

many people pay in the United States. We could reduce benefits—again, there is not much support for that. Or we could, indeed, increase the return on the money that is in a trust. We think that is an excellent idea, to provide individual accounts so at least a portion of the money that is in the fund would belong to you and belong to me. I suspect people over 50 or so would not see any difference, but younger people would have an account that would be theirs and, indeed, could be invested in equities for a much better return.

So, along with reducing the debt, those are some of the things, with which we will be involved.

#### GUN CONTROL

Mr. THOMAS. Mr. President, unfortunately, one of the issues that continues to show up and seems to have nine lives—or more than nine, is the matter of gun control. We have seen it every session a number of times. I am sure we will see it again. I think it is something about which we ought to talk. I believe most people have come to the conclusion that the passage of additional laws is not going to make a great deal of difference in the behavior of criminals. Sadly, law abiding citizens who are exercising their constitutional rights are the ones who will be impacted by additional gun control laws. But it would not affect those who do not intend to abide by the law. Therefore, the idea of additional laws certainly is questionable.

In my mind, it is not the direction we ought to take. Fortunately, I think the majority of people in this country also believed the passage of new laws is not the solution. We need to enforce the numerous gun laws that are on the books.

Thankfully for our country, the President has not been able to carry out his continuing agenda of wanting more and more gun laws. But, regrettably, he has not been able to make enforcement more effective. More laws are not going to keep those who are willing to break the law from doing things illegally. Stronger enforcement of existing laws is the answer. The administration, however, has not presented such a program. Certainly, we need to move in that direction.

When tragedies occur, as they did in Colorado and a number of other places, of course all of us wonder what we can do to ensure that these tragedies do not happen again. The first impulse in a legislative body is to pass more laws.

Unfortunately, that is often the most political thing to do. But the fact of the matter is, in almost every instance numerous gun laws were broken when these terrible acts were committed. One might say, what advantage is there in passing more? Indeed, what we ought to be doing is talking about enforcement.

As many of you know, the administration has been busy developing new gun control initiatives and additional

laws—everything from threatening gun manufacturers with Federal lawsuits to mandatory licensing of new handgun purchases. Currently, there are 26 municipalities that have filed lawsuits against the gun industry, and they are shown on this chart. These lawsuits seek to make gun manufacturers liable for the criminal misuse of firearms. Interestingly enough, three cases have been thrown out by judges in Cincinnati, OH, Bridgeport, CT, and Miami-Dade County, FL.

These cases are interesting. For instance these judges noted:

... the City's complaint is an improper attempt to have this Court substitute its judgment for that of the legislature[.] Only the legislature has the power to engage in the type of regulation. . . .

The city of Cincinnati.

The plaintiffs have no statutory or common law basis to recoup their expenditures. . . .

The city of Bridgeport.

... the Plaintiffs have not directed this Court to any statute or case that would allow a city or county to proceed against a group of manufacturers. . . .

Miami-Dade County, FL.

The courts have pointed out municipal lawsuits are not the answer. Interestingly enough, the President has announced the Justice Department will pursue a similar lawsuit against the gun manufacturers on behalf of HUD. Basically, the Federal Government is trying to pressure gun manufacturers into settling their current cases.

Once again, the action highlights the President's failure to pass gun control legislation. Instead of bringing forth legislation, he is seeking to go through the judiciary to do what he has been unable to accomplish in Congress.

This next graph shows the results of a poll taken recently by CNN and USA Today. It was conducted between December 9 and 12 of last year. Let me read it:

As you may know, the U.S. Justice Department is considering filing a lawsuit against the gun manufacture industry seeking to recover the costs associated with gun-related crimes. The companies that manufacture guns in the U.S. have stated the charges have no merit. Which side do you agree with more in this dispute: the Justice Department (or) the gun manufacturers?

The result was, those who agreed with the lawsuit by Justice were 28 percent, and those who agreed the lawsuit had little merit were 67 percent. I really believe this poll reflects how American's feel about a government lawsuit against the gun industry.

In the President's State of the Union address he spoke about the idea of having individual states regulate the sale of handguns by requiring a photo ID and documentation of the successful completion of a safety course—just to purchase a handgun. This is clearly another attempt by the President to tighten gun laws on law-abiding citizens. Of course, criminals do not register their guns. Enforcement, however, is how we get guns out of the hands of the criminals. Republicans

have continued to support law enforcement efforts.

Project Exile, for example, which has been put into place around the country, has dropped the murder rate in Richmond, Virginia by 30 percent each year that it has been in place.

Unfortunately, President Clinton cannot say the same for his gun control efforts. This is a graph of ATF gun referrals, prosecutions, and convictions in 1992 and 1998. Between 1992 and 1998 ATF referrals for prosecution went down by 5,500 or 44 percent; prosecutions have dropped 40 percent; and, finally, convictions have dropped 31 percent.

This graph shows just how tough the administration has been since 1992 regarding the enforcement of existing federal gun laws.

Last year, I asked the General Accounting Office (GAO) to conduct an audit of the National Instant Check System (NICS). The system was put in place in November 1998 as phase 2 of the Brady Act. I asked the GAO for an audit to see if, indeed, it is operating as Congress intended it to. I am confident when the report is released—and it has not yet been released but will be very soon—we will have results that show the NICS has not been as effective as we hoped it would be.

Lastly, since last November, there have been numerous news articles from around the country that highlight the public's disfavor with attempts by the President to add more gun control laws. I want to take a minute to highlight a couple of these. One is titled, it is the "Wrong Approach," by the Cheyenne Tribune Eagle, which suggests:

Since the President has been unable to ban individuals from owning guns, Mr. Clinton has decided to do an end run around the Constitution.

That is the point of view of that particular paper.

Another is titled, "Gun Deaths, Injuries on Decline." This article speaks about a government study which shows that gun deaths have declined since the late 1960's.

Mr. President, I ask unanimous consent to print these articles in the RECORD.

