''(A) the amount available under section 2677 for carrying out this part, less the reservation of funds made in paragraph (4)(A) and less any other applicable reservation of funds authorized or required in this Act (which amount is subject to subsection (b)); and

''(B) the percentage constituted by the ratio of—

''(i) the distribution factor for the State; to

''(ii) the sum of the distribution factors for all States.

''(3) DISTRIBUTION FACTOR FOR PRINCIPAL FORMULA GRANTS.—For purposes of paragraph (2)(B), the term 'distribution factor' means the following, as applicable:

''(A) In the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, the product of—

''(i) the number of cases of acquired immune deficiency syndrome in the State, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data are available; and

''(ii) the cube root of the ratio (based on the most recent available data) of—

''(I) the average per capita income of individuals in the United States (including the territories); to

''(II) the average per capita income of individuals in the State.

''(B) In the case of a territory of the United States (other than the Commonwealth of Puerto Rico), the number of additional cases of such syndrome in the specific territory, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data is available.

''(4) SUPPLEMENTAL AMOUNTS FOR CERTAIN STATES.—For purposes of paragraph (1)(B), an amount shall be determined under this paragraph for each State that does not contain any metropolitan area whose chief elected official received a grant under part A for fiscal year 1996. The amount determined under this paragraph for such a State for a fiscal year shall be the product of—

''(A) an amount equal to 7 percent of the amount available under section 2677 for carrying out this part for the fiscal year (subject to subsection (b)); and

''(B) the percentage constituted by the ratio of—

''(i) the number of cases of acquired immune deficiency syndrome in the State (as determined under paragraph (3)(A)(i)); to

''(ii) the sum of the respective numbers determined under clause (i) for each State to which this paragraph applies.

''(5) DEFINITIONS.—For purposes of this subsection and subsection (b):

''(A) The term 'State' means each of the 50 States, the District of Columbia, and the territories of the United States.

''(B) The term 'territory of the United States' means each of the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Republic of the Marshall Islands.

''(b) MINIMUM AMOUNT OF GRANT.—

''(1) IN GENERAL.—Subject to the extent of the amounts specified in paragraphs (2)(A) and (4)(A) of subsection (a), a grant under this part for a State for a fiscal year shall be the greater of—

''(A) the amount determined for the State under subsection (a); and

''(B) the amount applicable under paragraph (2) to the State.

''(2) APPLICABLE AMOUNT.—For purposes of paragraph (1)(B), the amount applicable under this paragraph for a fiscal year is the following:

''(A) In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico—

''(i) $100,000, if it has less than 90 cases of acquired immune deficiency syndrome (as determined under subsection (a)(3)(A)(i)); and

''(ii) $250,000, if it has 90 or more such cases (as so determined).

''(B) In the case of each of the territories of the United States (other than the Commonwealth of Puerto Rico), $0.0.''.

SEC. 503. CONSOLIDATION OF AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—Part D of title XXVI (42 U.S.C. 300ff–71) is amended by adding at the end thereof the following section:

''SEC. 2677. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—For the purpose of carrying out parts A and B, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1996 through 2000. Subject to section 2673A and to subsection (b), of the amount appropriated under this section for a fiscal year, the Secretary shall make available 64 percent of such amount to carry out part A and 36 percent of such amount to carry out part B.

''(b) DEVELOPMENT OF METHODOLOGY.—With respect to each of the fiscal years 1997 through 2000, the Secretary may develop and implement a methodology for adjusting the percentages referred to in subsection (a).''.

(b) REPEALS.—Sections 2608 and 2620 (42 U.S.C. 300ff–18 and 300ff–30) are repealed.

(c) CONFORMING AMENDMENTS.—Section 2605(d)(1) (as redesignated by section 105(3)), is amended by striking ''2608'' and inserting ''2677''.

SEC. 504. ADDITIONAL PROVISIONS.

(a) DEFINITIONS.—Section 2676(4) (42 U.S.C. 300ff–76(4)) is amended by inserting ''funeral-service practitioners,'' after ''emergency medical technicians,''.

(b) MISCELLANEOUS AMENDMENT.—Section 1201(a) (42 U.S.C. 300d(a)) is amended in the matter preceding paragraph (1) by striking ''The Secretary,'' and all that follows through ''shall,'' and inserting ''The Secretary shall,''.

