate on the floor of the Senate and has decided, albeit with some reluctance because of his impatience over his view of our failure to address these issues, to agree to take it through the Indian Affairs Committee.

I thank Senator GORTON. I really do, because without his agreement and his position as chairman of the subcommittee, he had every right—even though I disagreed from time to time about legislating on appropriations bills—to bring this issue to the floor as part of his bill. We proved in recent days that we do give the utmost respect to committee chairmen and subcommittee chairmen in their work.

I thank Senator STEVENS, chairman of the full committee. Senator STEVENS, who is as knowledgeable on Native American issues as anyone in this body, played a key role in negotiating the agreement and settlement that we came to, along with my friend, Senator DAN INOUYE, who is most respected, along with Senator CAMPBELL, on these issues.

Senator DOMENICI, I might point out, in his usual articulate, vigorous, and certainly nonconfrontational fashion played an important role in the spirit of the discussions that we had in Senator STEVENS' office.

The upshot of it all is that really, Madam President, there are six old guys here that know each other pretty well. We know that we have to act in what is the best interests of Native Americans, the interests of this body, and, very frankly, the continued bipartisan—indeed, nonpartisan—addressing of Native American issues.

I think we have a very, very good resolution. It would not have been possible without all the figures that I mentioned, and I believe that we will continue.

If I could, finally, caution my colleagues, there will continue to be issues before this body and the Nation concerning Native Americans. There is population growth, which brings Native American tribes and non-Native Americans into collision with one another. There is an increase in Indian gaming, which in the view of many Americans has made all Indians rich. And, by the way, that is far, far from the case. There is a total of about 10 tribes that have become wealthy. There is continued issues, such as taxation. There will be continued Supreme Court decisions, including the recent ones concerning and affecting the State of Alaska.

I urge my colleagues to get involved in understanding these issues. But I have some comfort in the knowledge that we have experienced people such as Senator CAMPBELL, Senator INOUYE, Senator STEVENS, Senator GORTON, and Senator DOMENICI who have many, many years of experience with these issues.

Again, I thank my colleagues for resolving this very difficult issue in a more than amicable fashion.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I thank my good friend from Arizona for his comments concerning my participation in the dialogue on this amendment which has just taken place in my office. Let me state at the outset that I believe that in this country there is a period of rising expectations on the part of our Alaska Native and native American peoples that there will be more assistance coming to them from the Federal Government. And, of course, we all seek to have greater self-determination on the part of those people who are part of the Indian tribes and native peoples of our country. The great difficulty is that this is not just an expectation but an increasing demand now for additional money to enable these peoples to carry out the legitimate roles that they have in their own tribal and native organizations. This comes at a time when we are living under a budget ceiling with diminishing resources, as far as the Department of Interior is concerned, caused primarily, in my opinion, because of the vast increase—the enormous increase—in the amount of interest we are paying on the national debt, which is literally squeezing out a lot of the items that we were able to afford previously. We are working on that in connection with the balanced budget process. But it is hard for many people on the reservations in the contiguous States and small villages throughout my State, and throughout our Nation, to understand that there is a limit on the amount of money we have available to put into such funds, like the Tribal Priority Allocation Fund. We face this year a situation where there is a budget request for an increase in money. Yet, because of actions that have taken place in the last 3 years, there are almost 100 percent more tribes in number than we previously dealt with under this account. Those are primarily in my State, the State of Alaska. Alaska now has 226 different entities that are called tribes by the Department of Interior. In the past, they were Native villages. The population of the Native villages belonged to the several different tribes in our State.

The net result of this is that, despite the increased request for funds, it is not really possible to meet these legitimate requests, and, as I said, in some instances, demands for increased money. This has led to a series of alternative suggestions—some from the Senator from Washington, as the chairman of the Appropriations subcommittee dealing with these issues, and others from those who serve on our Indian committee, led by my good friend from Colorado. And I say to the Senate that I think it is time that we really have some more information to deal with this. I know some people are reluctant to solicit that information. But I have joined the Senator from Washington in asking the GAO to do some examination into the various types of options that may be available to Congress to deal with these increasing demands which exceed our ability to provide funds in all these areas.

It does seem to me that we have to realize, despite our own personal feelings that some people might have on the subject, that the people who live on Indian reservations and in these very

isolated Indian and Native communities in my State are literally the poorest of our poor. They are the people that need our consideration, and our help, more than any I know in the Nation. Many of us have spent years trying to find ways to help them deal with their problems. There has been no real panacea. We have not discovered a way yet. But we clearly now have increasing participation in governmental affairs in a democratic way in most of these tribes and villages of our Nation.

I am hopeful that these tribal priority allocations will, in fact, be used to provide a greater degree of democracy, a greater degree of participation, and a greater attempt to satisfy the needs of the people who should be receiving the benefits of the Federal money that we provide through the Bureau of Indian Affairs. We all have some serious questions about the BIA. It is an institution that may well have outlived its usefulness in the sense of being able to deal with the problems of the native American and Alaska Native people. But, for the time being, it is the only institution we have.

As Members of Congress we are vitally interested in the affairs of the Indian tribes and Alaska Native people. We need to take more time in trying to not only work out the differences among us, but also work out solutions with respect to how the Federal Government can further the aspirations of these people to become more able to deal with the problems of the present and the future and better able to find a way to preserve their own culture and have greater participation in American affairs.

For that reason, I am pleased that we have had these meetings. I think that the meetings that have taken place between the Senators who are on the Appropriations Committee and the Indian Affairs Committee have been most helpful for us not to only understand one another but understand some of the problems that are different. They are different in Colorado, they are different in Arizona. They are different in Hawaii. Most people do not think of Hawaii having Indian problems. But there are issues involving the indigenous peoples in Hawaii that are very, very complex. My friend from Hawaii is spending a lot of time on this issue, as is the Senator from New Mexico, and legitimately so.

Our constituents, by the way, don't all make the same requests. They don't necessarily seek the same goals. They don't even seek the same solutions to their common goals. What I'm saying is that it is not an easy thing right now for us to deal with this issue in appropriations.

Therefore, I am delighted as the chairman of the Appropriations Committee that we have this commitment from the Indian Affairs Committee that there will be hearings on the subject, that there will be really an examination in depth into the possible solutions to the problems presented by these issues arising out of the allocation of funds in the tribal priority allocation.

I thank the Senator from Washington for his willingness to step down from some of the requests he has made of the Senate, and to give us a chance to go back and get some basic data and information that will be necessary for us to deal with this. I hope and pray we will deal with it next year in a fair and open way, and find a way to ensure that the moneys that are available are made available first to those who have the greatest need for them, and particularly that the people who are seeking this money understand what it is for. It is for assistance in maintaining the governance of these tribes and villages. These aren't slush money accounts. They are very strictly limited by law, and we want to make certain that they are, in fact, used for the benefit of the people who are on reservations, as well as in those very isolated villages in my State.

Let me thank all of the Members who have participated in this. I do hope that the Senate will accept our compromise amendment to the amendment on this subject that was originally in the bill as reported from our committee.

I thank all concerned for their participation.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Hawaii.

Mr. INOUYE. Mr. President, thank you very much.

Mr. President, this is a battle day—an important day in Indian country. And I am certain that Indian country applauds the resolution that has been reached concerning sections 118 and 120 of this bill.

So, Mr. President, I rise to join my colleagues in applauding and commending the distinguished Senator from Washington for making this day possible.

I am well aware—and I am certain that all of us are well aware—of the controversy that sections 118 and 120 have engendered over the past 2 months. It has been a difficult time for all of us.

Indian country has been vocal in its opposition to these provisions—and I believe rightly so—for these sections go to the very essence and the very foundation of our relationship with Indian governments.

As my chairman, the distinguished Senator from Colorado, Senator NIGHTHORSE CAMPBELL, has indicated, section 118 will cause us to revisit the commitments this Government made to Indian nations in over 800 solemn treaties. Most Americans are not aware that our relationship with the Indian country is based upon treaties, the Constitution of our land, decisions of the Supreme Court, and the laws of this land. These 800 treaties enable the United States to exercise dominion and control over 500 million acres of land which once belonged exclusively to our Nation's first citizens. As Chairman CAMPBELL has indicated, section 120 would have stripped tribal governments of one of the most fundamental attributes of their sovereignty.

So, in the days ahead, I hope we can focus our attention on the concerns that sections 118 and 120 were designed to address in a venue that will enable the full participation of those who would be most directly affected by these provisions, the tribal governments and the citizens of Indian country. For it is my sincere belief that the solutions to these matters can be found in Indian country and that the tribal government leaders will join us in this effort, and that is the way it should be. If we are to legislate, it should be only after we have given careful and thoughtful consideration to these matters. We should have the benefit of all affected citizens, Indians and non-Indians, and whatever we come up with ought to have the benefit of some consensus.

With this in mind, I have given my personal assurance to the chairman of the Interior appropriations subcommittee, the Senator from Washington, that we will seriously and deliberately address these matters in the authorizing committee. We have received assurances of the chairman of that committee, Senator BEN NIGHTHORSE CAMPBELL.

In the interim, I am pleased we have been able to reach agreement and that we have done so in a manner that will enable us to work together in partnership with Indian country as well as other affected citizens to assure the best outcome within the context of our history, our laws and our policy.

So, Mr. President, once again, may I applaud and commend my friend from Washington, Senator SLADE GORTON.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, in the interests of clarity in dealing with two related but distinct issues, I have asked, and the Senator from Colorado has agreed, to deal separately with two amendments on his part to sections 118 and 120. So, while most of the speakers have talked about each, to this point, now, before we vote on the proposal of the Senator from Colorado, I am going to address only section 118, the section that calls, in the form in which it was reported by the Indian Affairs Committee, for a study not only of the needs of Indian communities across the land but the resources available to those Indian communities to support, in whole or in part, their governmental entities.

These tribal priority allocations, in the amount of just over three-quarters of a billion dollars, are directed at the activities, on the broadest possible scale, of the self-governing Indian tribal organizations all across the United States, numbering several hundred in total. And there are, it seems to me, two distinct questions even as we deal with this appropriation of more than three-quarters of a billion dollars of

the money of all of the taxpayers of the United States. The first is: Is the historic distribution of money from this account to the various Indian tribes done in a fair and rational manner? And, if not, what can be done to improve that method of distribution?

The second and quite distinct question is whether or not full support of Indian tribal governments is a permanent duty of the people of the United States; a form of entitlement or a matter of discretion in which the people of the United States, in addition to encouraging the development of self-governing institutions, are also entitled to demand on the part of successful Indian governments an increasing duty of self-support of these governing institutions—the tribal legislatures, the court systems, the police systems, and the like, systems that in our Federal system are paid for by the people of the United States in connection with this Congress, the people of the States with their legislatures, and the people of cities, counties, and towns with respect to their governing institutions. And we ran into opposition in connection with each of these; a protection of the status quo in connection with each.

I took over the chairmanship of this subcommittee 2 years ago, and for 2 years asked the Bureau of Indian Affairs, when it justified its budget, about the formula through which it distributed its moneys to Indian tribes, without getting a satisfactory answer. Asked whether or not it had any ability to determine the relative needs of the varying tribes in the United States, the reluctant, ultimate answer was, no, the Bureau of Indian affairs didn't have that kind of information, did not know in any detail the income of tribal governments through gaming, through gambling operations, through natural resource extraction, through rental of its properties and the like.

Moreover, it became quite clear that the Bureau of Indian Affairs didn't care to get that information. The reason that the Bureau of Indian Affairs doesn't really care about getting that information is that it does, in fact, believe that these payments are a permanent entitlement, a permanent burden on all of the other taxpayers of the United States, and that, therefore, while perhaps an examination of needs is appropriate, an examination of resources is not appropriate in any respect whatsoever.

With both of those propositions I disagree. While section 118 that exists in the bill today does not change the system and require a mandated distribution on the basis of a system of needs, which of course implies something about the resources that cover these needs on the part of each individual tribe, it became evident that there is so much disagreement in Indian country with even a determination of the facts on which we can make a later determination of needs and resources that section 118 was unacceptable.

The proposal that Senator CAMPBELL has made, and with which I agree, deals rather narrowly with the distribution of the money in this appropriations bill, increased by something more than $75 million over the current year, and most particularly with the way in which any excess over last year's distribution and over a formula already developed in the Bureau of Indian Affairs will be made. In that connection, it is a significant step and it is something with which I agree. Because it is insufficient, however, because it doesn't even mention either needs or resources, in my view something else very significantly is needed.

Before I get into that, however, much of the debate on the other side of this issue, many of the newspaper editorials, have spoken of the appropriation for tribal governments, so-called TPA, as an entitlement based on treaty—because there are several hundred treaties with various Indian tribes, the last of which was ratified in 1868—that we are in fact dealing with an entitlement, that we should not look at relative needs, we should not look at the ability to provide for governments through the resources of Indian tribes at all because this is a matter of treaty obligation between the Government of the United States and these various Indian tribes.