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

[From the Cheyenne Tribune Eagle, Dec. 16, 1999]

#### WRONG APPROACH—FEDERAL LAWSUIT IGNORES RIGHTS OF GUN MAKERS

Once again, President Bill Clinton, our national embarrassment, is showing utter contempt for our Constitution as well as for the basic rights of the individual and the concept of freedom.

Since he has been unable to ban individuals from owning guns, Mr. Clinton has decided to do an end-run around the Constitution by threatening to sue gun manufacturers. Mr. Clinton is exactly the type of despotic leader the Framers had in mind when they wrote the Second Amendment.

As Thomas Jefferson said, "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to

protect themselves against tyranny in government."

But Mr. Clinton and his ilk, meaning the liberals in Congress and all who would idly sit back and allow government to infringe upon a right our framers declared "shall not be infringed," are guilty of abridging our freedoms, endangering our lives and threatening the future of the very government they were elected to preserve.

Mr. Clinton has failed to get Congress to completely ignore the Constitution and ban guns so now he has decided to turn to the courts to get his way.

He said his administration would sue the gun manufacturers, much in the same fashion as the administration sued the tobacco industry, in order to force the private companies to bend to Mr. Clinton's will and his socialistic and erroneous world view.

The president's dubious claim is that the industry's marketing and manufacturing methods are responsible for violent crime at the nation's 3,000 public-housing authorities.

What Clinton fails to comprehend is that government is mostly responsible for the conditions that breed violent crime in public housing.

If Mr. Clinton wishes to end violence in public-housing complexes, he should end public housing. It is a drain on society and ultimately harms the individuals government purports to help. Besides, government has no Constitutional authority to offer public housing.

Another government action that leads to unnecessary violence is its war on drugs. Prohibiting individuals the freedom to pursue drug use is also not authorized by the Constitution. The decriminalization of drugs would have the end result of lessening the burden on our prison system and dramatically reducing violence, much like the repeal of the prohibition against alcohol.

Ultimately, however, the criminal is the one to blame for his actions. Just because a person uses a gun while committing a crime is no reason to blame gun manufacturers. That is tantamount to blaming automakers for every car accident or burger joints for every heart attack.

Mr. Clinton knows he can cripple the gun makers by suing them. Just the cost of defending against a government lawsuit can be cost prohibitive. In effect, it is government banning guns by economically destroying the makers in what can only be termed thugery. Already 24 cities, including Cincinnati and Cleveland, and two states have filed lawsuits against gun makers.

Hearings are expected to begin in January. We will be watching this one closely.

[From the Washington Post, Nov. 19, 1999]

#### GUN DEATHS, INJURIES ON DECLINE—1997 FATALITIES WERE LOWEST SINCE '60S; MANY REASONS CITED

ATLANTA, Nov. 18.—Gun deaths in the United States dropped 21 percent between 1993 and 1997 to the lowest level in more than 30 years, and firearm-related injuries fell 41 percent, the government reported yesterday.

Experts cited such reasons as tougher gun control laws, a booming economy, better police work and gun safety courses.

The study by the Centers for Disease Control and Prevention looked at all gunshot wounds reported at emergency rooms, whether they were intentional, accidental or self-inflicted.

The number of fatalities dropped from 39,595—15.4 gun deaths per 100,000 people—in 1993, to 32,436—12.1 per 100,000—in 1997.

The rate "is the lowest it's been since the mid-'60s," said J. Lee Annett, a CDC statistician. "This progress is really encouraging and really says that joint prevention efforts

of public health officials, legislators and law enforcement should continue."

The drop was not unexpected: Homicide rates in the 1990s have fallen to levels not seen since the 1960s, and about two-thirds of all homicides are committed with guns. But the latest figures also include suicides and accidental deaths.

Moreover, nonfatal shootings fell from 104,390 to 64,207 in the same period, or from 40.5 per 100,000 to 24.0.

Jim Manown, a spokesman for the National Rifle Association, said the numbers prove that more gun laws are not needed, only that the laws on the books need to be enforced.

"It is a fact that this substantial drop in gun violence directly correlated to a big increase in gun enforcement by police," said Lawrence W. Sherman, a University of Pennsylvania professor who has studied gun policy. "Police were not treating guns in a preventive sense prior to 1993 and now they are."

Some experts also credit a strong economy that has helped reduce overall crime rates and suicide attempts. Margaret A. Zahn, a North Carolina State University criminology professor, said prosperity has also allowed governments to spend more on services that prevent gun violence, such as domestic violence shelters and youth recreation programs.

The CDC also listed such possible factors as an aging population, increased gun safety measures and the waning of the crack trade.

Gun control advocates said they are encouraged, but pointed out that even so, an average of 265 people a day were shot in 1997. "People shouldn't be satisfied," said Nancy Hwa, spokeswoman for Handgun Control and the Center to Prevent Handgun Violence. "Everybody is still at risk, and the presence of guns should still be a major concern."

[From the Wall Street Journal, Jan. 12, 2000]

#### DON'T DEMOCRATS BELIEVE IN DEMOCRACY?

(By Robert B. Reich)

If I had my way there would be laws restricting cigarettes and handguns. But Congress won't even pass halfway measures. Cigarette companies have admitted they produce death sticks, yet Congress won't lift a finger to stub them out. Teenage boys continue to shoot up high schools, yet Congress won't pass stricter gun controls. The politically potent cigarette and gun industries have got what they wanted: no action. Almost makes you lose faith in democracy, doesn't it?

Apparently that's exactly what's happened to the Clinton administration. Fed up with trying to move legislation, the White House is launching lawsuits to succeed where legislation failed. The strategy may work, but at the cost of making our frail democracy even weaker.

The Justice Department is going after the tobacco companies with a law designed to fight mobsters—the 1970 Racketeer Influenced and Corrupt Organizations chapter of the Organized Crime Control Act. Justice alleges that the tobacco companies violated RICO by conspiring to create an illegal enterprise. They did this by agreeing to a "concerted public-relations campaign" to deny any link between smoking and disease, suppress internal research and engage in 116 "racketeering acts" of mail and wire fraud, which included advertisements and press releases the companies knew to be false.