(c) TECHNICAL CORRECTIONS.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(1) in section 2601(a), by inserting ''section'' before ''2604'';

(2) in section 2603(b)(4)(B), by striking ''an expedited grants'' and inserting ''an expedited grant'';

(3) in section 2617(b)(3)(B)(iv), by inserting ''section'' before ''2615'';

(4) in section 2618(b)(1)(B), by striking ''paragraph 3'' and inserting ''paragraph (3)'';

(5) in section 2647—

(A) in subsection (a)(1), by inserting ''to'' before ''HIV'';

(B) in subsection (c), by striking ''section 2601'' and inserting ''section 2641''; and

(C) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking ''section 2601'' and inserting ''section 2641''; and

(ii) in paragraph (1), by striking ''has in place'' and inserting ''will have in place'';

(6) in section 2648—

(A) by converting the heading for the section to boldface type; and

(B) by redesignating the second subsection (g) as subsection (h);

(7) in section 2649—

(A) in subsection (b)(1), by striking ''subsection (a) of''; and

(B) in subsection (c)(1), by striking ''this subsection'' and inserting ''subsection'';

(8) in section 2651—

(A) in subsection (b)(3)(B), by striking ''facility'' and inserting ''facilities''; and

(B) in subsection (c), by striking ''exist'' and inserting ''exists'';

(9) in section 2676—

(A) in paragraph (2), by striking ''section'' and all that follows through ''by the'' and inserting ''section 2686 by the''; and

(B) in paragraph (10), by striking ''673(a)'' and inserting ''673(2)'';

(10) in part E, by converting the headings for subparts I and II to Roman typeface; and

(11) in section 2684(b), in the matter preceding paragraph (1), by striking ''section 2682(d)(2)'' and inserting ''section 2683(d)(2)''.

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

Except as provided in section 101(a), this Act takes effect October 1, 1995.

Amend the title so as to read: ''An Act to amend the Public Health Service Act to revise and extend programs established pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990.''.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments and request a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. FRIST, Mr. KENNEDY, and Mr. DODD conferees on the part of the Senate.

APPOINTMENT OF CONFEREES—H.R. 2076

The PRESIDING OFFICER. Mr. President, I understand that pursuant to the order of September 29, 1995, the Chair is authorized to appoint conferees on the part of the Senate for H.R. 2076, the Commerce, Justice, State appropriations bill for fiscal year 1996.

The PRESIDING OFFICER appointed Mr. GREGG, Mr. HATFIELD, Mr. STEVENS, Mr. DOMENICI, Mr. MCCONNELL, Mr. JEFFORDS, Mr. COCHRAN, Mr. HOLLINGS, Mr. BYRD, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, and Mr. KERREY of Nebraska conferees on the part of the Senate.

JERUSALEM EMBASSY RELOCATION IMP

DING OFFICER appointed Mr. GREGG, Mr. HATFIELD, Mr. S

Mr. DOLE. Mr. President, I understand that S. 1322, introduced earlier by myself is at the desk.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the bill for the first time.

The bill (S. 1322) was read the first time.

Mr. DOLE. Mr. President, I ask for its second reading.

Mr. BYRD. Mr. President, I have been asked to object and do object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, as indicated, I have introduced S. 1322, the Jerusalem Embassy Relocation Act of 1995. I am pleased to do so with the distinguished senior Senator from New York, Senator MOYNIHAN, as the lead cosponsor. As the Senate knows, Senator MOYNIHAN has been the expert and the leader on Jerusalem for his entire career. I am pleased that he has joined with Senator KYL, Senator INOUYE and other cosponsors in this important legislation. I would like to take special note of the roles of Senator KYL and Senator INOUYE in developing this legislation, and in agreeing to the changes included today.

This legislation is very similar to S. 770, introduced on May 9, 1995. S. 770

currently has 62 cosponsors—and 61 of them are included on the legislation I am introducing today. There is one major change between S. 770 and S. 1322—the provision requiring groundbreaking in 1996 for construction of a new Embassy has been deleted, and minor or conforming changes have been made. All major provisions are identical: Findings on the importance of Jerusalem, statement of policy on recognizing Jerusalem as the capital of Israel, semiannual reporting requirements, and, most important, the requirement that the American Embassy be open in Jerusalem no later than May 31, 1999.