I wish to make the point, as we look forward to a future debate on this issue, that there is no such treaty right. Mr. President, there is no such treaty right. We found one treaty with one tribe that calls for payment in perpetuity of several thousand dollars a year. Most Indian treaties, however—and we use here the treaty of Point Elliott in my own State, a treaty signed in 1855, that includes a clause very much like this one:

> In consideration of the above cession [that is the lands the Indians were signing away] the United States agree to pay to the said tribes and bands the sum of $150,000 in the following manner.

And it sets out declining annual payments for a period of 20 years, ending, presumably, in 1875, or in 1876. That is the typical Indian treaty with respect to a fiscal obligation on the part of the people of the United States. Obviously, that period of time ran out over a century ago. The optimism with which it was signed, the implication being that by that time the Indians would be integrated into the larger society, did not take place, and the Congress of the United States has gone through several phases of attitudes toward Indian tribes, toward their integration, toward their self-determination and the like. We are now in a period of time in which the strong public opinion, and opinion in this Congress, is in favor of self-determination, conscious self-determination in the Indian institutions.

The point I am making here is not to disagree with that policy. I think it is a perfectly appropriate policy and one that I have supported. The point that I am making here is that it is a discretionary policy, and that this three-quarters of a billion dollars is appropriated as any other discretionary account is in the Congress of the United States. Therefore, it is totally appropriate for us to determine whether we think the money is being well spent, whether we think it is being fairly distributed, whether we think there is a better formula, whether we think there should be some obligation on the part of wealthier tribes to pay all or part of the cost of their own tribal governments.

So we have taken a sample number of tribes with respect to this year's distribution, about 20, on this chart. I may say that this is not one of these telescoped graphs that only works between No. 100 and No. 200. This graph goes from zero to $2,452. Tribal allocation per person to the Pequot Tribe in Connecticut from this year's distribution is $2,452. That is the tribe with the most successful gaming operation in the United States. Unemployment in the Pequot Tribe is zero.

At the other end of the scale, the Fond du Lac Tribe, which gets $24 per person in its TPA allocation, has 67-percent unemployment.

This, of course, doesn't include anything like all the tribes in the United States. I think it is a fair sampling, and any Member who desires to know where on this scale a tribe in his or her State falls can get that information through us. But you have a range of between $24 per capita and $2,452 per capita—a range of 100 to 1. The net result of failing to deal with that issue this year is that the ratio will be greater in 1998 in the bill we are voting on, it will be greater than it is at the present time.

The original formula, I think, dates from sometime in the 1930's. Under those economic circumstances, having no relation to the present day, these tribes' governing authorities, of course, have various powers. Some provide more services than others do. But nonetheless, each year's change has made this system worse and is exacerbated.

I will show you the same chart in a slightly different form, Mr. President. This form works from the Rosebuds in the Dakotas, which have the highest unemployment, 95 percent, down to the Pequots that have zero. In other words, to the best of our ability to determine need—because we don't have all of the figures, unemployment figures have to be a shorthand here for need—the most needy tribe gets $225 per capita. Again, the Pequots, $2,400. But if we don't want to take that one, let's take this one in Alabama; it is $1,195.

Interestingly enough, the second highest distribution here is to the tribe that has the second highest unemployment. But the obvious import of these charts is that there is simply no relationship whatsoever—no relationship whatsoever—between the need, the economic poverty, the unemployment on a given Indian reservation and the distribution of moneys to the governing

body of that institution from the Federal Government pursuant to these TPA's.

One further point, of course, in connection with this question about treaties, most of the tribes in the United States are not treaty tribes. The Senator from Alaska referred to the fact that by fiat, the administration created, I think, a couple of hundred new tribes in Alaska, none of which are treaty tribes, but all of which, by that administrative action, will in a year or so fall into this kind of distribution of money. So the distribution has nothing to do with whether or not tribes are treaty tribes or nontreaty tribes. The tribes really don't have anything to say about the issue.

We are distributing the money at the present time in a manner that is highly irrational. As a consequence, Mr. President, Senator STEVENS and I have authored a letter dated today to the Comptroller General of the United States in the General Accounting Office, asking for a General Accounting Office study of the system I have described here, how we got to that system and how we can do better.

Our request does, of course, include in it a request to the GAO to make a determination, not only of the needs of the tribes, but of their ability to meet those needs with their own resources. We may well learn from the GAO that even it cannot answer that question, because the tribes will not release a sufficient degree of information for us to make an intelligent decision. Then we will be told what kind of legislation is necessary so that Congress can deal with this matter in a rational fashion.

I ask unanimous consent that the letter that Senator STEVENS and I have authored to the General Accounting Office be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, September 16, 1997.

JAMES F. HINCHMAN,
Acting Comptroller General, General Accounting Office, Washington, DC.

DEAR MR. HINCHMAN: We are writing to request that the General Accounting Office (''GAO'') immediately undertake a study of issues related to the distribution of funds by the Bureau of Indian Affairs (''BIA'') through Tribal Priority Allocations (TPA). The GAO is requested to complete the study and submit a report by June 1, 1998. The study should address in detail the following:

(1) any inequities in the current distribution of TPA funds among Tribes;

(2) the results of the distribution of TPA funding in FY 98 (to the extent such results are available);

(3) the tribal and non-tribal resources, including tribal business revenue, available to each Tribe for meeting governmental needs;

(4) the extent to which each Tribe can or should, in whole or in part, become self sufficient, in terms of its ability to provide government services, through the use of resources available to it;

(5) the impact of recognition of new Tribes on TPA funds;

(6) recommendations for determining the level of funding needed for a Tribe to provide governmental services; and

(7) recommendations for a formula for the distribution of TPA funds that takes into account the disparate needs, population levels, treaty obligations and other legal requirements with respect to the provision of governmental services, and the resources available to each Tribe to provide such services.

In undertaking the study the GAO should consider the formulas currently used by the BIA for the distribution of funds for other programs, the formulas previously used by the BIA or other federal agencies for the distribution of funds under the Indian Priority System that was developed after enactment of the Indian Reorganization Act, and any formulas recommended by the 1994 Joint Tribal/DOI/BIA Task Force on Reorganization of the BIA, the Commission on Reservation Economics, the American Indian Policy Review Commission, and any other relevant commissions or reviews.

In evaluating the resources available to each Tribe for meeting governmental needs, the GAO should enumerate in its report the nature and availability of the information BIA needs to determine accurately the level of resources available to each Tribe for the provision of governmental services. The report should include recommendations regarding any changes in law that may be necessary in order to obtain such information and what constitutes a de minimus level of revenue for which the cost of reporting or assessing such revenue would outweigh the benefit of obtaining that information. For the purposes of this study, the GAO should consider the term ''tribal business revenue'' to mean income, however derived, from any venture owned, held, or operated, in whole or in part, by any entity on behalf of the collective members of any Tribe. Such term shall also include any income from license fees or royalties collected by a Tribe. The term ''any venture'' includes any activity conducted by an entity, regardless of the nature or purpose of the activity, and shall include any entity regardless of how such entity is organized, whether corporate, partnership, sole proprietorship, trust, cooperative, governmental, non-profit, or for-profit in nature.

The recommended formula for the distribution of TPA funds should include a means of assigning priority among Tribes for the allocation of funding, so that those with the greatest need for governmental services and the fewest resources to meet that need, relative to the needs and resources of all other Tribes, are given the highest priority. The GAO shall include as an appendix to the report suggested legislative language to accomplish any changes in law or regulation necessary to ensure the distribution of TPA funds according to the recommended formula.

Thank you for your prompt attention to this request. If you or your staff have any questions regarding this request, please contact Anne McInerney of the Senate Subcommittee on Interior and Related Agencies at 224–2168.

With best wishes,

Cordially,

SLADE GORTON.
TED STEVENS.

Mr. GORTON. I do want to say this, Mr. President. A number of compliments have been made about the way in which Members deal with issues that are highly controversial and on which they have great differences of opinion. I say, with respect to every one of those who have spoken here today, that I have gotten from each of them the greatest consideration, even when they have disagreed with me. Each of them holds his views as firmly as I do and as significantly as I do.

The chairman of the committee has agreed, and will speak to that later, to dealing with a specific bill on the other subject. I haven't asked him to deal with this subject in his committee, but I rather suspect that he is going to wish to do so in order to be able to deal rationally and intelligently with this issue as well.

So I have not gained the goal that I have set for myself when I was writing this bill to make substantive changes, but we are going to be able to vote these issues intelligently in the course of the next year in a way that has not been done in this Congress, certainly since I first arrived here in 1981 and probably for some time before that.

I believe the debate on this issue is long overdue, Mr. President. I am persuaded, quite persuaded, that we can't engage in it in its full substantive fashion at the present time, for lack of information, and that what we are doing here is going to give us a greater ability to make our points at some time in the future.

For their cooperation in seeing to it that we are moving forward on this issue, I thank each one of them, and we will be back here, I suspect, at some time in the future to debate this and the other issue more on its merits. Because the other issue is distinct from this one, I hope as soon as others who wish to speak on it have spoken, we will adopt the proposal, the amendment proposed by the Senator from Colorado, and then move on to the second one, and I will have a set of different remarks on that one.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask the distinguished Senator from Colorado, Senator CAMPBELL, and the distinguished Senator from Washington, Senator GORTON, would it be appropriate for me to speak now or would they rather proceed with something else? If they have to introduce a measure and want to get it done, it will be all right with me.

Mr. President, I say to my fellow Senators, I think the important thing for the hundreds of thousands of Indians in the United States and Indian country and the 10 percent of the population of the State of New Mexico who are Indian people. There are 22 different Indian tribes and pueblos in my State, living in a completely different style, but all Indians nonetheless.

The most important thing for them is we have won today. We did not lose on the issue of sovereignty as it pertains to their immunity in their court systems. We did not lose, in an appropriations bill, without adequate hearings, without adequate information on one of the most complex and historic-filled situations in our Government and our governance. We won, because those decisions to take away tribal judicial immunity, whether it be for 1

year or forever, have been withdrawn from this bill.

I thank the distinguished Senator, Senator SLADE GORTON, for withdrawing his judicial immunity provision. I think it has become absolutely and unequivocally discernible by everyone that is a very complicated issue.

Later, I am sure, in this discussion, we are going to hear proposals about how that is going to be fleshed out and how we are going to talk about judicial immunity, the right to sue Indian tribes or not to sue them in the courts of America and the courts of the States. We are going to hear discussions perhaps on how hearings ought to be structured to get to the bottom of certain issues where inequity may require that some modifications be made. But essentially, for the Indian leaders and the Indian people who came here by the hundreds, at least, this year, their tremendous concern about what was going to happen to them if this occurred is gone from the scene.

The Senator from New Mexico is fully aware that the distinguished Senator, Senator GORTON, desires to fix some things that he feels are wrong with Indian law and the distribution of money, and he feels that just as strongly as I feel that we ought to be very careful about what we do and that it is not a simple proposition. Even the two graphs that were put up that show the disparity in incomes and the disparity in the distribution of our Federal resources don't tell the complete picture.

The picture is one of a tribal allocation system evolving over time filled with history, filled with court decisions, filled with Senators who have purposely helped certain tribes and not helped others, which causes some of these funding levels to be out of whack.

Nonetheless, the needs in Indian country are not debatable, because for every Indian person that has an average American income and an opportunity for a job and some assets, tribal or otherwise, that are significant, my guess would be 50 that don't have these assets. For every one that does, my guess would be 50 don't, 50 are poor. Their tribes are poor. Their reservations are economically depleted. So I suggest, as I did early on when the issue of means testing arrived, that we ought to be equally concerned about the needs of the Indian people.

Frankly, the GAO letter that my friend, Senator GORTON, proposes, is fully within his rights. Any Senator can write to the GAO, whether it is joined by the chairman of the Appropriations Committee or whether it is the most junior Member here. You can write to GAO and ask them for information. Now I intend to ask them to assess the needs of the Indian people: How poor are they, and why are they poor? I want to ask them what physical needs they have—water systems, sewers, roads—for they live, in most cases, in a pretty bad economic situation and a pretty deteriorated public environment with reference to infrastructure and the like.

So it is mighty easy to say, let's fix this formula and have somebody in government formulate a new means test for us, but I will tell you, it is a lot more difficult to find out what our responsibility should have been over the years and how much of the Indians' plight is because of the laws we have and our failure to take care of the related trust responsibilities that we have.

The history of Indian people versus the United States of America is as old as some of the Supreme Court opinions written by Justice Chief Marshall back in 1830's. I am sure Senator GORTON, who is an expert on the legal debates, knows about all those cases. While I am not as legally perfected, I know that there is not one simple evolution of the relationship of the Indian people to the American Government and to the States. It has evolved because of court opinions, it has evolved because Presidents have articulated American policy with reference to Indians. President Nixon articulated a policy of self-governance and self-determination, which has then been carried out by the Government of the United States.