A few weeks ago, the administration announced another large lawsuit, this one against America's gun manufacturers, Justice couldn't argue that the gun makers had conspired to mislead the public about the danger of their products, so it decided

against using RICO in favor of offering "legal advice" to public housing authorities organized under the Department of Housing and Urban Development, who are suing the gun makers on behalf of their three million tenants. The basis of this case is strict liability and negligence. The gun makers allegedly sold defective products, or products they knew or should have known would harm people.

Both of these legal grounds—the mobster-like conspiracy of cigarette manufacturers to mislead the public, and the defective aspects of guns or the negligence of their manufacturers—are stretches, to say the least. If any agreement to mislead any segment of the public is a "conspiracy" under RICO, then America's entire advertising industry is in deep trouble, not to mention health-maintenance organizations, the legal profession, automobile dealers and the Pentagon. And if every product that might result in death or serious injury is "defective," you might as well say good-bye to liquor and beer, fatty foods and sharp cooking utensils.

These two novel legal theories give the administration extraordinary discretion to decide who's misleading the public and whose products are defective. You might approve the outcomes in these two cases, but they establish precedents for other cases you might find wildly unjust.

Worse, no judge will ever scrutinize these theories. The administration has no intention of seeing these lawsuits through to final verdicts. The goal of both efforts is to threaten the industries with such large penalties that they'll agree to a deal—for the cigarette makers, to pay a large amount of money to the Federal Government, coupled perhaps with a steep increase in the price of a pack of cigarettes; and for the gun makers, to limit bulk purchases and put more safety devices on guns. In announcing the lawsuit against the gun makers HUD Secretary Andrew Cuomo assured the press that the whole effort was just a bargaining ploy: "If all parties act in good faith we'll stay at the negotiating table."

But the biggest problem is that these lawsuits are end runs around the democratic process. We used to be a nation of laws, but this new strategy presents novel means of legislating—within settlement negotiations of large civil lawsuits initiated by the executive branch. This is faux legislation, which sacrifices democracy to the discretion of administration officials operating in secrecy.

It's one thing for cities and states to go to court (big tobacco has already agreed to pay the states \$246 billion to settle state Medicaid suits, and 28 cities along with New York state and Connecticut are now suing the gun manufacturers); it's quite another for the feds to bring to bear the entire weight of the nation. New York state isn't exactly a pushover, but its attorney general, Eliot Spitzer, says the federal lawsuit will finally pressure gun makers to settle. New York's lawsuit is a small dagger, he says. "the feds' is a meat ax."

The feds' meat ax may be a good way to get an industry to shape up, but it's a bad way to get democracy to shape up. Yes, American politics is rotting. Special-interest money is oozing over Capitol Hill. The makers of cigarettes and guns have enormous clout in Washington, and they are bribing our elected representatives to turn their backs on these problems.

But the way to fix everything isn't to turn our backs on the democratic process and pursue litigation; as the administration is doing. It's to campaign for people who promise to take action against cigarettes and guns, and against the re-election of House and Senate members who won't. And to fight like hell for campaign finance reform. In

short, the answer is to make democracy work better, not to give up on it.

[From the Wall Street Journal, Nov. 22, 1999]

LIBERALS HAVE SECOND THOUGHTS ON THE  
SECOND AMENDMENT  
(By Collin Levey)

It's the year of Littleton, "smart guns" and city lawsuits against gun makers. So where are the law professors speaking up for gun control? In the past few years, many of the premier constitutional experts of the left have come to a shocking conclusion: The Second Amendment must be taken seriously.

Back in 1989, the University of Tennessee's Sanford Levinson became something of a maverick by writing an article in the Yale Law Journal called "The Embarrassing Second Amendment," in which he maintained that the amendment guaranteed an individual right to own guns. Mr. Levinson's argument flew in the face of the interpretation that had prevailed since a 1939 Supreme Court ruling, which held that the amendment's reference to a "well-regulated militia" meant it only guaranteed a "collective" right to bear arms.

Until recently, few legal scholars had done much research on the Second Amendment. "One came up knowing it was a collective right—not because we learned about it in law school, but because we read the occasional op-ed," says Dan Polsby of Virginia's George Mason Law School. "Sandy Levinson made it respectable to think that heterodoxy might be possible."

The most prominent of the converts is Harvard's Laurence Tribe, once touted as a potential Supreme Court appointee in a Democratic administration. Mr. Tribe surprised many of his fellow liberals when the latest edition of his widely used textbook, "American Constitutional Law," appeared this year. Previous versions had virtually ignored the Second Amendment. The new one gives it a full work-up—and comes down on the side of Mr. Levinson.

Mr. Tribe believes the right to bear arms is limited, subject to "reasonable regulation in the interest of public safety," as he and Yale Law Professor Akhil Reed Amar wrote in the New York Times last month. But Mr. Tribe has written that people on both sides of the policy divide face an "inescapable tension . . . between the reading of the Second Amendment that would advance the policies they favor and the reading of the Second Amendment to which intellectual honesty, and their own theories of Constitutional interpretation, would drive them."

Journalist Daniel Lazare, a liberal gun-control advocate, acknowledges the tension, writing in Harper's: "The truth about the Second Amendment is something that liberals cannot bear to admit: The right wing is right." Mr. Lazare argues for amending the Constitution to repeal the Second Amendment.

What accounts for the change in Second Amendment interpretation? One of the catalysts has been a recently unearthed series of clues to the Framers' intentions. These include early drafts of the amendment penned by James Madison in 1789. In his original version he made "The right of the people" the first clause, indicating his belief that it is the right of the people to keep and bear arms that makes a well-regulated militia possible. State constitutions of the era confirm this interpretation: Pennsylvania accorded its citizens the "right to bear arms for the defense of themselves and the state."