A number of Members expressed concern about the potential impact of the requirement for breaking ground on construction next year. Clearly 62 percent of the Senate was comfortable with the provision. The lead cosponsor, Senator KYL, felt particularly strongly about some action occurring next year—the 3000th anniversary of Jerusalem. But Senator KYL and the other cosponsors have agreed to remove the requirement in the interests of gaining even broader support.

All of us in the Senate are aware of the possible impact our actions could have on the peace process in the Middle East. We want the peace process to succeed. As I said upon introducing S. 770, ''the peace process has made great strides and our commitment to that process in unchallengeable.'' Last spring, the fate of the declaration of principles ''Phase II'' agreement was very much up in the air. The July deadline was missed. The August deadline was missed. Fortunately, the Oslo II accord was signed last month. Implementation is underway. While always subject to disruption and always under attack from extremists, the pace process is working. The toughest issues are yet to be resolved in final status talks, including Jerusalem.

In my view, the United States does not have to wait for the end of final status talks to begin the process of moving the United States Embassy to Jerusalem. As both S. 770 and today's legislation state: ''Jerusalem should be recognized as the capital of Israel and the United States Embassy should be officially open in Jerusalem no later than May 31, 1999.'' In my view, we should begin the process of moving now and we should conclude it by May 31, 1999. That is the bottom line, and that is what S. 1322 does.

In the 5 months since the introduction of S. 770, the Clinton administration has done nothing to bridge our differences. A questionable legal opinion was offered and a veto threat was made, but no substantive contacts have occurred. Not one. I am disappointed the administration has ignored what is obviously a strong bipartisan majority in the Senate. I am disappointed the administration has made no effort at all to communicate with the lead sponsors of this legislation. Our hope is to unify, not to divide, on the sensitive issue of Jerusalem. Our hope is to move ahead on this issue. Our hope is the administration will support the legislation to move the Embassy. In 2 weeks, Prime Minister Rabin, mayor of Jerusalem Olmert and hundreds of others will assemble in the rotunda of the U.S. Capitol to commemorate the 3000th anniversary of Jerusalem. Many of us noted that the American Ambassador to Israel could not find the time to attend opening ceremonies for the 3000th anniversary of Jerusalem in Israel. I am confident that the Congress will celebrate this historic event in a much more appropriate manner.

In the coming days I expect additional cosponsors will be added to the Jerusalem embassy legislation. I also expect decisions to be made in the administration and in the Congress about how and when to proceed with this legislation.

I ask unanimous consent that a legal analysis supporting the constitutionality of this legislation along with a comparison of S. 770 and S. 1322, be printed in the RECORD following my remarks.

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

[From the Legal Time, Oct. 9, 1995]

CAN CONGRESS MOVE AN EMBASSY?

(By Malvina Halberstam)

This year marks 3,000 years since Jerusalem was first established as the capital of a Jewish state, by King David. Although the city has been ruled by many empires and states since then, it has never been the capital of any other country. It was formally reestablished as the capital of Israel in 1950. In a fitting tribute to the 3,000th anniversary, Sens. Robert Dole (R–Kan.) and Jon Kyl (R–Ariz.) introduced a bill on May 9 of this year to move the U.S. embassy from Tel Aviv to Jerusalem.

Besides the policy issue, which have been the subject of considerable debate, the Dole-Kyl bill raises interesting questions concerning the scope of congressional and executive authority in the conduct of foreign affairs, and the extent to which Congress can use its appropriations power to influence executive action in this area.

The proposed Jerusalem Embassy Relocation Implementation Act, which has 60 cosponsors, makes a number of findings, including that Jerusalem has been the Israeli capital since 1950 and that the United States maintains its embassy in the functioning capital of every country except Israel. The bill declares it to be U.S. policy to recognize Jerusalem as the capital of Israel, to begin breaking ground for construction of the embassy in Jerusalem no later than Dec. 31, 1996, and officially to open the embassy no later than May 31, 1999.