So the next time we debate this issue, we will not just have three exhibits here, one of which quotes from one treaty, for I am sure that more than one of us will be steeped in the history of how we got to where we are. It is not going to be as simple as devising a new means formula and distributing federal money based upon some kind of new means testing.

It may be that treaties don't govern all of these responsibilities, but I can guarantee you, the statutes are filled with commitments to the Indian people. Before we have this next debate and during the next hearings, we ought to be talking about all of those statutes that said we are going to educate the Indian people, and then we never provided enough money; that says we are going to house them, and then did not provide enough money. Where does that come into the equation?

We said we wanted economic prosperity for Indians—but until the 1980's through the highway trust funds, we hardly funded any roads for them. I can remember, when I arrived in 1973, $10 million was the level of funding for Indian roads. We were thrilled to get it up as high as $30 million. When we included Indians in our highway trust funds for the first time, the funding jumped dramatically to $80 annually, and in the most recent highway bill 6 years ago, we finally got it over the $150 million mark for all of Indian country out of the highway trust funds. In spite of them paying into the funds everytime they bought gasoline, we weren't building any roads from this fund for them until the mid 1980's.

Just a few remarks on judicial immunity. I believe it is incumbent upon the Indian leadership of this country to work with us, those of us who are genuinely concerned about their well-being and protecting their rights to self-determination and self-governance. We ought to work on some of the troubling areas where the lack of judicial review is something that is beginning to offend many people and that many of us who are protective of our Indian people are beginning to ask questions about.

In that regard, Senator GORTON, in conversations that are off the record and not on the Senate floor, has talked about the fact that maybe the solution isn't a total waiver of their judicial immunity. Maybe we need to examine these judicial areas that cry out for some kind of equity and fairness. I assume in the next year those will be looked at by various committees.

But in the final analysis, the important thing that happened here today is that, in my humble opinion, fairness prevailed because it would have been grossly unfair to waive tribal sovereign immunity. In fact I think it would have been wrong in the appropriations process to waive judicial immunity across Indian country so that Indian tribes can be sued by almost anyone for anything in any court. I believe we would have wreaked havoc on Indian governance and we would have destroyed the tribes of our country in many cases. And this too is an evolving situation.

For in many of the cases where we have cited that the Indian tribes cannot be sued, they have insurance, I say to Senator INOUYE. We found many of them are in fact settling lawsuits because they bought liability insurance. We have even found that some of the suits that people talked about here on the floor were indeed covered by liability insurance. So those who sued tribes were not without a remedy.

But let us say the process has worked because we have not jumped precipitously into changing that very large body of law with reference to the governance and status of a recognized Indian tribe in terms of the courts of our land and judicial review of their actions.

And on the previous issue on means testing, in summary, I believe that justice prevailed and the right thing is done by us not acting to establish some formula or even indicate that we are setting down that path.

All we have done today is to set in motion some questions to the Government, the GAO. As indicated, there might be a lot of other questions of them. Then, in due course, means testing will be looked at in a manner that it should be looked at by appropriate committees.

I thank Senator GORTON. I was privy to the meetings where this resolution was finally arrived at. I was not there at every meeting, but nonetheless I was there in time. I was there in time to make sure that some ideas that were apparently gaining credence were denied their credence. And I feel very good about that. And we are now back together saying, let us work together and see what we can do.

I say to Senator CAMPBELL, as chairman of the committee, our new chairman, I have served on your committee for a while, never as chairman because I could not do that, but I pledge to you my support as we move through the next year or so in trying to solve some of these problems. I am firmly convinced that it will not be a simple proposition of ''let's have a means testing formula,'' because there will be a lot more to it before we finish as we try to understand just what we ought to be doing in fairness.

I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I think it is certainly appropriate, for a few moments, to speak to the issue at hand here on the floor and my support for what the Senator from Washington has chosen to do with the two issues that he brought to the Interior appropriations bill dealing with native Americans and sovereign immunity.

I discussed these issues with him at length and certainly with native Americans of my State—four different tribes. I have spent a good number of hours discussing this issue and how it relates to their rights and how it relates to the rights of all citizens in this country.

I am extremely pleased also to have worked very closely with the Senator from Colorado who I respect greatly for his opinions in this area and certainly his long-term knowledge about issues of native Americans because he is so proudly one of those amongst us who can claim that title and does so proudly and represents them so well in this body.

I am pleased that we are willing to take this back to hearings. It is an issue of immense proportion for both non-Indian citizens of our country and Indian citizens because of the nature that is evolving upon many of our reservations and the questions that are mounting outside of them as it relates to fairness and equity.

In my State of Idaho we have at this moment some conflict that must, I think, in the end be resolved so that there is a sense of fairness for all parties involved. There is now on both sides of this issue a lack of that sense. I hope that we can resolve some of it. It is our responsibility. We are talking about Federal law and the recognition of that law and that which has built up around it now for well over a century.

I certainly trust my colleague from Colorado to deal with it in an even-handed, straightforward way and the Senator from the State of Washington who forced this issue upon us, in the right way, to cause us to look at something that sometimes we are not willing to or we find difficult to deal with.

Yet there are times in our country's history when it is appropriate to look at what we intended in the past and how it has revolved into the present and whether it fits today's modernness or if there are some reasonable adjustments that can be made within law that affect people in their lives. That certainly is our responsibility.

So I thank both of my colleagues for their willingness to cooperate and work with each other and to resolve, out of what could have been substantial conflict, an approach that I think in the end meets all of our interests in a way that serves this body and native Americans in our country well along with non-Indian citizens.

I yield back my time.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, as my distinguished friend from New Mexico suggested, the matter before us is a very complex one. The history that we will be considering in the days ahead, when we debate this matter, is also a complex one filled with tragedy and filled with sadness.

It is true, as stated by my friend from Washington, that many of the tribes are not treaty tribes. But I will explain why I believe it is not so.

Mr. President, when the first European came upon this land, anthropologists have suggested there were anywhere from 10 million to 50 million native Americans residing in the present 48 States. Today, the number is less than 2 million.

The history of our relationship with our first citizens is not a very happy one, Mr. President. In the early days, we looked upon them and counted upon them to help us in our wars. The record indicates that if it were not for certain tribes belonging to the Iroquois Confederacy, General Washington and his troops at Valley Forge could very well have perished. These Indians traveled hundreds of miles carrying food on their backs so that our troops would be fed.

Well, that was a long time ago, Mr. President. But this is part of our history. There was a time when Indians sent ambassadors here because they were sovereign nations, just as sovereign as Britain or France or China or Japan. And we treated them as sovereigns.

So sovereign nations conferring with other sovereign nations usually come forth with an agreement which we call treaties.

Our history shows that we entered into 800 treaties with Indian nations. Of that number, 430 never came to this floor. They are somewhere in the archives of the Senate of the United States. For one reason or another, we decided not to act upon these treaties, treaties that were signed either by the President of the United States or his designated representative. They were solemn papers, documents that started with very flowery words such as: ''As long as the sun rises in the east and sets in the west, as long as the rivers flow from the mountains to the oceans, this land is yours.''

It is true, as I indicated, that not all Indian nations are treaty nations, because 430 of the 800 treaties were not ratified, were not even discussed, were not debated, were not considered. But most of the remaining treaties are treaties that were signed in perpetuity.

It is true that there are some that were not signed in perpetuity. But most of them had the flowery language: ''As long as the sun rises in the east and sets in the west, that is yours.''

Then we decided that the 370 remaining treaties may have been a mistake. And, Mr. President, this is a chapter that many of us would try to forget and it is almost difficult to believe. But we proceeded to violate provisions in every one of them.

Ours is a proud Nation. We always point to other nations and say, ''You have violated a treaty. You have violated START II. You have violated the nuclear proliferation treaty,'' and we convince ourselves that we always fulfill every provision in our treaties. Yes, today we do so.

But there was a time when we disregarded these solemn promises. After the treaties were signed, we decided that Indians were a nuisance. That is a harsh word to use, but we established a policy of extermination. We may not have used that word, but the actions we took were extermination.

We often hear about the trail of tears. We have had hundreds of trails of tears. For example, the Cherokees were rounded up in the Carolinas—thousands of them. They were rounded up in the summertime, and in the wintertime, with their summer attire, some in shackles, had to travel across the country to Oklahoma. It is no surprise that over half of them perished. These were the trails of tears.

Oklahoma, Mr. President—we hate to admit this—is a dumping ground. There are tribes there that cannot trace their ancestral land in Oklahoma. What are the Apache doing in Oklahoma? What are the Seminoles doing in Oklahoma? What are the Cherokees doing in Oklahoma? They were sent there, and oftentimes sent to areas that no one wanted. Yes, if we found gold on certain land, that treaty was violated.

So, Mr. President, this is a very complex issue. After the Indian wars—and we oftentimes look back to those days with great pride; there were great soldiers, great generals, like General Custer—at the end of the Indian wars, as a result of wartime death, disease, and such, the Indian population of the land had come down to 250,000—250,000.

Yet, with this background, with this history, I think we should recall this footnote.

In all of the wars that we have been involved in since World War II of this century, native Americans have put on the uniform to participate in the defense of our freedoms, our liberties, our Constitution, our people, and our land. They have sent more men on a per capita basis than any other ethnic group.

More men from Indian reservations served in Desert Storm on a per capita basis than any other ethnic group.

In fact, we oftentimes look at that great statue of the raising of the flag at Iwo Jima on Mt. Suribachi. It should be noted that of the five Americans that are raising the flag, one is an Indian. That has been the contribution of Indian men and Indian women throughout our history. They have done so notwithstanding their strange and tragic history in the back. So I think they have earned the right to say, ''Let's not break any more treaties.'' Enough is enough.

Mr. President, like my distinguished friend from Washington, my friends from Colorado, New Mexico, Arizona, and Alaska, I look forward to this great debate where we can finally with some definitiveness and with some depth discuss our relationship with the first citizens.

In closing, I will read part of the statement of Governor Stevens of the State of Washington when he asked the tribe in the Pacific Northwest to sign the treaty of Point Elliott. The Governor used some extraordinary words:

> There will be witnesses. These witnesses will be tides. You Indians know that the tide goes out and comes in, that it never fails to go in or out. You people know that streams that flow from the mountains never cease flowing. You people know the sun rises and sets and never fails to do so. Those are my witnesses. And you Indians, your witnesses and these promises will be carried out and your promises to me and the promises to the Great Father made to you will be carried out as long as these three witnesses continue.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. I thank Senator INOUYE for those very thoughtful comments. Until he introduced a bill just a few years ago that established a museum of the American Indians as part of the Smithsonian—and I was a House sponsor when I was on the House side—until that happened, there was a common saying here in Washington, DC, by Indians throughout the Nation. That saying was, ''There are more dead Indians in Washington than live ones.'' It was because at that time there were over 16,000 remains, mostly skulls, but other body parts, housed by the Smithsonian.

Senator DOMENICI, when he was here, I think put it in a good and proper perspective. We are dealing with a couple of sections. My primary opposition was not that I was trying to lock anybody out from debate, but I felt it was the wrong vehicle for putting these very, very important policy changes on an appropriations bill. But Senator DOMENICI put it in a proper perspective. Since he did, I will make a point of that, too.

Senator INOUYE mentioned the number of treaties that were dealt with. It is my understanding that 374 were ratified by the U.S. Senate and 374 broken—every single one—but not by the Indians. That is something that ought to be in a historical perspective when we talk about section 120 or 118.

Most of the things that the Indians lost in the centuries past were done through two manners: either at gunpoint or through some subterfuge. Certainly if they had known the value of Long Island, they would never have sold it for $27 worth of beads. In the case of the Black Hills, they did not have a choice; it was at gunpoint, as many other lands were, too.

Some authorities, including Herman Viola, head of the National Archives and a prominent author on American Indians, has written about 14 thoughtful books on American Indians, and he says in some writings that estimates are as high as 30 million aborigine people—30 million—died in North and Central America between 1492 and 1992—30 million. It was not like this place wasn't inhabited. There were complete nations.

If you go back in history and you look at the great cities of Cahokia, which disappeared 400 years before the landing of Columbus, which had 20,000 acres in cultivated crops and astronomers, doctors, artists, and every imaginable kind of profession in their own way—gone, 400 years before anybody landed on a boat here from any of the European countries.

The great city of Tenochtitlan, which the modern city of Mexico City is built on top of, had thousands of years of their own history before the coming of post-Columbian people. I live about half an hour from Mesa Verde, called the Cliff Dwellings. They were there before Christ walked the Earth, the people living on the mesas, planting their corn, raising their kids, praying to their Lord, passing on generation to generation. They left there almost 400 years before Columbus even got here.

So when we talk about who owes what to whom around here, I think it is very important that we remember that Senator DOMENICI and Senator INOUYE have tried to put this in a proper perspective. They were a culture. They did not have prostitution. They did not have jails. They did not have communicable diseases. They did not have unemployment. They did not have taxes, by the way, Mr. President. They did not have welfare, mental institutions, literally all of the social problems that we now think are consuming America, eating up America. They did not have those. They could not even swear. They could not even swear. They had no swear words in the Indian language.