In a letter to English Whig John Cartwright, Thomas Jefferson wrote that "the constitutions of most of our states assert, that all power is inherent in the people; . . . that it is their right and duty to be at all

times armed." These cross-Atlantic discussions are important, since the Framers were distinguishing the right of Americans to bear arms from English law's treatment of the question. Joyce Lee Malcolm, a professor at Bentley College, has examined the Second Amendment in light of English law. She concludes that the Colonists had intended to adopt basic ideas of English governance but to strengthen the people's rights. A right to "keep and bear" was seen as a bulwark against oppressive government.

Other scholars have found supporting evidence in the 14th Amendment, which bars states, in addition to the federal government, from restricting certain rights of citizens. According to Robert Cottrell of George Washington University, in the aftermath of slavery, with no real police presence, this protection was critical to preventing the monopoly of guns from resting in the hands of white officials, many of whom moonlighted in white hoods. The 14th Amendment has been a powerful force in constitutional law, playing a key role in the development of free-speech jurisprudence.

"The emaciated condition of the Second Amendment now is very similar to the condition of the First Amendment in 1908," says Duke University Law professor William Van Alstyne. In the aftermath of World War I, Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis began writing dissents in favor of a broader reading of the First Amendment. But not until the 1930s did courts begin adopting their arguments.

The new reading of the Second Amendment may get a hearing if a gun control case, *Emerson v. Texas*, makes it to the Supreme Court. In a divorce proceeding, Timothy Joe Emerson was issued what's been called a "y'all be civil" restraining order—routine in Texas divorce cases. Unknown to him, one provision barred him from possessing a gun. When he took his 9mm Beretta out of a desk drawer during an argument with his wife, he was charged with violation of a federal gun control law.

U.S. District Judge Sam Cummings ruled that the order violated Mr. Emerson's Second Amendment rights. As Mr. Polsby puts it, "If you're simply attaching a firearms forfeiture to a person who has no such designation as a dangerous person, that's not acceptable if the Second Amendment means anything."

The state of Texas has appealed to the Fifth U.S. Circuit Court of Appeals. If that court's ruling makes it to the Supreme Court, it would be the first gun-control case heard by the justices since 1939's *U.S. v. Miller*, which set the precedent for the collective-right interpretation. In that case, the Supreme Court held that a bootlegger was rightly convicted of transporting a sawed-off shotgun across state lines, on the grounds that the weapon had no legitimate use in a militia.

Today, two Supreme Court justices have suggested interest in a reading of the Second Amendment as guaranteeing an individual right. Clarence Thomas has noted the law-review articles piling up on the side of an expanded interpretation, suggesting it may be time to reconsider *Miller*. And Antonin Scalia, in a decision on an unrelated matter, referred to "the people" protected by the Fourth Amendment, and by the First and Second Amendments.

"As a liberal and a humanist," Prof. Tribe says today, "people thought I was betraying them by saying that the Second Amendment is part of the Constitution." But, he adds, "what is being knocked away now is a phony pillar and a mirage."

[From the Washington Post, Aug. 29, 1999]

ATF FIREARMS PROSECUTION REFERRALS  
DROP—STUDY SAYS CRIMINAL CASES HAVE  
FALLEN SINCE 1992, BUT PICKED UP LAST  
YEAR

(By Edward Walsh)

There has been a steady decline during the Clinton administration in the number of weapons-related criminal cases that the Bureau of Alcohol, Tobacco and Firearms (ATF) has turned over to federal prosecutors for legal action according to a new study made public yesterday.

The study by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, which analyzes law enforcement data, said the number of ATF referrals to federal prosecutors has dropped by 44 percent since 1992, when there were 9,885 referrals. Last year, the agency charged with enforcing federal firearms laws referred 5,510 cases to federal prosecutors, according to TRAC. Most ATF referrals to federal prosecutors involve alleged weapons offenses.

It also said that until last year there has been a matching decline in the number of federal prosecutions of ATF weapons cases, which fell from 4,108 in 1992 to 2,165 in 1997. But in 1998, that trend was reversed with the prosecution of 2,710 ATF weapons cases, a 25 percent increase over the previous year, the report said.

The TRAC researchers, who analyzed data from the Justice Department, the Office of Personnel Management and ATF, said one reason there may be fewer criminal referrals is that ATF's work force is smaller now than it was earlier in the decade. The agency's total force has declined by 8 percent since 1992 and there has been an even sharper drop of 14 percent in the number of its criminal investigators. ATF had 2,072 criminal investigators in 1992 and 1,779 last year, according to the report.

The findings are likely to fuel the gun control debate in Congress, where opponents, such as the National Rifle Association, argue that there is no need for new gun control laws and that the administration should concentrate on enforcing existing laws.

Administration officials did not dispute the trend toward fewer federal prosecutions, but said part of this was due to a decision by ATF to concentrate more of its resources on complex investigations of major gun traffickers and less on individual firearms law violations.

A Justice Department spokeswoman, who declined to be identified, also disputed the accuracy of some of the numbers in the TRAC report. The report said that in 1998 there were 2,528 federal prosecutions under two frequently used federal firearms laws, but Justice Department records show that 5,876 defendants were prosecuted under those laws that year, she said.

She said the number of federal firearms violators who have received sentences of more than five years in prison has increased by more than 25 percent since 1992, reflecting ATF's decision to focus more on gun traffickers.

"There is a decline in those [firearms] charges, but it is not as dramatic as portrayed here, the spokeswoman said.

"The number of low-end federal offenders is down because the ATF is strapped for resources and made a conscious decision to focus on traffickers and because the states are doing a better job so we don't have to do those cases."

An ATF spokeswoman, who also did not want her name used, said the agency experienced a 20 percent reduction in field agents between 1993 and 1997, losing some of its most experienced agents to retirement. ATF is now aggressively hiring agents, she said,

but it will take time to train them and get them in the field.

The ATF spokeswoman also said that statistics on prosecutions do not reflect all of the agency's activities, which in the 1990s have included major investigations of the bombings of the World Trade Center in New York and the federal building in Oklahoma City.