The provides that at least $5 million in 1995, $25 million in 1996, and $75 million in 1997 of the funds authorized to be appropriated for the State Department's acquisition and maintenance of buildings abroad shall be made available for the construction and other costs associated with the relocation. It further provides that not more than 50 percent of those funds appropriated in 1997 may be obligated until the secretary of state reports to Congress that construction has begun and that not more than 50 percent of the funds appropriated in 1999 may be obligated until the secretary reports to Congress that the Jerusalem embassy has officially opened.

President Bill Clinton has opposed the legislation on policy grounds, and the Justice Department has prepared a memorandum arguing that the bill is unconstitutional. Essentially, the department argues (1) that the bill interferes with the president's power to conduct foreign affairs and make decisions pertaining to recognition, and (2) that the bill is an inappropriate exercise of Congress' appropriations power because it includes an unconstitutional condition.

THE ''FOREIGN AFFAIRS'' POWER

Contrary to popular impression, the Constitution does not vest the foreign affairs power in the president. It does not vest the foreign affairs power in any branch. Indeed, it makes no reference to ''foreign affairs.''

The Constitution vests some powers that impact on foreign affairs in the president, others in the president and the Senate jointly, and still others in Congress. It provides that the president ''shall receive ambassadors.'' It gives him the power to appoint ambassadors, but only with the advice and consent of the Senate, and to make treaties, provided two-thirds of the senators concur.

The Constitution also gives Congress a number of powers affecting foreign affairs, including the power to ''regulate commerce with foreign nations''; to ''establish uniform rules of naturalization''; to ''coin money and regulate the value thereof, and of foreign coin''; to ''define and punish piracies and felonies committed on the high seas, and offenses against the law of nations''; to ''declare war, grant letters of marque and reprisal, and make rules concerning capture on land and water''; and to ''raise and support armies,'' and ''provide and maintain a navy.'' As Edward Corwin put it in The President: Office and Powers, 1787–1984, ''the Constitution . . . is an invitation to struggle for the privilege of directing American foreign policy.''

Probably the most comprehensive Supreme Court discussion of the foreign affairs power is Justice George Sutherland's opinion in United States v. Curtiss-Wright Export Corp. (1936). In that case, the Court sustained a statute authorizing the executive to order an embargo on arms to Brazil—a delegation of congressional authority unacceptable at that time with respect to domestic regulation. Sutherland argued that in foreign affairs, as distinct from domestic affairs, the authority of the federal government does not depend on a grant of power from the states. Turning to the specific issue before the Court, the president's authority to declare an embargo, Sutherland stated, ''We are dealing here not alone with an authority vested in the President by exercise of legislative power, but with such an authority plus the very delicate plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations.''

In addition to making no reference to ''foreign affairs,'' the Constitution also makes no reference to ''recognition'' of foreign states. The provision that the president ''shall receive ambassadors,'' now considered the basis of the president's power over recognition, was described by Alexander Hamilton in Federalist No. 69 as ''more a matter of dignity than of authority'' and ''a circumstance which will be without consequence.''

Historically, however, presidents have made decisions on recognition, starting with George Washington's recognition of the French Republic. In United States v. Belmont (1937) and United States v. Pink (1942), the Supreme Court implicitly accepted the executive's authority over recognition when it held that an executive agreement recognizing the Soviet government and providing for settlement of claims between the

United States and the Soviet Union superseded inconsistent state law.

Both the Court's reference to the president's broad foreign affairs powers in Curtiss-Wright (and other cases cited in the Justice Department memo), and the Court's implied acceptance of the executive's authority to recognize foreign governments to Belmont and Pink were made in situations in which Congress either delegated authority to the executive or was silent. None involved a conflict between Congress and the president.

FLUCTUATING AUTHORITY

Indeed, the Supreme Court has never held that Congress could not exercise one of its constitutional powers because doing so would interfere with the president's conduct of foreign affairs. The Court has held the converse: that presidential action, which might have been constitutional if Congress had not acted, was unconstitutional because it was inconsistent with legislation enacted by Congress. In Youngstown Sheet and Tube Co. v. Sawyer (1952), the Court held that, notwithstanding his constitutional power as commander in chief, President Harry Truman's seizure of the steel mills to ensure that a threatened strike did not stop the production of steel needed for the Korean War, was illegal because it was inconsistent with the Taft-Hartley Act for resolving labor disputes. Justice Robert Jackson, who had been President Franklin Roosevelt's attorney general and was a strong proponent of broad executive authority, concurred in what has become the classic statement on the relationship between executive and legislative power. Jackson wrote: Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . .

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all the Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. . . .

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution in uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Justice Jackson cited Curtiss-Wright as an example of the first class of cases and noted that ''that case involved not the President's power to act without Congressional authority, but the question of his authority to act under and in accord with an Act of Congress.'' Jackson concluded, ''It was intimated that the President might act in external affairs without congressional authority, but not that he might act contrary to an Act of Congress.''

Admittedly, the Dole-Kyl bill does not explicitly require the president to relocate the embassy to Jerusalem. However, the findings that Jerusalem is the Israeli capital and that Israel is the only state in which the U.S. embassy is not in the capital, the assertion that it is U.S. policy that the embassy be in Jerusalem, the allocation of funds for relocation and construction of an embassy there, and the prohibition on the use of some funds appropriated to the State Department if construction is not started by December 1996 and completed by May 1999, all clearly indicate the purpose of Congress to commence construction of a U.S. embassy in Jerusalem no later than December 1996 and to open that embassy no later than May 1999.

THE JACKSON ANALYSIS

Under the Jackson analysis, were the president to take ''measures incompatible with the expressed or implied will of Congress,'' his power would be ''at its lowest ebb.'' He could ''rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.'' Such exclusive presidential control could be sustained ''only by disabling the Congress from acting upon the subject.'' While the question has never been decided, it is unlikely that a court would hold that the president's authority to receive ambassadors (his power to appoint ambassadors requires the advice and consent of the Senate), minus the power of Congress under the necessary and proper clause and the spending clause of Article I, is sufficient to disable Congress from acting upon the subject.

Both the necessary and proper clause and the spending clause have been broadly interpreted to permit Congress to legislate on a wide range of matters. Neither limits congressional action to the matters enumerated in Article 1, §8.

The necessary and proper clause authorizes Congress to make not only all laws necessary and proper to implement the enumerated powers of Congress, but all laws necessary and proper to execute all powers vested in the government of the United States or in any department or office thereof. Thus, even if recognition were deemed an executive power—on the basis of historical precedent, if not constitutional provision—Congress has the power under this clause to enact legislation concerning the location of U.S. embassies.

The Dole-Kyl bill is also clearly a proper exercise of Congress' spending power. That the use of the spending power is not limited to those areas that Congress can otherwise regulate was made clear in United States v. Butler (1936). Justice Owen Roberts, writing for the majority, stated, [The first clause of Article I, §8] confers a power separate and distinct from these later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States [emphasis added].

The Justice Department memo argues, correctly, that Congress cannot use the spending power to impose unconstitutional conditions. Thus, the Supreme Court has held that Congress cannot use the appropriations power to violate the establishment clause of the First Amendment, Flast v. Cohen (1968); the compensation clause in Article III, United States v. Will (1980); or the prohibition on bills of attainder in Article I, §9, United States v. Lovett (1946). The principle that has emerged is that Congress cannot use the spending power to achieve that which the Constitution prohibits. But neither appropriating funds for relocation and construction of an embassy nor limiting expenditure of funds appropriated for the acquisition and maintenance of buildings abroad if construction is not started and completed on specified dates violates any prohibition of the Constitution.

The Justice memo relies on Butler, the only case in which the Court has held a federal appropriation invalid because of the unconstitutionality of a condition that did not involve infringement of individual rights. In that case, decided more than half a century ago, the majority took the position that Congress could not use federal funds to induce states to enact regulations that Congress could not enact under its enumerated powers. Within a year of that decision, however, the Court (in Steward Machine Co. v. Davis and Helvering v. Davis (1937) sustained conditional appropriations in areas outside the scope of Congress' enumerated powers. Since then, Congress has enacted numerous statutes in which it used the spending power to achieve results that it could not have achieved by regulating directly.

Most recently, in South Dakota v. Dole (1987), the Supreme Court rejected a state argument that Congress could not use federal highway funding to achieve a national minimum drinking age because the 21st Amendment gave the states the power to make that decision. After reviewing its earlier decisions, the Court stated, These cases establish that the ''independent constitutional bar'' limitation on the spending power is not, as petitioner suggests, a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly. Instead, we think that the language in our earlier opinions stands for the unexceptionable proposition that the power may not be used to induce the States to engage in activities that would themselves be unconstitutional.