They were a pretty good culture. We could learn a lot from them. We did not learn very much because we found it was easier to take things at gunpoint or to get one to sell out another. That was common in those days. If the negotiators with the Federal Government could not talk some of the chiefs out of the land, they would simply say, ''OK, we will set up our own chiefs. We will set up these guys over here. They belong to the tribe. We will say they are the guys that have the authority to sign the agreements and the treaties.'' That is the way some of the land disappeared.

If we decided we could not deal with the Government of France or Great Britain or any other foreign country, we would simply say, we will set up our own puppet leaders in your country and then we will sign an agreement with them and that will become the law of the land. That is how a lot of the land disappeared.

They had none of these problems. It was not in their nature and it was not in their culture. They inherited it all. Many, many tribes are still trying to find their center, find their way, and make a better life for themselves and their kids. It is an uphill battle all the way because this Government, by and large, has never been very sensitive of their needs.

If you remember, historically, in fact, the Bureau of Indian Affairs was not part of the Department of the Interior when it was set up. It was part of the Department of War. Do you think anybody that sets up a framework to try to find fairness after fighting decades of battle, where some of their own people were lost in their battles, do you think they will be fair? Probably not.

That is what led to the rise of the Surgeon General in the 1800's asking the War Department to send out a request to collect body parts from American Indians. If they were already dead, that was OK, dig them up and send them in. If they were not, kill them and then send them in. The point of that whole study is a matter of historical record. It was to do one thing: They took measurements of the skulls, the bones; they measured how far apart were the eyes, and the cranial cavity and so on, and in their infinite wisdom decided, because those measurements were different from the Anglo majority of this country, they could not have had the intelligence to own land. That was one of the reasons and one of the driving forces of westward expansionism.

I didn't want to get into a big history lesson here, but that is all a matter of record.

It seems to me that if Senator DOMENICI and Senator INOUYE did anything, they tried to put this in a proper perspective. There have been many, many bills and many laws passed dealing with American Indians where they have had very little input and no voice in this body. All they are asking now is to have a voice in this body by having these bills introduced in a legislative forum so they can speak to them, too, and not just slipped in in an appropriations bill.

In the past, there have been many devastating laws passed by this Congress. Certainly one was simply called relocation. That was not so long ago, it just happened in the 1950's, in which Congress decided Indians had lived on reservations long enough and they could be assimilated, and they uprooted families and sent them to the city and taught them to be electricians, plumbers, automobile mechanics, and after they finished school,

they dumped them on the streets of Los Angeles, New York, Fresno, and all over this country with no jobs and no skills or ability to get the jobs with which they could make a living doing the things they had been taught under relocation.

That is the reason why we have such high alcoholism rates among urban Indians now, still to this day, 40 years after the relocation act.

In its infinite wisdom, this body decided, through the Termination Acts of the 1950's, they would arbitrarily say the Indians have been living around the city long enough, therefore we will not call them Indians now but terminate them as a legal body. The heck with the whole treaties, the heck with what we agreed to, our word is no good, we will terminate them. I have never understood that. It is like telling a black American you have been around the cities long enough, you are no longer black. I don't know how they could have even done that, but they did it.

To this day, many of those tribes that were terminated and left in limbo, not quite in the Anglo world and certainly not in the Indian world because they were no longer legally Indians, and they have been trying to find their center. That is why in the last few years we have allowed more and more tribes to go through the Bureau's procedure to be reinstated as tribes.

I guess in closing I should say we do an awful lot around here based on the law book. It seems to me we ought to do a little more based on the Good Book. You can be legally right and morally wrong. Everybody in this body knows that. I think we can put something in place that might be legally right and stand up in any court of law, but we have to ask ourselves, was that the right thing to do? Was that a fair thing to do to 2 million people without their input, without them knowing, without them having a voice? I don't think so.

If you look at the unemployment rate on the charts that Senator GORTON showed, it was 95 percent on the reservation in Pine Ridge, SD. When you talk about a 9 percent unemployment nationwide, this country comes unglued. We think we are in a major catastrophe if we have a 9 percent unemployment. Try 40, 50, 80, 90, or 95 percent, like in Pine Ridge, SD, and all the dysfunctional problems, including fetal alcohol syndrome. One out of five or six babies born is destined to lead a life in an institution because his mother drank too much because she didn't know the difference or did not know it would hurt her unborn baby. Try to apply those statistics to the outside world.

Half of our high school kids don't finish high school. We have kids sniffing glue, eating paint, blowing spray paint in their face, burning our their mind. They don't know what they are doing because they have not had proper education or training. We have a suicide rate on some reservations where one out of every two girls, one out of every two, tries suicide before she is out of her teenage years, and one out of every three boys, and too many of them succeed.

That is the historical perspective that I try to put this in when I say we went the wrong way in trying to add this to an appropriations bill with no input. I am delighted and honored that so many Senators came forward and spoke to this, and at least for this year, we got it right and we are telling people this Nation is no better than a human being when we give our word. We are now in the process of dealing with fast-track for NAFTA, expanding that; we dealt with the Chemical Weapons Ban Treaty, and we are dealing with another treaty dealing with landmines. They are all going to affect millions of people. It just seems to me that if this Nation can give their word in treaties to everybody else in the world that live halfway around the world, we can darn sure give our word to the first Americans and keep it.

With that, Mr. President, I would like to get back to the amendment and clarify that. I did ask unanimous consent on the pending question that is now referred to as section 118, beginning on page 52, line 16; is that correct?

The PRESIDING OFFICER. The Senator's amendment does propose a substitute for that language. The Senator is correct.

Mr. CAMPBELL. I am not sure. Did I ask for the yeas and nays?

Mr. GORTON. No. I think we are ready to vote on the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment by the Senator from Colorado?

If not, the question is on agreeing to amendment No. 1197 by the Senator from Colorado.

The amendment (No. 1197) was agreed to.

Mr. CAMPBELL. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16, AS AMENDED

The PRESIDING OFFICER. The question is now on the Committee amendment, amended by the amendment of the Senator from Colorado.

The excepted committee beginning on page 52, line 16, as amended, was agreed to.

Mr. CAMPBELL. Mr. President, I will move to section 120.

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 55, LINE 11

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 55, line 11.

The text of the excepted committee amendment is as follows:

TRIBAL PRIORITY ALLOCATION LIMITATION

SEC. 120. The receipt by an Indian Tribe of tribal priority allocations funding from the Bureau of Indian Affairs ''Operation of Indian Programs''' account under this Act shall—

(1) waive any claim of immunity by that Indian tribe;

(2) subject that Indian tribe to the jurisdiction of the courts of the United States, and grant the consent of the United States to the maintenance of suit and jurisdiction of such courts irrespective of the issue of tribal immunity; and

(3) grant United States district courts original jurisdiction of all civil actions brought by or against any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

Mr. CAMPBELL. I ask unanimous consent that the committee amendment referred to as section 120, beginning on page 55, line 11, be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The excepted committee amendment beginning on page 55, line 11, was withdrawn.

Mr. CAMPBELL. Mr. President, I wasn't going to speak to that, but I might make one comment. As I read the language of the bill, there were so many unanswered questions. One that came to mind was this. As I understand section 120, tribes who did not want to give up their sovereign immunity would be denied Federal funds. If they did willingly give up Federal funds, then they would not have had to give up their sovereign immunity, which seemed strange to me because the tribes that are the most destitute and therefore the most dependent on Federal help, would have been the ones who would have had to give up immunity and therefore would have been sued more, where the very few, perhaps 1 out of 100, who do have a casino and have some money, simply would have said we don't want Federal money, we have enough; therefore, their immunity would have been intact. It seems that paradox should be the thing that we discuss in a proper forum, which is the committee legislation.

With that, I have no further comments, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, section 120 of the bill is a section that conditioned tribal priority allocations on the abandonment of a doctrine called sovereign immunity on the part of Indian tribes. There has been much said during the course of the day about justice, about simple justice, about there being more important concerns than the letter of the law. With that proposition, I find myself in agreement. And the proposal with respect to sovereign immunity was aimed at just precisely that goal—simple justice.

In fact, Mr. President, there is a letter to the editor in the Washington Post today that goes under the title of ''Simple Justice.''

I ask unanimous consent that this letter be printed in the RECORD at this point.

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

[From the Washington Post, Sept. 16, 1997]

SIMPLE JUSTICE

I read with disappointment the comments of Sens. Ben Nighthorse Campbell and John McCain regarding Sen. Slade Gorton's provision to the Interior Appropriations bill that would require Indian tribes to waive their sovereign immunity from suit before they can receive federal funds [''Keeping Our Promise to the Indians,'' op-ed, Sept. 10]. Their argument misses the point.

Sen. Campbell said recently that the legislation that would provide my family access to the federal court system to seek justice for my son's death would pass over his [Campbell's] ''dead body.'' Now Sen. McCain has joined the rhetoric.

On Oct. 25, 1994, two of my sons were returning home from a school function in our farm pickup truck. When Jered, 18, and Andy, 16, were crossing an intersection on an Indian reservation, a tribal police vehicle hit their truck at a speed calculated at 68 mph. My son Jered was killed instantly, and Andy suffered serious injuries.

I then learned that my family has no recourse in the federal and state court systems, because tribes have protection for such actions under the principle of sovereign immunity. According to University of Washington law professor Ralph Johnson, sovereign immunity is based on European law—''you can't sue the King.'' There are no kings in America. Sovereign immunity is not a right held by Native Americans; it is an authority granted to them by Congress.

I was told that my only avenue to seek justice would be through the tribe's makeshift court system that operates without a constitution. Indian tribal courts have routinely shown their inability to administer justice fairly. The tribes don't even have to allow a person to seek damages against them if they choose not to.

Sen. Gorton has written a provision that tribes receiving federal tax dollars must accept responsibility for their actions in the same court system that every other American must. This proposal is a simple and fair one. Sen. Campbell's objection to this legislation is denying my family's right to seek justice for a tragic incident that has profoundly changed our lives forever.

When Sen. Campbell talked about this legislation passing over his ''dead body,'' it hit a deep and emotional chord with me; that is why I am urging the passing of this legislation. But the death I speak of is real, no political talk. The justice I ask for is no more than any other American enjoys when not dealing with Indian reservations.

The two senators wrote that Native Americans ''don't come from large voting blocs, and most cannot afford the kind of access in Washington other Americans have.'' In addition to that, they referred to Native Americans as a ''silent minority''.

The Center for Responsive Politics totaled the monies spent by Native American interests on lobbying, soft-money donations to national and state party committees, individual contributions and PACs to be $4,248,464. Common Cause listed the top 25 gambling industry soft-money donors during the 1995 and 1996 campaign cycle. The No. 1 donor was an Indian tribe, as was the ninth, 16th, 17th, 18th, 20th and 23rd.

I am just the father of a son who was killed on a reservation. I have spent $20,000 of my own money to seek justice for his death—money earned by working on my farm. If the Native Americans who have spent more than $4 million influencing proliticans are the ''silent minority,'' I wonder where that leaves me in the senators' eyes.

BERNARD GAMACHE
Wapoto, Wash.

Mr. GORTON. The simple justice referred to in this article is the death of an 18-year-old high school student in an automobile accident in the lower Yakima Valley in the State of Washington. That accident, according to the father of the boy and the police agencies, took place when a Yakima tribal policeman ran a red light in a pursuit and broadsided the pickup being driven by the young man and killed him.

The Yakima Tribe, the employer of that police officer, cannot be sued because of the doctrine of sovereign immunity. In other words, there is no State or Federal court in which the father, the author of this letter, can seek simple justice. He is absolutely precluded by the doctrine of sovereign immunity. Now, if that police vehicle had belonged to the Yakima County sheriff's office, a suit could have been brought against Yakima County. If it had belonged to the Washington State Patrol, the father could have brought a lawsuit against the State of Washington—but not against the Yakima Tribal Council, the employer of that police officer.

The Yakima Tribal Council states that the facts are somewhat different and that perhaps the police officer was not negligent. Neither you nor I, Mr. President, nor any Member of this body can be certain of those facts. But it is for exactly that reason that we set up courts in the United States, so that there could be a neutral body to make that determination and to reward damages where a judge and a jury felt damages were due.

So when we discuss this question of tribal immunity, we aren't dealing with an abstraction, we are dealing with a very real question of justice involving very real people and involving responsibilities that are undertaken by every other governmental corporation in the United States.

During the course of the debate over sovereign immunity, we have also heard, as one of the principal defenses, that it is created by these 367 treaties with Indian tribes. Unlike the debate on the previous question, a treaty-created right of financial support, I can't put a display behind me here showing a treaty and what it does to deal with tribal immunity because, bluntly, there isn't a word about sovereign immunity in any one of those 367 treaties. The reason is not surprising. Governmental immunity from lawsuits is not a concept that traces from that relationship. It is a doctrine of English common law that you could not sue the king, a common law inherited by the United States upon our Declaration of Independence in 1776, and abandoned, in most part, by the Government of the United States, by the governments of varying States, and through them by local governments all across the United States. One of the most recent statements of a Member of the Supreme Court on sovereign immunity is Justice Stevens, in 1991:

> The doctrine of sovereign immunity is founded upon an anachronistic fix. In my opinion, all governments, Federal, State, and tribal, should generally be accountable for their illegal conduct.