Mr. THOMAS. Mr. President, I believe all of us want to find a better solution to illegal gun use. We intend to do that. People in my State believe more laws are not the answer, that, indeed, the enforcement of gun laws is the answer. We are pleased to see that the administration has finally added increased funding for the enforcement of existing gun laws—something we have been talking about over the last 7 years. The dollars alone, however, will not do it. There has to be some oversight. We have to make sure there is an effective use of law enforcement.

Mr. President, I yield time to my friend from Idaho.

Mr. GREGG. Will the Senator from Wyoming yield?

Mr. THOMAS. Absolutely.

Mr. GREGG. I understand the Senator from Wyoming controls the time. I wonder if, after the Senator from Idaho speaks for 5 or 10 minutes, the Senator will be willing to give me 5 or 10 minutes on a separate subject.

Mr. THOMAS. Will it be possible to let Senator SMITH speak for a couple of minutes and then Senator GREGG can wind up our hour? Mr. President, will that be all right?

Mr. GREGG. That will be fine.

Mr. THOMAS. That way, we will hear from the Senator from Idaho, the Senator from New Hampshire, Mr. SMITH, and the Senator from New Hampshire, Mr. GREGG.

The PRESIDING OFFICER. Before the Senator from Idaho begins, has the Senator from Wyoming propounded a unanimous consent request?

Mr. THOMAS. I ask unanimous consent that the Senator from Idaho be allowed to speak and then the Senator from New Hampshire, Mr. SMITH, and then the Senator from New Hampshire, Mr. GREGG, in that order.

The PRESIDING OFFICER. Senator GREGG from New Hampshire being the third speaker.

Mr. GREGG. Reserving the right to object, I simply ask the Senator from Wyoming if I may be reserved 10 minutes within that timeframe.

Mr. THOMAS. Absolutely.

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

The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I thank the Senator from Wyoming, Mr. CRAIG THOMAS, for coming to the floor today once again to shape and clarify some of these issues that are going to be front and center before this Congress and this Senate over the coming months as we deal with Presidential initiatives, Presidential budgets, and some of the issues that are going to be, by fall and November, election-time issues.

Last week, I took issue with the President's State of the Union Address in a broad sense as it related to the budget and some of the initiatives he propounded within the State of the Union. Today, I will focus, as my colleague from Wyoming has focused, on the element in the President's speech dealing with guns and gun violence.

Last November, the Centers for Disease Control reported 34,000 Americans die every year from firearm injuries. If there is good news to be found in that terrible statistic, it is that the number has declined every year for the last 4 years. It is fewer than the 43,000 Americans who die every year from motor vehicle accidents. And yet when we have some of our colleagues on the floor pounding their podiums and saying how terrible it is—and it is terrible—they forget to put it in relation to other kinds of accidents and/or intentional acts that produce deaths among the American citizenry.

That figure of 34,000 is far less than the 44,000 to 98,000 patients who die every year by medical error. That is right. I am talking about errors made in the delivery of medicine. It is estimated that 44,000 to 98,000 patients die every year by medical error—that is a statistic which comes from the Institute of Medicine—and yet somehow when such a tragedy happens, it does not make the headline in the paper; it simply makes the obituary page.

When we consider there are over 200 million privately owned guns in the United States, we cannot escape the conclusion that the overwhelming majority of America's 80 million gun owners are peaceful and extremely responsible and using their constitutional rights in a responsible-citizen way. There are 80 million gun owners and 200 million privately owned guns in America.

We in the Government are charged with the responsibility of seeing that guns are used appropriately within the Constitution. That is, in part, our job. It is an American right and responsibility of all Americans, should they wish to exercise it. We are here to deal with those who use guns to intimidate, to steal, to rape, to murder. That is what the Government is for. That is our job, not to restrict or control the right of the free citizen in the exercise of his or her constitutional right, but to go at those who do the opposite, who use the right in the wrong way—to steal, to rape, or to murder. This duty comes before any other matter that we would want or should want to consider on the issue of guns.

We know when the Government takes this responsibility seriously, we save lives. You can come to the floor and pass all of the politically driven bills that you want to, but if they are not enforced or not enforceable, then it is a political statement, not a responsible act of our Government.

In Richmond, VA, a Republican initiative called Project Exile has stepped up and prosecuted the gun-toting

criminals and cut the murder rate by 30 percent every year since it was enacted in 1997. That is in Richmond, VA. In fact, it is said in Richmond that a man walked into a 7-Eleven with a baseball bat to rob it. They caught him. They said: Why didn't you use a gun? He said: You get locked up if you use a gun.

Isn't it amazing that the criminal element of our society will read and respond to the effective and targeted enforcement of a law? As a result of that, in a city that was plagued by what any person would judge as a high rate of crime and murder, it has dropped that precipitously, since the targeted direction of law enforcement not only to arrest but to prosecute and lock up those who misuse their gun rights.

How does the administration address the duty to the American people? Over the past 7 years, the Clinton-Gore administration has cut the ATF's pursuit of criminals who use guns by nearly half. The number of prosecutions fell by nearly as much, and the number of gun-toting criminals convicted fell by one-third. This isn't an NRA statistic; this is an independent Syracuse University statistic. It is objective by every politician's measurement.

This is how it profiles on a chart. Last year, in this Chamber, Vice President AL GORE cast the tiebreaking vote in favor of interfering with peaceful, law-abiding, responsible gun ownership—not criminals, but responsible citizens exercising their right to go out and buy a firearm for their personal ownership and possibly for their personal protection.

It was quite a moment for the Vice President. There he sat in that chair, the image of leadership. He was able to tell Americans how concerned he was about gun violence because he had cast the tiebreaking vote to impose greater restrictions on law-abiding Americans.

But I wonder, when this administration was gutting the enforcement of laws against gun violence, was the Vice President casting his vote then? No. Here is the Vice President's record, right here on this chart. This is where he and the President took over the law enforcement responsibilities of the Justice Department of this country.

Look what happened during the Reagan and the Bush years—aggressive efforts to go at the criminals; arrests went up; crime began to go down.

Here the Clinton-Gore administration backed off. They cut budgets. You know the rest of the story. When this administration was letting violent criminals off, I have a simple question to ask: Where was AL?