CONGRESS' POWER OF THE PURSE

Moreover, in Butler the Court held that Congress could not use the spending power to limit states' rights. The Court has never held that Congress cannot limit the proper exercise of power by another branch of the federal government through the use of its appropriations authority unless the matter falls within Congress' enumerated powers. Such a holding would vitiate one of the most important—if not the most important—of the checks and balances: Congress' power of the purse. As the U.S. District Court for the District of Columbia stated in United States v. Oliver North (1988), [t]hough the parameters of Congress' powers may be contested, Congress surely has a role to play in aspects of foreign affairs, as the Constitution expressly recognizes and the Supreme Court of the United States has affirmed. The most prominent among those Congressional powers is of course the general appropriations power.

That Congress can use the spending power to limit the executive's constitutional powers is well established. Consider, for example, the president's power as commander in chief. Although the Constitution provides that the president shall be commander in chief, and the Supreme Court stated almost 150 years ago that this encompasses the power ''to direct the movements of the naval and military forces at his command and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy'' (*Fleming v. Page* (1850)), Congress has repeatedly used its funding power to limit military action by the president. Indeed, in some of the challenges to the

Vietnam War, courts have stated that Congress' failure to prohibit the president from using funds for the war (or for certain aspects of it) constituted authorization. If Congress can exercise its appropriations power to limit the president's power as commander in chief—a power specifically provided for in the Constitution—a fortiori it can exercise the appropriations power to limit the president's foreign affairs power—a power not expressly vested in the president, but implied from other powers and shared with Congress.

Since World War II, Congress has consistently used appropriations as a means of controlling some aspects of foreign policy. In 1989, commentator Louis Fisher characterized the assertion that Congress cannot control foreign affairs by withholding appropriations as ''*the* most startling constitutional claim emanating from the Iran contra hearings'' (''How Tightly Can Congress Draw the Purse Strings?'' *American Journal of International Law*). Or, as Professor John Hart Ely put it in his 1993 book, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath*, assertions ''that foreign affairs just aren't any of Congress's business . . . bear no relation to the language or purposes of the founding document, or the first century and a half of our history.''

EVEN KISSINGER CONCEDED

Even strong proponents of broad executive power in foreign affairs agree that Congress can use the appropriations power to affect the conduct of foreign affairs. Professor Louis Henkin, chief reporter for the latest Restatement of U.S. Foreign Relations Law, has written, ''Congress has insisted and presidents have reluctantly accepted that in foreign affairs as in domestic affairs, spending is expressly entrusted to Congress. . . .'' And then Secretary of State Henry Kissinger conceded, following the executive confrontations with Congress during the Vietnam War: The decade long struggle in this country over executive dominance in foreign affairs is over. The recognition that Congress is a coequal branch of government is the dominant fact of national politics today. The executive accepts that Congress must have both the sense and the reality of participation foreign policy must be a shared enterprise.

Whatever the respective powers of Congress and the president to decide whether to recognize a foreign state—a question on which the Constitution is silent and the Supreme Court has never ruled—that issue is not raised by the Dole-Kyl bill. Rather, the issues are whether Congress can enact legislation that may affect U.S. foreign policy interests, and whether it can achieve its ends through use of the appropriations power. Long-established practice, the writings of scholars and statesmen, and judicial decisions all indicate that the answer to both is clearly yes.

COMPARISON OF S. 770 AND S. 1322

The withholding of funds pending groundbreaking for a new embassy in Jerusalem in 1996 has been deleted (Section 3(a)(2) and section 3(b) of S. 770).

A new finding concerning a 1990 resolution on Jerusalem passed by Congress has been added (finding 9 of S. 1322).

The statement of policy has been amended to include reference to Jerusalem being undivided and open to all ethnic and religious groups.

The statement of policy has been re-worded to use ''relocated'' rather than ''officially open'' in reference to the Embassy (section 3).

Fiscal Year 1995 funding (section 4 of S. 770) has been deleted.

Funding for relocation costs in fiscal year 1996 and fiscal year 1997 has been modified to be discretionary rather than mandatory (section 4 of S. 1322).