And, of course, Mr. President, we never, under our system of judgment, allow the determination of whether or not something is illegal to be made by the person accused of illegality. We use an independent court system for that determination. The Supreme Court has dealt very specifically with the question of where the authority to make that determination about Indian tribal sovereign immunity is lodged.

Chief Justice Rehnquist, in 1991, at the end of a series of cases on this subject, wrote:

> Congress has always been at liberty to dispense with such tribal immunity or to limit it.

It is not a matter contained in any treaty. It is a matter that the Constitution of the United States of America lodges right here in the Congress of the United States.

Now, I have agreed to the amendment that was just accepted because the Senator from Colorado, the Senator from Hawaii, and others have also graciously agreed that a subject that, for all practical purposes, has not previously been taken up by the Committee on Indian Affairs will in fact be taken up.

I will, in the next few days or weeks, introduce a bill on sovereign immunity. They have agreed that there will be a series of hearings in which we will hear from victims of sovereign immunity, like the author of this letter, and from many others, and hear the justification of the various tribes for the retention of this anachronistic concept. They have also agreed that we will have a markup and a vote on such a proposal in the committee.

My friend, the Senator from New Mexico, who is not here now, who vociferously and successfully argued for the removal of this section from this bill, has said, as he just did a few moments ago, that he feels that there may be real room, in connection with this doctrine, for changes, for some removal of that tribal immunity, even if not a total abandonment of it. I find that to be a most encouraging statement. I hope he reflects on others of his own view. The particular example that he has used is one that is pretty close to home, because as long ago as 1981 when I was attorney general of the State of Washington, I was involved in a lawsuit in which the Supreme Court of the United States made the judgment that Indian tribal smoke shops were required to collect the State's cigarette tax on the sale of cigarettes to non-Indians and to remit them to the State. It is curious that now we are debating actively just how much more we should pile on in the way of cigarette taxes in order to discourage smoking.

But in the 17 years since the Supreme Court made that decision, a decision renewed in another case in the Supreme Court of the United States just a few years ago, Indian tribes have systematically and successfully ignored the judgment of the Supreme Court of the United States and have refused to collect those cigarette taxes, and sell cheap cigarettes, often to minors, without collecting the State sales tax, and to successfully defy the Supreme Court because the smoke shops are considered tribal enterprises and the State taxing authorities can't sue to enforce the collection of those taxes because of the doctrine of sovereign immunity. Just what justification we are going to get in these hearings for defying decisions of the Supreme Court of the United States and selling cheap cigarettes in the year 1997 and 1998 I am not sure about. I am going to be very interested in listening to that argument. We are talking about fairness here. We are talking about taxes that support the schools to which members of the tribe go. We are talking about a tax system that creates fair competition between sellers who hold that tribal immunity and those who do not. And, in a third area, we need to examine whether or not the ordinary forms of contract law ought to allow the enforcement of contracts, as against a claim of tribal immunity preventing a determination as to whether a contract has been violated or not.

Those are three areas. I don't know that they are necessarily exclusive, and probably the considerations in each one of them may be different.

Should States be allowed to enforce the collection of taxes that the Supreme Court says they have lawfully imposed? Should persons alleging violations of contract be able to go into a court to get a fair and equitable determination of whether a contract has been violated? Should the victim of negligence, or even an intentional harm in an automobile accident, or an assault, or the like, be able to seek redress in the courts of his or her State, or his or her Federal system, against an Indian tribe under pretty much the same circumstances in which they can seek that redress against any other governmental entity in the United States?

The Supreme Court, Mr. President, has said the buck stops here. It is up to us to make that decision. We have not even talked about it for 20, 30, or 40 years.

I think it is a major step forward that we will in fact talk about it. I suspect that it will still be a controversial issue, though it may be that the Senator from New Mexico has come up with a way for us to say, ''Well, perhaps we are not going to go all the way; perhaps we will try to deal with areas which are really quite open and shut, and see whether or not it works to the administration of justice; whether or not it does undercut any kind of tribal right of self-determination.''

That offer, as well as the generous statements from the Senator from Hawaii, and the Senator from Colorado, I greatly welcome. And I think we can deal with this in an orderly fashion of committee hearings and committee action.

I now think perhaps for the first time we have some hope that we may not only be able to talk about the issue but to come to some kind of an accommodation in which we meet somewhere in the middle of the road—hopefully we will not get hit by a car on the way—and see whether or not we can't move forward on this.

So, I agree with the amendment of the Senator from Colorado which has just been agreed to. I thank him for his agreement to move forward on an issue on which he feels strongly, just as I do. But that, of course, is the way in which we deal with controversial issues, and I look forward to the next round.

Mr. President, I think we have exhausted this subject. With respect to the bill as a whole, we will return I believe to the debate over the various amendments on the National Endowment for the Arts. The majority leader informs me that he in the strongest possible terms wishes to complete all action on this bill by adjournment tomorrow. Once Members who wish to speak to the National Endowment for the Arts, or any other issue, come to the floor and do so, we will have a further opportunity this evening.

There is an amendment on forest roads to be proposed by Senator BRYAN of Nevada, which I understand will be proposed early tomorrow, which will be highly controversial. And this will require a vote. The Senator from Arkansas, Mr. BUMPERS, and the other Senator from Nevada, Mr. REID, may well have settled the controversy involving them, and others.

So I am not certain, on the Bryan amendment and the various amendments on the National Endowment for the Arts, that there are any others that will require rollcall votes. If there are, I urge Senators, or their staffs, to notify us and come to the floor and discuss them.

We need to pass this bill. We need to get it into a conference committee. There are many controversial differences with the House bill.

With that, Mr. President, and the request of anyone who wants to say anything tonight to say it, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE NATIONAL ENDOWMENT FOR THE ARTS

Mr. REED. Mr. President, last November, the people of Rhode Island gave me the great honor of succeeding one of this Chamber's true giants: Senator Claiborne Pell. Throughout his years of service, Senator Pell committed himself to increasing access to education and, fittingly, his name has become synonymous with the fight to open the doors of higher education to all of our Nation's citizens, regardless of income.

Senator Pell also dedicated himself to increasing access to the arts for all Americans, regardless of an individual's or a community's wealth. He recognized the power of the arts to inspire people of all ages, through national and local exhibitions as well as arts education. With his wise and steadfast leadership, Congress made a commitment to advancing these aims, creating a National Endowment for the Arts.

I am proud to follow in Senator Pell's footsteps in supporting the NEA and a strong Federal commitment to the arts. Across the country and in my home State of Rhode Island, the arts enhance our culture and strengthen our economy.

The events of recent years in Rhode Island's capital city of Providence are a testament to the power of the arts. The last half decade has seen the revitalization of Providence's downtown area. One major factor in this rebirth has been the emergence of Waterplace Park, which uses architecture to take advantage of the Woonasquatucket and Providence Rivers' natural beauty. This summer, with NEA support, the WaterFire exhibition was introduced to the park. In the few short months since its installation, this artistic display has already encouraged thousands of Rhode Islanders to rediscover Providence's treasures.

The arts have also contributed to Providence's revival in other ways. Institutions like the recently renovated Providence Performance Arts Center and Trinity Repertory Company, both of which receive NEA support, provide our State's residents with opportunities to see well-renown and innovative theatrical works. In addition, the passage of new tax incentives for artists residing in downtown Providence has attracted a vibrant and increasingly active artistic community to the city. Taken together, these developments led USA Today to name Providence a ''Renaissance City'' in 1996.

The Federal investment in the NEA is minimal. The $100 million this bill would provide for the NEA, for which I commend the chairman and ranking member of the subcommittee, represents less than 40 cents for each of our Nation's citizens.

But with this tiny investment, the NEA does great things, offering our Nation's citizens increased access to all forms of the arts. In my State, the NEA supports not only theatrical productions, but also the work of the Children's Museum of Rhode Island, the youth concerts given by the Rhode Island Philharmonic Orchestra, and the interactive music program that Rhode Island Hospital offers to its patients. In my hometown of Cranston, the NEA

supports the annual Labor and Ethnic Heritage Festival, which brings people of diverse backgrounds together to celebrate and learn about each others' traditions and cultures.

These programs reach a wide range of Rhode Islanders, but even those who choose not to participate in these events benefit from NEA support and our State's vibrant arts communities. There is a close relationship between the arts in Rhode Island and economic growth.

Working closely with the NEA, the Rhode Island State Council on the Arts supports many arts organizations, social service organizations conducting arts programs, and arts educators. One of the Rhode Island Council's funding categories, which supports 26 of the State's largest arts organizations, is known as general operating support. In 1995–96, the council's grants in this category totaled $355,000, with an average grant size of $10,000.

For this investment of $355,000, the State of Rhode Island saw an enormous return. The 26 general operating support organizations directly contributed more than $24 million into the Rhode Island economy. More than 1.1 million people attended these organizations' programs last year, further spurring the economy. Using modest Department of Commerce multipliers, these figures suggest that the activities of the general operating support organizations alone contributed a total of more than $97 million to Rhode Island's economy last year. The figure for all arts organizations would be even greater.

These impressive findings are repeated on a national scale. Recent studies have shown that the national nonprofit arts industry generates some $36.8 billion annually in economic activity; supports 1.3 million jobs; and produces $790 million in local government revenue and $1.2 billion in State revenue. For each dollar the NEA invests in communities, there is a twentyfold return in jobs, services, and contracts. Without question, this is a wise investment of our resources.

We must also recognize the importance of national leadership in the arts, which only a strong, sufficiently funded National Endowment can provide. As my colleague from Utah, Mr. BENNETT, noted yesterday, the NEA's seal of approval helps countless organizations across the country to raise matching funds from private sources to support the arts.

In addition, by identifying arts education and increased access to the arts as its priorities, the NEA has promoted these issues nationwide. In recent years, we have seen a resurgence of our commitment to include the arts in elementary and secondary school curricula in Rhode Island, largely spurred by the NEA's emphasis on how exposure to the arts helps young people to grow more proficient in all subjects.

I am proud to serve on the Labor and Human Resources Committee, which has examined many of these issues. I am also proud to be a cosponsor of S. 1020, which the committee passed earlier this year by a bipartisan 14-to-4 vote. S. 1020 reauthorizes and continues to reform the NEA, while maintaining a strong Federal commitment to the agency and its ideals. I look forward to the consideration of this important legislation on the Senate floor.

Standing on this floor 32 years ago, Senator Pell observed that ''the arts throughout history have greatly enriched all truly worthwhile civilizations. The arts can put into tangible form the highest of man's creative ideas, so that they may become permanently memorable.''

Today, I wish to echo Senator Pell's wise counsel. I urge my colleagues to support the NEA at the funding level requested by the subcommittee and to preserve a strong Federal commitment to the arts.

VANISHING TREASURES

Mr. DOMENICI. Mr. President, I would like to take a moment to bring an issue to the Senate's attention related to the National Park Service and it's new initiative called Vanishing Treasures.

In a number of park units throughout the Southwest, the Park Service is responsible for maintaining and interpreting numerous ruins and historic structures, some that date back over 1,000 years.

One example of the wonderful ruins that exist in our National Parks is the Chetro Ketl kiva found in Chaco Canyon in New Mexico; a fascinating structure demonstrating the advanced architectural skills of the ancient Anasazi culture.

Many of these structures have become unstable and are constantly being degraded, primarily by the effects of the harsh desert climate. Furthermore, the almost artistic skill required in the stabilization methods that are necessary to preserve these structures is being lost because of the emphasis on other programs within the Park Service.

The Vanishing Treasures initiative will provide a 10-year program to stabilize these kinds of ruins to the point where they can be preserved by routine maintenance activities. Additionally, the initiative will place an emphasis on the training of younger employees, both permanent and seasonal, in the skills needed to perform this needed work.

In all, over 2,000 prehistoric and historic structures in 41 Park Service units, and countless numbers of future visitors will benefit from the work performed under this initiative.

The bill before us provides $1.5 million for this program, which is $0.5 million more than provided by the House, and $2 million less than requested by the administration.

I hope that the chairman will work with me to ensure the Senate level is at least maintained in conference, and I look forward to working with him to explore other opportunities to see that this initiative has sufficient resources to do this important work.

I ask unanimous consent that additional material be printed in the RECORD.

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

VANISHING TREASURES INITIATIVE

Vanishing Treasures (+$3,500,000; 18 FTE): The initiative proposed here would enable the NPS to reduce threats to ancient prehistoric ruins and historic structures that have grown to serious proportions in recent decades. ''Vanishing Treasures'' will improve the preservation of over 2,000 prehistoric and historic ruins in 41 parks in the arid west, all located within the Intermountain Field Area of the Park Service. The NPS estimates that half of these structures, the remains left by ancient American Indian societies such as the Anasazi, their historic descendants, and later pioneers, are in less than good condition. About 60 percent of these structures are being impacted severely or substantially, mainly by weathering and erosion. The severely impacted structures are at risk of collapse in the near future Others are deteriorating a bit less quickly, but with continued deferred maintenance this process will accelerate. Also of special concern is the poor documentation of these structures, about 60 percent of which are not well recorded and are poorly known.

An estimated 20 million visitors annually come to see these prehistoric and historic ruins and to learn about the ancient and historic cultures that created them. This visitation contributes over $1.6 billion to the economies of the States where the parks are located, helping to create over 33,000 jobs there. If the NPS is unable to maintain these structures, they will be lost. There is no Servicewide base funding for this program in FY 1997.

''Vanishing Treasures'' is proposed as a 10-year program to bring NPS capability and the prehistoric and historic structures to a condition in which they will be preserved by routine preservation maintenance activities. The initiative includes: immediate emergency actions to be carried out in the first year; documentation, planning and management of projects to be carried out over the 10-year period of the initiative; a focus on skilled maintenance expert development and training; and provisions for appropriate expertise in other disciplines to make the program successful. Projects will be carried out by parks or centers, depending upon the nature of each project. Following is a summary of the four components of the Vanishing Treasures program:

Emergency Needs. Wind, rain, ice, snow, visitor use, site looters and vandals, insects, birds, rodents, and other forces wear down, break up, and deteriorate prehistoric structures unless counteractive steps are taken. Lack of such steps in recent decades has placed some structures in grave danger. In FY 1998, $2.045 million will fund the most acute emergency preservation projects where collapse and permanent loss of irreplaceable resources is imminent. Approximately 18 to 24 projects will be undertaken to meet most of the acute emergency need. A few examples of types of projects to be undertaken include:

Wupatki and Walnut Canyon National Monuments: These units include 202 sites that have standing prehistoric architecture, including large interpretive sites as well as smaller sites whose structural conditions have been identified as threatened with imminent loss. Only one position is currently devoted to ruins preservation.

Chetro Ketl, Chaco Culture National Historical Park: Large elevated circular kivas are a hallmark of Classic Bonito Phase great

house architectural design. Among many, only Kiva G in the Chetro Ketl ruin has been extensively excavated. Kiva G is a series of eight superimposed, independently constructed ancient kivas, representing at least 18 separate prehistoric construction episodes and elevated 35 feet in the central building mass of the ruin. A support system of masonry and wooden piers, wooden sheathing, and steel beams installed more than 60 years ago to preserve the site have rusted, twisted, bowed, fractured, and rotted so that stresses are now transmitted to the prehistoric walls the system was intended to protect. The area is hazardous to the very workers who preserve the walls. Because of the extreme height and mass, collapse would be catastrophic to the kiva and 15 surrounding rooms. Funding would allow a structural/safety evaluation, design plan, and preservation treatment for this important resource.

Fort Union National Monument: In late July of 1995 a major architectural feature located in the Quartermaster's Office fell, and in the summer of 1996 another wall gave way to strong winds. Resources needed preservation work at Fort Union include but are not limited to a minimum of 250,872 square feet of adobe, 83,725 cubic feet of rock foundations, 25 new and replacement braces, and an undetermined amount of fired brick in over sixty structural remains.

Mesa Verde National Park: This park and two associated units protect 5,000 documented prehistoric sites, including 585 cliff dwellings and 45 mesa-top towers. Only about 100 of these sites have received treatment over the last ninety years, and structures renowned for their remarkable state of preservation are deteriorating at an alarming rate. Collapsing walls, undermining foundations, sagging roofs, rising damp and eroding mortar all place the integrity of this architecture in danger. Moreover, the recent fires at Mesa Verde National Park revealed as many as 500 new sites that will adds further to the conservation workload.

Upper Ruin, Tonto National Monument: Unexcavated Room 15 contains as much as eight feet of dirt fill, creating immense stress between it and adjacent excavated Rooms 7 and 14. Stress is exacerbated as seasonal rains swell the fill with moisture. Walls are bulging and cracking despite various temporary shoring and runoff diversions. Without correction, the inevitable collapse will soon destroy important prehistoric architecture and unstudied archaeological deposits.

[From the New Mexico Journal, Sept. 2, 1997]

SUN, WIND, RAIN CRUMBLE RUINS

PRESERVATION EFFORTS HINDERED BY LACK OF FUNDS

(By Peter Eichstaedt)

CHACO CANYON, N.M.—Harsh winds, driving rains, and an unrelenting sun are as common here as the timeless stone and dried mud dwellings of the ancient Anasazi.

But wind, rain and sun could spell the end of these mysterious ruins unless measures are taken soon to preserve them, say National Park Service officials.

The common notion is ''you don't need to fix them because they're ruins,'' says Dabney Ford, archaeologist at the Chaco Culture National Historic Park.

Because most visitors come and go quickly, spending only an hour or two at the parks, they rarely notice the annual deterioration of the ruins, Ford says in a recent interview.

''There are some genuine disasters,'' she says of Chaco and 40 other national parks, monuments and historic sites across the West in need of preservation. Walls are falling down and sites are being washed away by flash floods and downpours, she says.

To generate public sympathy and federal funds to preserve these ruins, Ford and other national park employees earlier this year launched a drive to secure $3.5 million from Congress.

But Congress, scheduled to reconvene this week, is poised to provide less than a third of that request.

If approved, the money would begin a 10-year project called the ''Vanishing Treasures Initiative'' to improve and protect more than 2,000 prehistoric and historic ruins in 41 national parks in New Mexico, Arizona, Colorado, Texas, Utah and Wyoming.

The money would also set up a mentor program where the parks' experienced Native American preservationists would train another generation to do the work, Ford says.

GONE WITH THE WIND

As Ford leans into the wind while balanced on the rim of a large round kiva, she points to a bulge in the sandstone masonry work below her feet.

The bulge has been caused by underground moisture that has weakened the ancient mud mortar between carefully laid rock. Natural pressure did the rest, she says.

The rock must be removed and replaced, she says. ''It takes about one hour to repair one square foot.''

The hands-on work is done by Navajos such as Charles Lanell, who began working part-time at Chaco Canyon in 1973 and who uses techniques that preserve the historic integrity of the sites, she says.

The parks also face a loss of expertise, Ford says, because the most knowledgeable of the Native American restoration specialists are soon to retire. There are no apprentices to replace them, she says.

What repairs are performed on the ruins are dire emergencies, Ford says, and only as much work is done as can be paid out of various park funds.

In some cases, the best thing to do for preservation is simply to backfill some of the multi-room stone structures and kivas, Ford says. Burying these ruins protects them from the ravages of rain, wind and sun.

''We haven't been taking care of these things,'' she says. ''There are reasons, and they are mostly fiscal.''

The situation at Chaco is not unique. At Aztec Ruins in Aztec, N.M., ancient rock walls are tilting and some have fallen. Some of the country's best-preserved and hand plastered rooms are being washed away by periodic rains that leak through deteriorating chamber roofs, says Barry Cooper, Aztec Ruins' superintendent.

Mike Sherris, facility manager at Aztec, was among the three people who launched the preservation program.

''They just were not well-funded for many years,'' Sherris says of preservation work at Aztec and other monuments. ''We're going to lose sites here if we don't maintain them.''

A third major ruin in New Mexico also has been deteriorating.

Mike Schneegas, facility manager at Salinas Pueblo Missions National Monument, near Mountainair, also helped initiate the program.

The preservation needs at Salinas ''were much greater than we thought,'' he says. With just three or four seasonal employees to do the repair work, ''we just can't keep up.''

Erosion is the biggest problem at Salinas and threatens the many towering rock walls, he says. Moisture from the soil creeps into the mud mortar and weakens the walls.

A little bit of preservation work goes a long way and can save money in the long run, he says. Repairing a deteriorating wall is much cheaper than rebuilding one.

FINDING A MEANS

Like other federal agencies in recent years, the National Park Service suffered deep budget cuts and preservations funds were lost, Ford says.

''We've downsized and it's been for the good,'' she says, but ''money is tight'' and budgets focus on simply keeping the parks open.

The House and Senate, in separate measures in July, proposed $1 million and $1.5 million respectively for the Vanishing Treasures program.

In addition, another $2 million has been proposed for ''stabilization'' work across the country, only a portion of which would be used by the western parks, says Jerry Rogers, superintendent of the Southwest Office of the Park Service.

The $2 million will be available to all 375 parks and historic sites in the country, Rogers says, while the Vanishing Treasures funds are just for the 41 parks in the West.

''The final amount for Vanishing Treasures will presumably be worked out in a conference committee and will be somewhere between $1 million and $1.5 million,'' he says.

Rogers says he hopes to get more money in future years, but is happy about any money Congress provides.

''The need for $3.5 million is very real,'' he says. ''We understand the difficulties Congress faces in setting priorities. The National Park Service will make Congress glad it gave us what they did.

AMENDMENT NO. 1200

(Purpose: Clarifies that funds provided for land acquisition in south Florida may be used for acquisitions within Stormwater Treatment Area 1–E)

Mr. GORTON. Mr. President, I send an amendment to the desk sponsored by Senators MACK and GRAHAM, and ask for its immediate consideration.

The PRESIDING OFFICER. If there is no objection, the pending committee amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. MACK and Mr. GRAHAM, proposes an amendment numbered 1200.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 19, line 2, strike the colon and insert in lieu there of '': Provided further, That the Secretary may provide such funds to the State of Florida for acquisitions within Stormwater Treatment Area 1-E, including reimbursement for lands, or interests therein, within Stormwater Treatment Area 1-E acquired by the State of Florida prior to the enactment of this Act: ''

Mr. MACK. Mr. President, I rise today to thank the distinguished chairman of the subcommittee for his hard work in getting this bill to the floor today. I also want to express my personal thanks for his including a truly historic appropriation for land acquisitions related to the Everglades restoration effort in my State of Florida. I would like to take a moment of the Senate's time today to engage the Senator from Washington in a colloquy.

As the chairman well knows, the restoration effort encompasses all of south Florida, from the Kissimmee River in the north to the Florida Keys in the south. I understand that while

the $66 million has been allocated for land acquisitions in Everglades National Park, the bill contains language allowing the Secretary to use these funds to purchase lands elsewhere in the south Florida ecosystem. Is that correct?

Mr. GORTON. The Senator from Florida is correct. The legislation before us today allows the Secretary to use this funding to assist the State of Florida in acquiring land in Stormwater Treatment Area 1—East, should he determine it appropriate and deemed necessary by the Secretary.

Mr. GRAHAM. I join my colleague from Florida in thanking the chairman for his hard work on behalf of the Everglades. As my friend from Washington is aware, the Federal Government—under an agreement enshrined in the Everglades Forever Act of the State of Florida—is committed to purchase land for Stormwater Treatment Area 1—East. This land will be used to create a buffer marsh bordering on the Everglades agricultural area to help restore water quality. As I understand it, nothing in the bill before us today prevents the Secretary from using a portion of the Everglades National Park land acquisition funding to assist in STA–1E land acquisitions. Is that correct?

Mr. GORTON. The Senator is correct. The Secretary may use the funding in this provision to improve and restore the hydrological function of the Everglades watershed. Nothing here prevents the Secretary from providing park acquisition funding to assist the State of Florida in the purchase of land for the project you described.

Mr. GRAHAM. I appreciate the chairman's comments and assistance.

Mr. MACK. I thank the chairman for his work on behalf of Florida's environment and for his help here today. I yield the floor.

Mr. GORTON. Mr. President, this amendment has been cleared by the managers on both sides and is noncontroversial. I recommend its adoption.

Mr. REID. I would say these amendments have been cleared on this side, on behalf of Senator BYRD.

I urge the adoption of this amendment.

The PRESIDING OFFICER (Mr. GRAMS). If there is no objection, the amendment is agreed to.

The amendment (No. 1200) was agreed to.

AMENDMENT NO. 1201

(Purpose: To permit the Virgin Islands to issue parity bonds in lieu of priority bonds)

Mr. GORTON. Mr. President, I send an amendment to the desk sponsored by the junior Senator from Alaska. I ask unanimous consent the pending committee amendment be set aside and we proceed to the consideration of the Murkowski amendment.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. MURKOWSKI, proposes an amendment numbered 1201.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Sec. . (a) PRIORITY OF BONDS.—Section 3 of Public Law 94–392 (90 Stat. 1193, 1195) is amended—

(1) by striking ''priority for payment'' and inserting ''a parity lien with every other issue of bonds of other obligations issued for payment''; and

(2) by striking ''in the order of the date of issue''.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to obligations issued on or after the date of enactment of this section.

(c) SHORT TERM BORROWING.—Section 1 of Public Law 94–392 (90 Stat. 1193) is amended by adding the following new subsection at the end thereof:

''(d) The legislature of the government of the Virgin Islands may cause to be issued notes in anticipation of the collection of the taxes and revenues for the current fiscal year. Such notes shall mature and be paid within one year from the date they are issued. No extension of such notes shall be valid and no additional notes shall be issued under this section until all notes issued during a preceding year shall have been paid.''

Mr. MURKOWSKI. Mr. President, the amendment that I am offering would amend the Revised Organic Act of the Virgin Islands to permit the Virgin Islands to issue parity bonds rather than priority bonds as now required under the organic legislation. The amendment would also permit the Virgin Islands to issue short-term revenue bonds in anticipation of the receipt of taxes and other revenues. These are authorities generally available to the States. The Governor requested this authority. The Delegate supported the legislation. The administration testified in support of the provisions and the Committee on Energy and Natural Resources unanimously adopted the provisions as part of S. 210, which has passed the Senate. Inclusion of this language on this measure may facilitate providing the Government of the Virgin Islands with this authority and I thank the managers of this legislation for their cooperation.

Mr. GORTON. Mr. President, I believe this amendment has been cleared by both sides and we are prepared for its adoption.

Mr. REID. This amendment has been cleared. On behalf of Senator BYRD, I urge its adoption.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1201) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1202

(Purpose: Technical amendment clarifying that committee provision regarding Forest Ecosystems Health and Recovery Revolving Fund applies only to Federal share of receipts)

Mr. GORTON. Mr. President, I send an amendment to the desk for myself and Senator BYRD.

This is a technical amendment regarding the Bureau of Land Management's Forest Ecosystems Health and Recovery Revolving Fund. The Recovery Fund is used for the planning, preparing and monitoring of salvage timber sales and forest ecosystem health and recovery activities. The amendment clarifies that the Federal share of any receipts derived from treatment funded by the account shall be deposited back into the Recovery Fund. A percentage of the receipts that are collected from salvage timber sales are returned to the States.

That applies to only the Federal share of receipts.

I ask unanimous consent the pending committee amendment be set aside and this amendment be considered.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. BYRD proposes an amendment numbered 1202.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 6, line 20, strike ''Any'' and insert in lieu thereof ''The Federal share of''.

Mr. GORTON. Mr. President, the amendment has been agreed to by both sides.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1202) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1203

(Purpose: Technical amendment clarifying provision allowing TPA funds to be used for repair and replacement of school facilities)

Mr. GORTON. Mr. President, I send a further amendment to the desk sponsored by myself and Senator BYRD. It is another technical amendment clarifying the provision allowing TPA funds to be used for repair and replacement of school facilities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. BYRD, proposes an amendment numbered 1203.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 32, beginning with the colon on line 13, strike all thereafter through ''funds'' on line 18 and insert in lieu thereof the following: '': *Provided further*, That tribes may use tribal priority allocations funds for the replacement and repair of school facilities which are in compliance with 25 U.S.C. 2005(a) so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocations funds''.

Mr. GORTON. Mr. President, the amendment is technical. In response to the growing backlog of unmet need for replacement and repair of BIA schools, the committee recommended that tribes be allowed to use their Tribal Priority Allocations funds for replacement and repair of schools if they wish. The technical amendment we are recommending today would clarify that, if a Tribe decides to use its TPA funds for the improvement, repair, or replacement of a school, that work must be preapproved by the Secretary of the Interior. In addition, future work must be completed with TPA or non-Federal Tribal funding. The Bureau correctly noted after the committee included the original language that, absent such conditions, it cannot currently meet the needs as they exist now. We are attempting to give Tribes some options; however, we do not wish to simply add to the need.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1203) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GORTON. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would like to spend a few moments discussing the issues pertaining to the National Endowment for the Arts. There are a number of amendments which are either already filed at desk or will be filed between now and, I gather, tomorrow afternoon. There will be further debate on this tomorrow as well. But I wanted to add additional comments, as well as to reiterate some of the points I made yesterday, both in support of the amendment which I have filed, as well as the general issues that have been raised by a number of the others who have spoken with regard to the NEA.

Again, I would like to begin as yesterday by pointing out that, like many of the people here in the Senate, I am a strong proponent of the arts; a supporter. In our State we have a number of outstanding institutions too numerous to mention without forgetting important ones. I will just say in our State we make a major commitment and investment in arts activities. There are problems, though, as have been discussed at great length in the last day and a half, with the way the National Endowment for the Arts has functioned. I don't have specific criticisms of individuals, but I do think the results have been ones that have raised concerns. They have been concerns I have had since I came to the Senate in 1995.

The principal concern I have is that the way we have proceeded has sort of established an ongoing debate which, on the one hand, has people arguing that the funding of specific types of, either arts institutions or artists, has meant that, in effect, tax dollars have been used for unacceptable or, in some cases it is argued, obscene activity. On the other hand, we hear from those who seek to be recipients of NEA grants, the argument that every time we add more controls here in Congress on the way these dollars are distributed, we are in effect performing a type of censorship on art and creativity in our country.

My fear is that ultimately this leads us in a direction where there is a no-win outcome. Everybody loses. I met and discussed this with Jane Alexander. We have talked. I have outlined to her my concern that all it will take is one or two or maybe three more objectionable or provocative grants and we could well see an immediate cessation of support for the National Endowment or for any concept like it. In my State, that would be a bit of a problem because a lot of the institutions, I think, need lead time before we would totally cease support.

Also, I think if we continue this debate we are really, in many ways, undermining the arts themselves. Because every time we have national focus on the problems with respect to artistic activity in this country, I think if anything it causes people not only to want to see fewer tax dollars supporting the NEA, and more strings attached to those tax dollars, but I think it diminishes the overall level of interest in and positive feelings toward arts activities.

I also am concerned, and have expressed this before, about the way the NEA makes its decisions. Because, as we have seen in the very excellent presentation by the Senator from Arkansas and the Senator from Alabama and others, the Senator from Texas as well, the distribution of these dollars has not been in any sense based on any kind of ratios based on population or similar criteria, but rather are very disproportionately focused in a small number of communities in our country. I think a lot of people, at least in my State, probably in others as well, are frustrated, again, with the sort of Washington knows best mindset that makes those allocations.

When I came to the Senate I spent a lot of time trying to decide how best to address the problem. The conclusion I reached in 1995, about which I have spoken on this floor since, which I worked on when I was a member of the Labor Committee, which I have written about in editorials, is that we ought to move in the direction of a private, privately financed, privatized NEA. In my judgment, moving us outside a situation where it is supported with direct tax dollars will allow the National Endowment to retain its independence, to not have to get embroiled in this debate between censorship and obscenity; to fund projects that this national entity would decide makes sense, and not have to worry about whether there would be political consequences each time it made said decisions.

I believe such an approach is in the best interests of the arts. I certainly think it's in the best interests of the NEA. And I think it's in the best interests of the taxpayers who sent us here to make these decisions.

Privatization of the NEA cannot happen overnight. So when I was first elected to the Senate, I proposed a 5-year plan to slowly reduce the Federal Government's support for the NEA, giving that entity the opportunity, the time necessary to become privately chartered, to raise money, to build the kind of support necessary to sustain itself at least at the current levels, and in my judgment it would be sustained at a much greater level if it was privately supported.

I believe, if we provide a similar kind of timeframe from now forward as I originally contemplated—that is through the year 2000, that is now 3 years away—that would be adequate to accomplish this mission.

So, first we need time. Second, we would need to provide, I think, some mechanism, some assistance to the NEA to allow it to move to a situation where it was privately supported. As I say, my proposal is that it be phased out over 3 years. That will give organizations who are looking to receive support, lead time to make long range plans. It will give the NEA time to build support in the private sector for its continuance.

As a consequence, I am offering an amendment that would set in motion the first year of that 3-year plan, by reducing the budget for the NEA accordingly, by approximately one-third. At the same time, I think we need to provide help. Consequently, my amendment would provide the NEA with the authorization to go forward and use some of its dollars to begin the fundraising activities needed for it to be an independent entity.

In addition, it would be my plan, if my amendment is agreed to, to subsequently introduce a sense-of-the-Senate resolution which would encapsulate the full privatization plan that I contemplate. It would also be my plan to work with other interested Members of the Senate to provide additional tools that would make it more feasible for the NEA to function in a private sense.

For example, ideas which we have looked at already would be the creation of a special postage stamp which would be marketed and sold at a greater amount than 32 cents, with the proceeds being made available to the private entity.

Other ideas which have been discussed would include such things as a tax checkoff on the tax form through which people could direct a small number of dollars they would otherwise be paying to the NEA. So, in fact, the people who really wanted to support it would be given this opportunity. There are a variety of other ways that we can do it.

The point is, I believe it is very feasible to generate private-level support at least as great as we are providing currently, at approximately $100 million a year. I say that for the following reasons. First of all, we already know that in this country the arts are supported on an annual basis by approximately $9 billion of activity and support of this type.

In addition, we have specific institutions, arts institutions, in this country, such entities as the Lincoln Center, the Metropolitan Museum of Art and many others, that have an annual operating budget considerably greater than the National Endowment for the Arts. So it is certainly the case that support is out there across this country to provide the kind of resources necessary for the entity to function privately and absolutely would be the case if such funds were available if we provided some of the tools that I mentioned earlier.

In addition, as I have indicated in previous speeches on this, I think there are a number of other mechanisms that could be available to the National Endowment for the Arts if it became a private entity to raise funds. They range from fundraising events, where the artists, the very artists, in fact, who come and knock on our doors urging us to support the entity, could produce and support fundraising activities on behalf of that private entity.

My belief is that such events, whether they are simple dinners or they are concerts and performances of that sort, could generate enormous amounts of money. In fact, I was noting the other day that one of the artists who has been down to see Members of Congress, Garth Brooks, just had a concert in Central Park, NY. Approximately 700,000 people attended that concert. It was broadcast on the HBO network. I am sure a huge amount of revenue was generated by the event. Those are the kinds of things I would think artists would be available to do in support of the NEA, especially those artists who have come to us and have said, this is a worthwhile project that ought to be supported.

I also believe there could be support generated for special events. As I pointed out in the Labor Committee when I brought a similar amendment before that committee a couple of years ago, each year during the various televised awards ceremonies celebrating the arts, such as the Oscars, the Emmys, the Tonys, the country and western musical award shows, and so on, we hear a great deal of support expressed for the NEA by the very performers who attend those events and give away awards. Those programs are literally built around the appearance of these pro-NEA entertainers, and it is my suspicion that those programs generate extraordinarily substantial profits for the networks that broadcast them. Indeed, I believe just a couple of years ago it was estimated that the Academy Awards show drew a worldwide audience of over 500 million people.

Certainly, that is the type of programming that could be turned into a fundraising opportunity for a private entity supporting the arts. Indeed, as I pointed out a couple of years ago, only 5 percent of the audience that watched were still willing to pay to watch through a pay-per-view broadcast of that type of program. It would generate more revenue, given the rates that one charges for those pay-per-view shows, more revenue than the NEA's current budget.

Again, all these are opportunities that I think exist out there, and I believe we should move in the direction of providing the NEA with the chance to benefit from that type of support.

There are others as well: Collaborative efforts of artists ranging from the kind of support we saw a few years ago for USA for Africa when the ''We Are the World'' recording produced approximately $60 million of support for that cause, to similar types of collaboration, or the possibility of reimbursements for commercially successful grants and events which the NEA provides the seed money for.

In short, Mr. President, a variety of opportunities, I think, exist, and I think, therefore, it is feasible for the private entity to at least generate the type of support that we provide annually and, in my judgment, probably considerably more support as if it truly was, as I believe it can be, a national level organization.

Another question, of course, that also has been raised by my amendment is, are there other important American treasures—perhaps arts related, perhaps not—that we ought to be considering funding? So what my amendment does, in addition to beginning the process of privatization of the NEA, is to expend the dollars which would be reduced from the NEA's budget on the preservation of American treasures, the restoration of national treasures. Let me outline the specifics.

First of all, $8 million for the restoration of the Star Spangled Banner. The cost to transfer the flag to begin its restoration will be approximately $1 million alone. It was recently reported in the media that the total cost could run as high as $15 million. Currently, the Smithsonian's calculating this amount will not confirm this number, but the $8 million we would earmark in my amendment represents a responsible amount to begin the preservation effort of the Star Spangled Banner itself, the actual flag which prompted Francis Scott Key to write America's National Anthem.

The amendment would also provide $8 million for the preservation of Presidential papers. Our former Presidents were prolific writers, Mr. President. Their works survive to this date. Private enterprises worked for over 40 years to preserve the works of Jefferson, Adams, Madison, Franklin, and other Founding Fathers, and they will not survive another two centuries.

The National Archives has focused its resources on preserving modern electronic records of local and State archives. The National Historic Publications and Records Commission once provided about one-third of the funding for the preservation of the Presidents' works, but has recently announced that the projects will now have to contend with whatever is left after it has satisfied the local archives proposal.

The fact is the preservation of Presidential papers is now at some risk. As a consequence, approximately $8 million of these earmarked funds would go to maintaining active support adequate to maintain our Presidents' documents.

Two million dollars in this amendment is directed at the restoration of Ellis Island, the site of the arrival of so many people in the United States. On islands 2 and 3, the old hospital ward, the crematorium and housing for immigrants are in desperate condition and appear in the same condition as when they were abandoned by the U.S. Coast Guard in 1954.

The National Trust for Historic Preservation has listed these buildings as 1 of the 11 most endangered historic sites in America. The $2 million which my amendment would earmark to Ellis Island restoration would prevent water intrusion and provide the ventilation and other support services necessary to preserve this national treasure.

There are other components, as well, to my amendment, one which would go toward helping to address a serious problem at Mount Rushmore, to maintain that facility in good condition, as well as preservation of the manuscripts and original works of great American composers which are at some risk now of being, like the Presidents' papers, inadequately supported.

In short, my amendment does several things. It sets us on the course to privatize the National Endowment for the Arts as opposed to an immediate abolition, a 3-year timeframe in which we would slowly give that entity the opportunity to move in the direction of privatization.

Second, it would protect and provide support to protect key national treasures—the Star Spangled Banner, our Presidential papers, the manuscripts and original works of great American

composers, Ellis Island, and Mount Rushmore.

Finally, I think it would help end the division that continues to exist at all levels with respect to the National Endowment for the Arts. By making the Endowment a private entity, we will take this issue, this very divisive issue, out of the Congress, give the arts the opportunity to act and give this entity the opportunity to act in an independent fashion without a lot of strings and a lot of limitations and allow us, as a consequence, I think, to move on in other directions.

We would still have a national entity. We would still have that entity supporting worthwhile projects as it deemed, but we would no longer have the ongoing battle I have outlined between the argument on the one hand that we are too often using taxpayers' dollars for objectionable activities and the argument on the other that every time we apply strings to these dollars, we are engaging in a form of censorship.

Mr. President, I think this is the right course to follow because it would accomplish the goals I have set forth, and tomorrow I will be speaking in greater detail on this during the debate time that has been set aside.

At this point, I yield the floor. I thank the Presiding Officer for the time.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 1196

(Purpose: To authorize the President to implement the recently announced American Heritage Rivers Initiative subject to designation of qualifying rivers by Act of Congress)

Mr. HUTCHINSON. Mr. President, I ask unanimous consent to set aside the pending committee amendments and call up amendment No. 1196.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. HUTCHINSON] proposes an amendment numbered 1196.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 152, between lines 13 and 14, insert the following:

TITLE VII—AMERICAN HERITAGE RIVERS INITIATIVE

SEC. 701. AMERICAN HERITAGE RIVERS INITIATIVE.

(a) IN GENERAL.—During fiscal year 1998 and each fiscal year thereafter, the President and other officers of the executive branch may implement the American Heritage Rivers Initiative under Executive Order 13061 (62 Fed. Reg. 48445) only in accordance with this section.

(b) DESIGNATION BY CONGRESS.—

(1) NOMINATIONS.—The President, acting through the Chair of the Council on Environmental Quality shall submit to Congress nominations of the 10 rivers that are proposed for designation as American Heritage Rivers.

(2) PRIORITIZATION.—The nominations shall be subject to the prioritization process established by the Clean Water Act (42 U.S.C. 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable Federal law.

(3) CONSULTATION WITH PROPERTY OWNERS.—To ensure the protection of private property owners along a river proposed for nomination, all property owners holding title to land directly abutting river bank shall be consulted and asked to offer letters of support for or opposition to the nomination.

(3) DESIGNATION.—The American Heritage Rivers Initiative may be implemented only with respect to rivers that are designated as American Heritage Rivers by Act of Congress.

(c) DEFINITION OF RIVER COMMUNITY.—For the purposes of the American Heritage Rivers Initiative, as used in Executive Order 13061, the term ''river community'' shall include all persons that own property, reside, or regularly conduct business within 10 miles of the river.

Mr. HUTCHINSON. Mr. President, this amendment supports one of our most fundamental rights, the right of property ownership. This fundamental right, I believe, is threatened by an Executive order signed by the President on September 11 designating the American Heritage Rivers Initiative. This initiative is intended ''to help communities and protect the river resources in a way that integrates natural resource protection, economic development, and the preservation of historic and cultural values.''

Who could be opposed to that? That, I think, is a goal that all of us share. However, in the eyes of those who live along these historic rivers, this initiative is just another Washington power grab for valuable river front property. It is another Washington intrusion under the guise of a program that has never—has never—been authorized or appropriated.

This Executive order allows for eight Cabinet Departments—the Departments of Defense, Justice, Transportation, Agriculture, Commerce, Housing and Urban Development, Interior, and Energy—along with four Government agencies—the EPA, the NEA, the NEH, and the Advisory Council on Historic Preservation—to decide what happens to America's rivers. I ask you, what does a Washington bureaucrat know about the Arkansas River or the White River, or any of the 16 leading candidates to be designated as American heritage rivers?

I have listened to my constituents, and they want vibrant river front communities that are reflective of the needs of the values of the local community in which they live and work. They want a community-led process that will make the right decisions for their particular community, not a federally dominated process that could dictate to property owners how they can use their land.

The amendment that I offer allows for the river front renaissance that so many of our communities desperately need, while offering protections for the average property owner and members of the community that must live with the decisions that are made.

My amendment provides the necessary safeguard for property owners and communities, while at the same time allowing these river communities to benefit from the Federal funds that are available to improve their polluted or damaged river areas and spur economic development.

Specifically, my amendment requires that the list of 10 rivers, nominated through the American Rivers Heritage Initiative, be submitted for congressional review. It also ensures that the nominations for the initiative will be subject to existing priorities that have been established by the Clean Water Act and the Safe Drinking Water Act.

Most importantly, this amendment ensures protection of private property owners who live and own property along the river proposed for nomination as an American heritage river. It requires that all property owners holding title to land directly abutting the river bank shall be consulted, shall be asked to offer letters of support or letters of opposition to the nomination as an American heritage river.

This amendment also protects vital community interests by defining what constitutes a river community. Under the Executive order—a flawed Executive order, indeed—anyone who is so inclined can nominate a river or have input into the nomination process without any relationship—business, property ownership, any kind of connection—anywhere near the river under consideration.

My amendment defines the river community as those persons who own property, reside, or who regularly conduct business within 10 miles of the river considered for designation. This ensures that the real interest of the community is truly reflected in the development, design, and operation of a river that receives the designation of an American heritage river.

This, I think, is an important issue. It is an issue that many of my constituents have been energized about. It has just recently come onto the scene, in one sense, because the Executive order was issued September 11, and the President is seeking to implement this. So I think it is appropriate for us on this Interior appropriations bill to provide some safeguards and to ensure that while the initiative moves forward, that the right of the property owners along these rivers is protected; that there is a process that is in place to ensure that those who are most vitally affected by the initiative will have input in the process, will have some input, have some say as to whether or not that river should be so designated.

While it ensures the environmental protections of the Safe Drinking Water Act and Clean Water Act, it will also ensure that these communities, many

times with damaged rivers and polluted waters, will have access to vital Federal funds to ensure that those communities can be reinvigorated.

So I ask my colleagues to join me in support of this amendment as a safeguard for private property and for American communities.

Thank you, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I share many of the sentiments expressed by my colleague from Arkansas. I believe that he has brought up an important issue, an issue that should not be decided simply by fiat from the President and the President's administration, but one that ought to be carefully considered here by the Congress.

Without having read every word of his amendment, I am inclined to tell him that I agree with it. I must tell him at the same time, in this relatively empty Senate Chamber, as he knows, his amendment will be quite controversial. I am certain it will require a rollcall. For that reason, I am particularly happy that he did bring it up tonight so that other Members can consider its provisions so that it can be debated further tomorrow. But while I had said not too long ago that I did not know of a number of other amendments that will require a rollcall, I will have to amend that statement and say that I think that the amendment of the Senator from Arkansas will require a rollcall.

I do hope that he and others will speak on it tomorrow. I just say that I think the statement he has made is correct, that this is an issue in which the Congress should be involved.

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

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

THEMES FOR BANKRUPTCY REFORM IN THE 105TH CONGRESS

Mr. GRASSLEY. Mr. President, I rise today to address an important topic which will be coming before the Senate in the near future. In 1994, Congress created the Bankruptcy Review Commission and charged this Commission with developing suggestions for changing the bankruptcy code. As the ranking member of the subcommittee with jurisdiction over bankruptcy at that time, I assisted in creating the Commission, When I became the chairman of the subcommittee after the 1994 elections, I fought to ensure that the Commission was funded. The Commission's report is due on October 20, 1997. I will have much to say at that time about the Bankruptcy Review Commission and the way in which it was conducted. As some of my colleagues may know, there have been some troubling instances that have come to my attention regarding the way the Commission has operated.

For now, however, I simply want to outline my views on the substance of bankruptcy reform.

I believe that the current bankruptcy system needs to be fixed in several ways. Under current law, it is just too easy to declare bankruptcy. And it is too easy for people who declare bankruptcy to avoid repaying their debts when they have the ability to do so. Of course, decades of irresponsible and runaway spending by Washington has set a bad example for the American people, so Congress bears some of the responsibility for this new attitude of deficit living that seems to push many Americans into bankruptcy.

With record numbers of personal bankruptcies in this country, American businesses are losing millions of dollars a year to bankruptcy. And this results in higher prices for homes, cars and other consumer goods for those Americans who pay their bills on time, and as agreed. In other words, those of us who play by the rules are picking up the tab for those who don't.

I think that Congress needs to tighten the bankruptcy system so that bankruptcy is reserved for only those Americans who really need the extraordinary protections of the bankruptcy code. At the same time, I'm very aware that creditors can sometimes use abusive tactics. In fact, Sears was recently forced to pay a multi-million dollar settlement for engaging In abusive activity. So, in my opinion, bankruptcy reform which will help creditors get more of what they are owed should also include reforms to enhance protections for debtors from harsh or abusive conduct.

Section 707(b) is one example of a situation where the bankruptcy code sends the wrong signal to the American people and may encourage irresponsible conduct. Section 707(b) allows a bankruptcy judge to dismiss a chapter 7 case only to prevent substantial abuse. In other words, Section 707(b) says that it's OK to abuse the bankruptcy system somewhat, so long as you don't abuse it so much that the abuse becomes substantial. I think we in Congress ought to change this to say that debtors can't abuse the bankruptcy system at all. The consideration of Section 707(b) will be very important when Congress considers reforms in the context of consumer bankruptcy.

I also believe that chapter 11 of the bankruptcy code needs fundamental reform. In hearings before my subcommittee on how bankruptcy disrupts funding for education, I learned that many businesses which attempt to reorganize flounder for too long, thereby deleting the assets of the company. That's less money for creditors and employees of the company. I think that this should change. The Bankruptcy Review Commission has adopted a proposal to speed things up for small businesses in chapter 11 cases. I look forward to supporting that proposal in the next session of Congress.

I believe that Congress needs to look long and hard at the way attorneys are compensated in bankruptcy. It seems to me, from the reports I receive from around the country, that attorneys are using up the assets of the bankruptcy estate without really contributing very much. And attorney's fees are paid ahead of—and at the expense of—schools, workers and children entitled to child support. I think that's something we need to change. I'm a little disappointed that the Review Commission did not really get into this issue, but it is something that I will be pursuing in the bankruptcy reform bill.

Another area which needs attention is the effect of the new global economy on bankruptcy. With the increase in international trade, many complex questions arise when a multinational company declares bankruptcy. Right now, international insolvency is an issue where there isn't very much international cooperation. The United Nations recently approved a model law on international insolvency and bankruptcy and I look forward to considering that model law in the coming year. In the United States, we put a great deal of emphasis on reorganizing companies under chapter 11. Chapter 11 protects jobs and creditors. But other nations don't put such an emphasis on reorganization. So these foreign nations sometimes aren't as respectful of our bankruptcy laws as they should be. Of course, the United States has exercised a leadership role in the area of international bankruptcies for many years through section 304 of the Bankruptcy Code which recognizes the validity of foreign bankruptcies. It is time to take the next step and make sure that all companies—wherever they are located—are treated fairly when they confront the bankruptcy laws of a foreign nation. If companies fear that they won't be treated fairly under a foreign nation's bankruptcy system, they may be less willing to invest. And that would hamper international trade, which America needs if it is to remain a strong and vibrant economy.

Mr. President, unfortunately there is a very parochial perspective among many bankruptcy professionals. The idea has somehow flourished that bankruptcy should be as broad and all-encompassing as possible. I don't share this point of view. I think we have to remember that bankruptcy should be a last resort. And that means the bankruptcy laws should be narrow and provide only as much relief as is necessary. The so-called automatic stay provides a clear example of the parochial attitude of many in the bankruptcy community. The automatic