How many gun-toting criminals would be locked up today if the Clinton-Gore administration had merely kept pace with the Reagan-Bush administration's record portrayed on this chart? I would like to hear the Vice President answer this question to American mothers. It is the right question to ask. It is a response that all deserve.

But there is more disturbing evidence that this administration does not take seriously its duty in law enforcement.

The national instant check system is designed to immediately notify the FBI if a criminal is trying to purchase a gun. I support that. Every Senator supports the ability of someone going into a licensed firearm dealer to buy a firearm immediately being checked, just like swiping your credit card through a machine at any retail outlet in America and instantly finding whether you have credit on your card so you can make that purchase.

We want the same kind of response when it comes to the purchase of a gun. We are nearly there. We have nudged, we have pushed, we have cajoled this administration and their Justice Department until they have finally done it—although they dragged their feet progressively over the last 8 years.

According to a staff report of the Senate Judiciary Committee, since November of 1998, this Republican initiative, started here on this floor—the instant check system background check—has stopped over 100,000 criminals from purchasing guns. That represents an enormous number of bad actors who need to be put back in jail. How many have the administration put back in jail? To my knowledge, none.

You heard the President in the well of the House in the State of the Union Address talk about all of these criminals detected and stopped from buying a gun. If a criminal walks into a hardware store or a gun shop and attempts to buy a gun over the counter from a licensed firearm dealer, and his background is checked, and he is a felon with a record, he has violated a law. He is in violation of the law. Yet the ATF has referred only one-fifth of 1 percent of these criminals acting illegally to the Justice Department for prosecution.

Mr. President, I am sorry. You can talk all you want about guns, but your actions show you don't care. You only want the politics of it.

Last year, this Congress said: No. We do not want the politics of it. We will not take that effort. We want substance. The administration claims it has increased the referral of firearms cases back to the States for prosecution. But that is the same as letting a criminal off the hook.

That is not an accusation of the States. These are Federal firearms violations. They deserve Federal prosecution. State prosecutors have fewer resources than Federal prosecutors, and State firearm convictions result in shorter sentences. Moreover, with a budget that grew 65 percent from 1992 to 1998, I am sorry, Janet Reno, we gave you the money; you didn't do the job. That growth in budget was the Justice Department.

The Clinton-Gore administration even lets convicted felons off the hook. Last September, we came to the floor to speak about it. This President, with his Executive power, granted clemency

to 12 terrorists convicted of 36 counts of violating Federal firearms laws. I am amazed at you, Bill Clinton, that you can stand on the floor of the U.S. House of Representatives and, with a straight face, talk about firearms control, when you turned loose convicted felons, convicted of firearms violations.

As recently as last year, the President said he would spend not more than \$5 million on the programs such as Project Exile, the kind I just outlined used in Richmond, VA. We asked for \$50 million. The President largely got his way. The final figure was about \$7 million. Sorry, Mr. President. Last year at this time you didn't deserve credit for any of it. Now you have stepped up. Now you are saying you want \$280 million to hire new investigators and prosecutors, both at the Federal and the State level. I ask you why, Mr. President? I think I know the answer. It is polling well. You went out and asked the question of the American people about law enforcement, something every Senator knows about, and it polled well. It got in the State of the Union.

It is far from clear that inadequate funding is the problem. The drop in prosecutions we have seen under this administration cannot be explained entirely by staff levels. The ATF observers at Syracuse University attest, "other unknown forces or policies changes are apparently at work." Many observers believe the administration already has the resources it needs to increase as dramatically as they want the prosecutions necessary.

I ask unanimous consent to continue for 3 more minutes.

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

Mr. CRAIG. One other issue I think is important: The President did something the other night that is the most radical expression on gun control by any President in the history of this country—I think that is worth repeating—the most radical proposal on gun control by any President in the history of this country. Here is what he said:

Every state in this country already requires . . . automobile drivers to have a license. I think they ought to do the same thing for handgun purchases.

Mr. President, it is obvious you don't understand.

What the President failed to grasp is that no State requires a license to purchase a car. If you want to have it hauled home to your ranch out in Wyoming and you stay on your ranch and you never get off on the public road, you, Senator CRAIG THOMAS, do not need a license to own a car. You need a license to drive a car on a public right of way, on a public road. States do not require a license to drive a car except on public roads. That is the whole point the President made. The average American scratches his head and says, yes, license cars, license guns. But the President said you had to have a license to buy a gun, a direct

statement of violation of the second amendment of our Constitution.

I can understand why Americans are frustrated, but I doubt the President has had a driver's license, maybe a valid one, in a long while. He has not needed one. I doubt he has ever waited in line at the Department of Motor Vehicles to get a license or to take the test in a long while. So if the President wants to license handguns like cars, then he is talking about issuing licenses to take a firearm out in public because it would be against the Constitution to require a license to buy one, so he must be talking about taking a license out to take a gun out in public. Well, we already do that. It is called concealed carry permits. Thirty States already say you can get a license to carry a gun in public, and it is called a concealed carry. The State of Vermont doesn't require a license at all.

I regret to inform you, President Bill Clinton, that what you are talking about is something I don't think you understand. No State requires a person to have a driver's license to purchase a car, nor should this Federal Government ever require a free citizen in our country the need to have a license to purchase a gun.

Mr. President, are you then talking about a national concealed carry law? That is probably a pretty good idea. For those who want to carry in public, you could say you have to have a certain safety record and safety standard and experience and all of those kinds of things if you want—not to own, now, but to carry openly in public. I think that is what the President is not talking about at all.

My time is up and there are a good many other facts to be dealt with. In States that have concealed carry, crime drops; when the criminal element knows that the citizen out there is armed for his or her self-protection, for the protection of their private property and their personal rights and their person itself.

Extensive study has also shown that when states begin issuing concealed carry permits, murders drop by about 8 percent, rapes fall by 5 percent and aggravated assaults drop by 7 percent.

Moreover, as economist John Lott notes, states that began issuing nondiscretionary permits between 1977 and 1992 "virtually eliminated mass public shootings after four or five years."