Mr. LIEBERMAN. Mr. President, I rise today to join with Senators DOLE, MOYNIHAN, KYL and INOUYE and most of my other colleagues in introducing the Jerusalem Embassy Relocation Implementation Act, S. 1322. I hope that this bill will gain the support of all of my colleagues in the Senate.

Mr. President, Jerusalem is and always shall be the capital of Israel. Jerusalem is a unified city in which the rights of all faiths have been respected. The Embassy of the United States of America to Israel should be in that country's capital, the city of Jerusalem.

Earlier this year, I joined with many of my colleagues in sending a letter to the Secretary of State encouraging the administration to begin planning for relocation of the U.S. Embassy to the city of Jerusalem. This process must move forward.

The bill we are introducing today establishes U.S. policy that Jerusalem should be recognized as the capital of the state of Israel.

The bill also establishes a timetable for construction and relocation of the U.S. Embassy to Israel in Jerusalem by May 31, 1995. The Secretary of State is required to present an implementation plan to the Senate within 30 days of enactment and provide a progress report every 6 months. The bill allocates substantial initial funding for the project—$25 million in fiscal 1996 and $75 million in fiscal 1997.

Like the President and many of my colleagues, I believe we can and should move forward to establish the U.S. Embassy in Jerusalem in a manner consistent with the continued negotiation and implementation of the peace process which achieved another significant step last month. The modification to this legislation from the version earlier introduced, S. 770, will ensure that this can be accomplished. There is no change in the real result of the bill: The opening of the U.S. Embassy in Jerusalem by May 31, 1999.

Mr. President, the Jerusalem 3,000 celebration underway in Israel and throughout the world commemorates the 3,000th anniversary of King David's entry into Jerusalem. There could be no more fitting occasion than this celebration to commit America to finally establish our Embassy in Jerusalem by the end of the decade.

With the adoption of the Jerusalem Embassy Relocation Implementation Act and continued progress in the peace process, we can enter the 21st century with the U.S. Embassy in Jerusalem, the capital of a safe and secure Israel, at peace with her Arab neighbors, in an economically prosperous Middle East.

ORDERS FOR TUESDAY, OCTOBER 17, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45, Tuesday, October 17, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period for morning business until the hour of 12:30 p.m., with Senators permitted to speak therein for 5 minutes each, with the exception of the following: Mr. LOTT, 30 minutes; Mr. THOMAS, 60 minutes; Mr. HARKIN and Mr. SIMON, 45 minutes; Mr. BURNS, 10 minutes; Mr. FRIST, 15 minutes.

I further ask unanimous consent that at the hour of 12:30 p.m., the Senate stand in recess until the hour of 2:15 p.m. for the weekly policy luncheons to meet.

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

Mr. DOLE. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture on the substitute amendment to H.R. 927, the Cuban sanctions bill, occur at a time to be determined by the majority leader after consultation with the minority leader; I further ask unanimous consent that in accordance with the provisions of rule XXII, Senators have until the hour of 12:30 on Tuesday to file any second-degree amendments to the substitute amendment to H.R. 927.

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

PROGRAM

Mr. DOLE. Mr. President, for the information of all Senators, if cloture is invoked on Tuesday, the Senate can be expected to be in session into the evening in order to complete action on the Cuban sanctions bill. A third cloture motion was filed today. Therefore, if cloture is not invoked on Tuesday, a third vote will occur during Wednesday's session.

Also during next week's session, the Senate can be expected to consider any of the following items: Labor HHS appropriations bill, if a consent agreement can be reached after brief consideration; NASA authorization; Amtrak authorization; available appropriations conference reports.

I am also going to announce that the first cloture vote will not be before 5 p.m. on Tuesday. To clarify, there will not be any votes until 5 p.m.

Let me also announce that under the able leadership of Senator ROTH of the Senate Finance Committee, the Republicans have completed action on the tax part of the reconciliation package—$245 billion in tax cuts; as far as family tax credits, $500. It is permanent.

There are a lot of good features in this bill: capital gains rate reduction, estate tax, family, health, businesses, a number of provisions that I think the American people will certainly find to their liking. I want to compliment the distinguished chairman of the Finance Committee. This is his first tax bill.