Why does crime fall when citizens' right to bear arms is protected? Because there is nothing a criminal fears more than a citizen who can defend himself.

The President's comments were, of course, a plug for the Vice President, who has been talking for some time about regulating guns like cars.

I wonder if that's really what either of them wants. In the words of second amendment scholar David Kopel, "if Gore follows through on his promise to treat guns like cars, he will oversee the most massive decontrol of firearms in

America since 1868, when the 14th Amendment abolished Southern states' Black Codes, which prohibited freedmen from owning guns."

Preserving and strengthening the second amendment would suit most Americans just fine. I hope that's really what the President and Vice President want. But I suspect it isn't. And I worry that if word gets out, some poor White House speechwriter is going to lose his job.

These are issues we will debate at length on the floor of the Senate over the coming months. I thought it was important to come to the floor to begin to understand, to begin to explain so the American people can more clearly understand the kind of irrational approach this administration is currently proposing and certainly the less than legitimate record they have in the area of law enforcement when it comes to the use of a firearm.

I thank my colleague from Wyoming for taking out this time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I thank my colleague from Wyoming for yielding me the time, and I thank him for his leadership in defense of the second amendment, as well as my colleague from the State of Idaho, who has been a long-time advocate of the second amendment.

I regret I have to stand up here again with my colleagues and defend the second amendment because we should not have to do that. I am honored to do it, but it is one of our amendments. It is No. 2 in the Constitution.

I find myself wondering why so many of our colleagues come here over and over again to try to take second amendment rights away. The right to keep and bear arms is one of the most fundamental rights we possess. You can't pick and choose which amendment you support in the Constitution, nor should you pick and choose what paragraph you support in the Constitution. If it is in the Constitution, we ought to abide by it and honor it.

The framers knew it, and that is why they placed the second amendment right up there at No. 2 in the Bill of Rights. They did not want the Federal Government to interfere with this basic right. It was part of the Bill of Rights for the people, and it was No. 2.

I get a kick out of listening to so many of our colleagues on the other side of the issue who, in their eloquence, can knock the second amendment down. It is interesting, though, when we hear from the folks who were actually on the scene when the second amendment was written, folks such as Samuel Adams, who said:

Among the natural rights of the colonists are these—first, the right to life; secondly to liberty; thirdly to property; together with the right to defend them in the best manner they can.

Basically talking about the right to bear arms. John Adams:

Arms in the hands of the citizens may be used at individual discretion for the defense

of the country, the overthrow of tyranny or private self-defense.

These are the founders. Patrick Henry:

Guard with jealous attention the public liberty . . . The great object is that every man be armed. Everyone who is able may have a gun.

Thomas Jefferson:

The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government.

This is important business we are talking about. This was a basic right. Noah Webster:

Before a standing army can rule, the people must be disarmed, as they are in almost every kingdom of Europe. The Supreme power in America cannot enforce unjust by the sword because the whole of the people are armed, and constitute a force superior to any band of regular troops.

Richard Henry Lee:

To preserve liberty it is essential that the whole body of the people always possess arms.

With all due respect to my colleagues who speak on this issue in opposition to the second amendment, I don't think they are as eloquent or as knowledgeable, and I know they weren't there. These guys knew what they were talking about because they wrote it. So let's not talk about revisiting the Constitution and being politically correct and changing things we can't change.

These are the giants in history, the people who were there on the scene. Yet, in the past year or so on this floor, I and many of my colleagues hear over and over again: gun control, gun control, gun control. Some of it is enacted, which infringes on the second amendment of millions of law-abiding Americans. You cannot trample on the Constitution of the United States and stand up there and take that oath and say you are going to defend it. It is simply inconsistent.

Despite what history and the second amendment tell us, some keep trying to come up with new and inventive ways to subvert that Constitution. I don't hear any of these people coming down and saying we are going to eliminate the first amendment, but I do hear them saying we ought to eliminate the second amendment.

The gun control provisions in the juvenile justice bill that were spurred on by the tragedy at Columbine used that tragedy, frankly. There were already 20,000 existing gun laws when that happened, but the killings were not stopped. Do we think more gun laws are going to stop something such as that from happening?

There was a recent amendment to stop gun manufacturers from declaring bankruptcy. Down the line they come, time after time again, singling out one legal product for discrimination: guns. No other lawful industry is treated so unfairly. Fortunately, my colleagues voted overwhelmingly to reject that amendment.

The Clinton administration said it will file a Federal lawsuit against gun

manufacturers. Here is an article from the Washington Post—it is interesting coming from the Washington Post—reporting how two State courts dismissed lawsuits against gun manufacturers. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Post, December 1999]

#### FIREARMS MAKERS WIN DISMISSAL OF LAWSUITS IN 2 STATES

In back-to-back victories for the firearms industry, judges in two states have dismissed lawsuits against gun manufacturers and dealers.

A state judge in Florida tossed out a suit by Miami-Dade County yesterday, three days after a Connecticut state judge dismissed a similar lawsuit brought by the mayor and city of Bridgeport.

The two lawsuits mirror other suits filed by municipalities that allege that guns have created a public nuisance, threatening residents' health and safety, and that gun manufacturers, like polluters, should have to pay for the cleanup.

But in their separate decisions, the judges in Connecticut and Florida reached the same conclusion: The governments lack legal standing to sue.

"The plaintiffs have no statutory or common-law basis to recoup their expenditures," ruled the judge in Bridgeport. "Public nuisance does not apply to the design, manufacture, and distribution of a lawful product," said the Florida judge.

The mayors of Bridgeport and of Miami-Dade County sued the firearms industry, claiming negligence, product liability and public nuisance. Those mayors said that the industry was responsible for the illegal flow of handguns into their areas.

The mayors want to recover gun violence costs for police, fire and emergency services. Bridgeport further sued to recover money lost from depressed property values and businesses that moved out of the city.

Bridgeport and Miami-Dade are among 29 cities and counties—including Chicago, San Francisco and Los Angeles—suing more than two dozen gun makers. In October, an Ohio judge threw out a similar lawsuit filed by the city of Cincinnati.

In one setback for the firearms industry, a state court judge in Georgia earlier had ruled that Atlanta could pursue its negligence claims against gun makers.

Last week, President Clinton said his administration is thinking about filing a federal lawsuit on behalf of the 3 million people living in public housing. Clinton's move was an attempt to force the industry into negotiations to settle the municipalities' lawsuits.

Anne Kimball, a Chicago lawyer representing Smith & Wesson Corp. and other gun makers, said the judges saw that the actions of criminals cannot be controlled by the firearms industry. "There is no quarrel that everyone is concerned about violence . . . The question is what to do about it. But these lawsuits are wrong," she said.

Mr. SMITH of New Hampshire. They are basically saying they are going to throw these suits out. That is the gist of it. They are not constitutional. The courts recognize that. The judges said they were completely lacking any legal basis.

Now the President wants to license and register all guns, like automobiles, as my colleague from Idaho referred to.

The last time I checked, there wasn't a constitutional right to drive. Does anybody know about that? I don't think they knew what a car was when the Constitution was written. There is no comparison between the two issues. I never heard anything from the Founding Fathers about the right to wagons or horses during that time. I never heard Patrick Henry say: Give me mobility or give me death. He said: Give me liberty or give me death. That is because driving a car is a privilege, not a right. It is a privilege. Gun owners would love to have guns treated as cars, with no background checks, no waiting periods, no age limit; it might be a good thing.

Tyranny isn't always obvious. It isn't always about killing and communism and all that. Tyranny can be much more subtle, piecemeal, gradual—like violating our oath of office and voting against our constitutional rights. It happens all the time in this place. History will judge us for it; it will judge us on the basis of how many times we stood here after having taken the oath of office and then having ignored that oath.

The second amendment guarantees that the right to keep and bear arms shall not be infringed. If you are for gun control—and you have a right to be—then you are against the Constitution of the United States. Change the amendment if you think you can do it. But don't keep passing gun control legislation time after time after time. That is what we are doing in these proposals and laws. We are doing it quietly, without violence, and with an air of respectability, which is what troubles me—as if it is right to do it here because it is on the floor of the Senate.

We are violating the constitutional rights of millions of law-abiding American citizens across the country, and any way you slice it that is still tyranny. That is why I am proud to stand here, as I have done many times—and I will do it every day, if I have to, until the last day I am in the Senate—in defense of the second amendment. I am pleased and proud to support the second amendment.

At this point, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, the other Senator from New Hampshire will be here shortly. I thank my friends for talking about the issue. I think it is one that is clearly important to many of us. It is constitutional. It is right. It is something we all support. It is something, however, we don't want to constantly have before us as each new issue comes up. This can be brought up as an amendment or as a way of stalling going on to other things. I appreciate very much the opportunity to do this.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 1052, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1052) to implement further the Act (Public Law 94-241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

##### SECTION 1. SHORT TITLE AND PURPOSE.

(a) This Act may be cited as the "Northern Mariana Islands Covenant Implementation Act".

(b) STATEMENT OF PURPOSE.—In recognition of the need to ensure uniform adherence to long-standing fundamental immigration policies of the United States, it is the intention of Congress in enacting this legislation—

(1) to ensure effective immigration control by extending the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), in full to the Commonwealth of the Northern Mariana Islands, with special provisions to allow for the orderly phasing-out of the nonresident contract worker program of the Commonwealth of the Northern Mariana Islands, and the orderly phasing-in of Federal responsibilities over immigration in the Commonwealth of the Northern Mariana Islands;

(2) to minimize, to the greatest extent possible, potential adverse effects this orderly phase-out might have on the economy of the Commonwealth of the Northern Mariana Islands by:

(A) encouraging diversification and growth of the economy of the Commonwealth of the Northern Mariana Islands consistent with fundamental values underlying Federal immigration policy;

(B) recognizing local self-government, as provided for in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America through consultation with the Governor and other elected officials of the Government of the Commonwealth of the Northern Mariana Islands by Federal agencies and by considering the views and recommendations of such officials in the implementation and enforcement of Federal law by Federal agencies;

(C) assisting the Commonwealth of the Northern Mariana Islands to achieve a progressively higher standard of living for its citizens through the provision of technical and other assistance;

(D) providing opportunities for persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor; and

(E) ensuring the ability of the locally elected officials by the Commonwealth of the Northern

Mariana Islands to make fundamental policy decisions regarding the direction and pace of the economic development and growth of the Commonwealth of the Northern Mariana Islands, consistent with the fundamental national values underlying Federal immigration policy.

#### SEC. 2. IMMIGRATION REFORM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) AMENDMENTS TO ACT APPROVING THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA.—Public Law 94-241 (90 Stat. 263), as amended, is further amended by adding at the end thereof the following:

##### "SEC. 6. IMMIGRATION AND TRANSITION.

"(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Effective on the first day of the first full month commencing one year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act (hereafter the "transition program effective date"), the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.) shall apply to the Commonwealth of the Northern Mariana Islands: Provided, That there shall be a transition period ending December 31, 2009 (except for subsection (d)(2)(I)), following the transition program effective date, during which the Attorney General of the United States (hereafter "Attorney General"), in consultation with the United States Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands provided in subsections (b), (c), (d), (e), (f), (g), and (j) of this section (hereafter the "transition program"). The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

"(b) EXEMPTION FROM NUMERICAL LIMITATIONS FOR H-2B TEMPORARY WORKERS.—An alien, if otherwise qualified, may seek admission to the Commonwealth of the Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without regard to the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

"(c) TEMPORARY ALIEN WORKERS.—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act:

"(1) Aliens admitted under this subsection shall be treated as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including the ability to apply, if otherwise eligible, for a change of nonimmigrant classification under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245 of such Act (8 U.S.C. 1255).

"(2)(A) The United States Secretary of Labor shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to extend beyond December 31, 2009, and shall take into account the number of petitions granted under subsection (j). In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the United States Secretary of Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions