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Senate

(Legislative day of Monday, March 6, 1995)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Lloyd John Ogilvie, D.D., offered the following prayer:

Let us pray:

Almighty God, ultimate Sovereign of this Nation, gracious Lord of our personal lives, and Providential Guide of this Senate, we dedicate this day to do justly, love mercy, and to walk humbly with You. We are challenged by the realization that the Hebrew meaning of ''walk humbly'' means ''to walk attentively.'' And so, we commit our minds and hearts to listen attentively to You.

Speak to us so that what we speak may be an echo of Your voice which has sounded in the depth of our receptive souls. In the din of the cacophony of voices demanding our attention and the pressure of the self-seeking forces willfully dominated by self-interest, help us to seek to know and do Your will for what is best for our beloved Nation. Help us to remember that no problem is too small to escape Your concern and no perplexity too great to resist Your solutions. Grant us the greatness of minds tuned to the frequency of the Spirit's guidance. Free us of any tenaciously held positions that may not have been refined by careful listening to You so that our united position together may be that of women and men committed to Your righteousness and justice. So we say with Samuel of old, ''Speak Lord, Your servant listens''—I Samuel 3:9. And the same blessing we seek for us this day, we pray for our President, the House of Representatives, the Justices, and all who carry the awesome responsibilities of government in every city and State of our land. Lord God of Hosts be with us yet, lest we forget to listen to You.

In Your holy name, amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 12:30 p.m. with Senators permitted to speak therein for up to 5 minutes each.

Mr. THOMAS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from South Carolina.

AN AMENDMENT TO H.R. 889 TO PROHIBIT FUNDING TO IMPLEMENT THE EXECUTIVE ORDER BANNING THE USE OF PERMANENT STRIKER REPLACEMENTS BY GOVERNMENT CONTRACTORS.

Mr. THURMOND. Mr. President, President Clinton recently issued an Executive order to ban the use of permanent replacement workers during labor disputes involving Government contractors. The Secretary of Labor would have the responsibility to enforce the order by asking Federal agencies to cancel existing contracts, or ban violators from future contracts.

This Executive order is contrary to current law and, therefore, improper. It will deny to Federal contractors a legal right which is available to all other businesses; namely, the right to respond to union economic warfare by hiring permanent replacement workers. This is a fundamental legal right of all employers and should not be eliminated by Executive order.

This administration asserts that the Executive order is simply a procurement policy under the discretion of the President. Yet, Congress has dealt decisively with this issue over the past 4 years by consistently rejecting legislation with the same objective as this order. Furthermore, the right to hire permanent striker replacements has been Federal law for 60 years. Let me repeat that—60 years. Banning the use of permanent replacements by Federal contractors through Executive order is an improper intrusion into the province of the legislative branch of Government.

This Executive order violates the congressional mandate of Federal Government neutrality in labor disputes. Current Federal labor laws are designed to strike a very delicate balance between management and labor. The right to replace strikers is just as much a vital part of that balance as is the right to strike and the right to bargain. This balance has evolved over many years of congressional scrutiny, and this intrusion will change the effectiveness of the law without proper legislative action.

Mr. President, it is a sad day for our Nation whenever one branch of our constitutional form of Government seeks to encroach upon the province of another. The Kassebaum amendment will prohibit the administration from spending any appropriated funds to implement this Executive order. I strongly urge my colleagues to support this amendment and to support cloture.

Mr. President, I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Mr. MURKOWSKI. Mr. President, may I have a response to the order currently pending from the Chair?

The PRESIDING OFFICER. Under the previous order, the Senator is recognized to speak for up to 30 minutes.

Mr. MURKOWSKI. Mr. President, I thank the Chair. I shall not take that time.

NORTH KOREA

Mr. MURKOWSKI. Mr. President, I would like to speak very briefly on two points, one involving the framework agreement between North Korea, and the other a resolution pending to allow President Li to visit the United States. It is my understanding that the occupant of the chair, Senator THOMAS, also wishes to speak briefly on the matter of President Li's visit to the United States. I would be willing to relieve him from the chair for the period of time for his statement.

If I may proceed, Mr. President, one of the issues I want to bring to the attention of my colleagues that is rather disturbing is associated with the United States and North Korea agreed-to framework on nuclear issues. There is an agreement that has been entered into by the United States directly with the Government of North Korea. As the President will recall, the framework agreement was signed on October 21 and we have so far had some four senatorial committee hearings covering various aspects of the framework agreement. The Foreign Relations Committee has addressed it. The Energy Committee has addressed it. The Armed Services Committee has addressed it, and the Intelligence Committee has addressed it.

In the agreed-to framework, the administration has stressed consistently North Korea's adherence to the terms of that agreement. But I share two specifics with my colleagues concerning recent articles that cast some doubt on North Korea's good faith.

First, North Korea is conducting vigorous military exercises at this time. In a March 6 Defense News report, it says:

> North Korea is conducting its most vigorous winter military exercise in recent years, an event that the U.S. and South Korean officials here attribute, in part, to the U.S. shipments of heavy oil authorized under the October 1994 nuclear package deal with Pyongyang.

Having been in Pyongyang with my colleague, the Senator from Illinois, I think we both find this rather distressing and inconsistent.

I remind my colleagues that the story is referring to the 50,000 tons of oil that was paid for with $4.7 million in Department of Defense emergency funds. Although not intended, the provision of heavy oil to North Korea has the perverse effect of strengthening North Korea's 1-million-man military machine. The story states:

> This year's exercises are significant because of the increased air sorties and a surge in the number of armored, mechanized and artillery corps practicing joint warfare operations.

I further point out in the March 6 Defense News the following:

> Although U.S. oil is not used directly to fuel military maneuvers, the influx of heavy oil into the country has allowed North Korea to divert other types of fuel reserves from domestic to military use.

We were assured, Mr. President, by the administration that this would not happen. Well, it has happened. What is our response? Well, the United States response is to cancel our winter ''team spirit'' military exercises with South Korea. I find that very inconsistent. What are we following it up with? The preparation to send 100,000 tons of additional oil in October, without safeguards.

The second report is that North Korea is not fully cooperating with the International Atomic Energy Agency. The March 2 Nucleonics Week reported:

> Pyongyang categorically refuses to allow the IAEA to reconstruct the history of fissile materials production at its Yongbyong complex.

The report of Nucleonics Week points out that Pyongyang's refusal to grant access could cause irreparable damage. The North Korean position is that the IAEA will have access to the inside of the reprocessing plant on or after a 5-year period. But IAEA officials report that access to the inside of the plant before then is paramount. The IAEA doesn't know right now what is going on inside the plant, if there is any plutonium separation, or if there are any materials being moved around.

The second story illustrates the problems with the agreed-to framework. We should have had a broader agreement that addressed other issues of concern—such as North Korea Army activities; should have demanded access to the two suspected wastesites, complete and total access to past, current, and future nuclear activities—something we demand from all other nations that are a party to the nuclear proliferation agreement.

We asked South Africa to come clean and they did, but the North Koreans have not. We have left the North Koreans, in the opinion of the Senator from Alaska, with too many cards in their hands.

I have sponsored two specific resolutions, one that is being taken up by the Foreign Relations Committee next week, requiring that we show progress on the framework agreement, and one that was accepted last week on the defense appropriations stating that no further funding could take place without the administration coming to Congress for approval.

RESOLUTION ALLOWING PRESIDENT LI TO VISIT THE UNITED STATES

Mr. MURKOWSKI. Mr. President, I rise to discuss a concurrent resolution expressing the sense of the Senate that the President of Taiwan, Li Teng-hui, be allowed to visit the United States.

We submitted this concurrent resolution, Senate Concurrent Resolution 9, last week. We had 36 bipartisan cosponsors, some 11 or 12 Democrats, and 24 or 25 Republicans.

Specifically, the concurrent resolution calls on President Clinton to allow President Li to come to the United States on a private visit, as opposed to an official state visit. An identical concurrent resolution, House Concurrent Resolution 33, has been submitted in the House by Congressmen LANTOS, SOLOMON, and TORRICELLI.

Why should we simply let the People's Republic of China, our friends in China, dictate to us who can visit our country? The current State Department policy of saying that allowing Li to visit would upset relations with the People's Republic of China offends the Senator from Alaska. I think Taiwan has made great strides toward achieving some of the goals that we have achieved in our democracy, such as ending martial law, free and fair elections, a vocal press, and in human rights great advancements have taken place.

Taiwan is a friendly, democratic, stable, prosperous country and the 5th largest trading partner of the United States and the world's 13th, I might add. They buy twice as much from the United States as from the People's Republic of China. The largest foreign reserves per capita, and contribute to international causes. They are good international citizens.

But the United States continues to give a cold shoulder to the leader of Taiwan. That leader, I might add, is going to run in a reelection effort. It is the first time they have had free and open elections. Last May, in Hawaii, the State Department refused to allow President Li to visit overnight while his plane refueled, and they indicated they would not allow a private visit. The rationale for that was that the President was going on to Central America and his plane had to land for refueling. I think it was the worst type of hospitality evidenced by the State Department in some time. We know that the People's Republic of China is going to bellow about everything we do regarding Taiwan—United States pressures at the United Nations on human rights, World Trade Organization membership, and anything we do for Taiwan is raised as an issue by the People's Republic of China. But, in the end, they will make the same calculation about when to risk offending us on the U.S. market.

I think that the precedent exists for President Li to visit the United States. Consider for a moment, Mr. President, that we have welcomed other unofficial leaders to the United States, such as Dalai Lama, who called on Vice President GORE—over the objections of the People's Republic of China. Yasser

Arafat came to the White House ceremony; he was once considered a terrorist. Gerry Adams has been granted numerous visas over British objections.

In each case, the administration made direct choices to allow a visit to advance America's goals. Li's visit would do the same thing. United States-ROC Economic Counsel Conference will hold a meeting in Anchorage, AK. Visiting there would not be a political statement. We are almost another country, in the sense that we are a little out there in the western northern part of the hemisphere, if you will.

What they are asking for here is for Li to visit his alma mater, Cornell University in New York. They would like him to come up in the spring and give an address to the students and faculty. I call on the administration to allow these events.

I remind my colleagues, as we address the friction between Taiwan and China, that there are two organizations—one, the mainland People's Republic of China, and one in Taiwan. They meet regularly and discuss hijackings and commercial and trade activities—everything but politics. Chinese business men and women are probably the best in the world. They recognize that it is necessary that they maintain a dialog, and now we are seeing the opening up of some of the southern ports of China with direct shipment of goods originating in Taiwan. They will not have to go through Hong Kong anymore. So as we look at a stagnant relationship with Taiwan, clearly there is a dialog developing between Taiwan and the People's Republic of China. It is time that we allowed President Li to visit this country.

Mr. President, that concludes my remarks. I see my friend from Illinois on the floor seeking recognition. I had the pleasure of accompanying him on a recent trip to North Korea and to China, as well. I am sure he has some observations.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

TAIWAN

Mr. SIMON. Mr. President, let me speak briefly on both the Taiwan situation and the North Korean situation.

I am pleased to cosponsor the concurrent resolution of Senator MURKOWSKI. I commend him for his leadership on this.

We ought to maintain a good relationship, if possible, with the People's Republic of China, but they should not be permitted to veto our standing up for human rights.

Senator MURKOWSKI mentioned that when President Lee landed in Hawaii at a military base on his way to Costa Rica, he was not permitted to stay overnight. The base commander was not permitted to come out and greet him.

Is this the President of a dictatorship? We treat dictators better than we treat the freely elected President of Taiwan. Taiwan is doing everything that we say a country should do—free press, a multiparty system, holding elections—and yet we treat them as a pariah. We treat them as they used to treat people with leprosy.

It is very interesting what happened in Germany. There were two Germanys, and we recognized both Governments. Neither Government was particularly happy that we did it, but it did not prevent the two Germanys from coming together. And that should be our attitude toward Taiwan.

I realize that right now formal recognition is not going to be in the cards for Taiwan. But, at the very least, we ought to say to the President of Taiwan, President Lee, who wants to come over to go to his school reunion at Cornell, who was not permitted to do that last time, that he should be able to come to his school reunion at Cornell.

There is also a meeting on United States-Republic of China economic relations. He would like to combine the two. Why should he not be permitted to come and attend those?

As one Senator, I think our conduct toward Taiwan has, frankly, been an embarrassment. If the People's Republic of China squeals some because we show some deference to the leadership of Taiwan, I think we just have to understand that is going to be part of the process.

NORTH KOREA

Mr. SIMON. Mr. President, let me comment also on the North Korean situation.

When Senator MURKOWSKI and I were in North Korea in December, we landed with the first official American plane to land in North Korea since the Korean war. It is important that both the United States and North Korea live up to our agreements.

The situation in Korea is the most volatile anywhere in the world where there are American troops. We have 36,000 to 37,000 American troops just south of the border in Korea. You have about 1 million troops in total facing each other with no communication. Even in the situation with Pakistan and India, there is communication between the two Governments. There is no communication between North Korea and South Korea.

North Korea is unlike any other government on the face of the Earth right now. It is a very tightly controlled dictatorship. The radio stations only have one station. The television stations only have one station. It is like Albania must have been back in the old days of communism.

I think it is important that the United States assist—while making clear to South Korea that we are going to be loyal to our friends there—in communication between the two countries.

Thanks to President Carter, a meeting had been set up between the President of South Korea and Kim Il-song, the leader of North Korea. Then he died fairly suddenly back in July of last year, and that did not happen.

Senator MURKOWSKI and I are working on the possibility of getting some North Korean and South Korean Parliamentarians together, some kind of minimal contact, so that there is some understanding between the two sides, so that what happens on the other side in both cases is not viewed with paranoia.

I would add, I think it is extremely important that North Korea permit South Korea to build the nuclear plants that we talked about. That was the understanding in the agreement that we had with North Korea and they should not back down on that agreement.

I hope we can be of some assistance to North Korea, which feels very isolated now. It is isolated. It has to make this transition from an old-fashioned, extremely monolithic communism to at least a more moderate communism, if their such a phrase, as in China and Vietnam. But I think we can play a constructive role there, and I hope we will.

TAX CUTS

Mr. SIMON. Mr. President, I see my colleague from Wisconsin about to take the floor. I see he has a cartoon about tax cuts. If he is going to speak about tax cuts, I want him to know I agree with him 100 percent. If there is anything irrational—and he will disagree with my next statement—if there is any illustration that shows why we need a balanced budget amendment, we would not be considering tax cuts right now in both political parties. If we had a balanced budget amendment, we would be focusing on balancing the budget.

But I agree 100 percent with my colleague that this is not the time to be moving in the direction of tax cuts.

Mr. President, I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Under the previous order, the Senator is recognized to speak for up to 15 minutes.

Mr. FEINGOLD. I thank the Chair.

TAX CUT FRENZY

Mr. FEINGOLD. Mr. President, I certainly thank the senior Senator from Illinois for noticing the cartoon and for being one of the first people in this body to come to me and say that we do need to prevent this tax cut frenzy if we are going to be serious about balancing the Federal budget.

I think, Mr. President, now is the time to put the tax cut proposals out of their misery. Let us do it early on so the American people know that there is something real to all this rhetoric in

Washington about balancing the Federal budget.

It seems to me, ever since the tax cut frenzy started with the November 8 election, that I have had a hard time finding anyone who is really for it other than a few folks here in Washington.

I have chosen this cartoon from December at Christmastime to illustrate how early the people of America were ahead of the politicians on this issue. It is a very simple cartoon. It shows a couple of parents holding a nice present, ''The tax cuts.'' But their baby holds ''The bill.'' The parents are enjoying this nice present, but passing its cost along to the next generation.

So even before the 104th Congress convened, I feel that the American people were way ahead on this and felt that this just did not make sense and that it did not add up.

I sort of felt as if maybe this issue would die pretty quickly, but I was wrong. In a way, this frenzy for a tax cut, which nobody supports, is the inevitable result of the November 8 election.

In the Milwaukee Sentinel just yesterday, there was an editorial entitled ''Tax Cut Plans—Questions About Both Party Plans.''

Mr. President, I ask unanimous consent that this editorial from the Milwaukee Sentinel be printed in the RECORD.

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

[From the Milwaukee Sentinel, Mar. 13, 1995]

TAX CUTS PLANS—QUESTIONS ABOUT BOTH PARTY PLANS

Bill Archer, the new Republican chairman of the House Ways and Means Committee, strode to the microphone in a basement hearing room after being introduced by a young couple from Virginia holding their year-old daughter.

It was just the common touch the Texas congressman was seeking to announce the committee's plan to cut taxes by nearly $200 billion over the next five years, or about $140 billion more than President Clinton has proposed in his plan.

Trouble is, both plans butt up against growing popular discontent over the federal deficit, which still will grow by $1 trillion over five years under Clinton's irresponsible budget plan. There also is no indication that Republicans have discovered the magic bullet that will slay the deficit dragon.

The reality is that hardly anyone accepts the current political nostrum that Congress and/or Clinton can cure what ails the nation by advocating spending and tax cuts, all at the same time.

That even includes prominent Republicans such as Bob Packwood, of Oregon, chairman of the Senate Finance Committee, and Pete V. Domenici, of New Mexico, who heads the Budget Committee.

Both have voiced opposition to tax cuts while government continues to spend more than it takes in. The simple truth is that House Republicans have not yet indicated how they would pay for tax cuts in the $200 billion range and still balance the budget.

Still, the Republican plan has some attractive features.

A capital gains tax cut, harangued by Democrats as a payoff to the rich, would benefit millions of middle-class investors and, at least in the short term, increase federal revenue as stockholders liquidate some of their holdings. That could help lead to the creation of revenue-producing jobs.

Similarly, the suggestion that people could withdraw money, free of penalty, from their individual retirement accounts for buying a home or other purposes is another economy booster. For local government, that's a future source of property-tax revenue.

What's confounding about it all is that while Democrats such as Rep. Sam M. Gibbons, of Florida, ranking Democrat on Ways and Means, say it's ''the wrong time and the wrong tax cut,'' you can bet that if it were Clinton and not Archer making a tax cut proposal, Democrats would rush to his banner.

The public, however, is far out in front on this issue and can see through both parties' strategies.

Mr. FEINGOLD. Mr. President, I just want to briefly suggest that this editorial points out that there is still a problem with both parties going after this tax cut idea.

The article says:

Bill Archer, the new Republican chairman of the House Ways and Means Committee, strode to the microphone in a basement hearing room after being introduced by a young couple from Virginia holding their year-old daughter.

It was just the common touch the Texas Congressman was seeking to announce the committee's plan to cut taxes by nearly $200 billion over the next 5 years, or about $140 billion more than President Clinton has proposed in his plan.

The trouble is [the Milwaukee Sentinel says] both plans [both Republican and Democratic plan] butt up against growing popular discontent over the Federal deficit, which still will grow by $1 trillion over 5 years under Clinton's irresponsible budget plan. There also is no indication that Republicans have discovered the magic bullet that will slay the deficit dragon.

The editorial goes on to say, ''The reality is that hardly anyone accepts the current political nostrum that Congress and/or Clinton can cure what ails the Nation by advocating spending and tax cuts all at the same time.''

So, Mr. President, what the public knew in December has apparently not completely reached the Halls of Congress. Day after day I see evidence, whether at a Wisconsin town meeting, or reading the major national newspapers, that in general the American people and the opinion makers outside of Washington do not want to do this, and thinks it is a foolish way to handle our budgetary problems.

This last night I had a chance to see a few minutes of a C–SPAN program on which two of our colleagues were appearing in front of the National League of Cities, and what they pointed out was that they had different views exactly on what should happen in the Federal budget.

I was intrigued by the different responses on what they said about the tax cut issue. The junior Senator from New Hampshire, Senator GREGG, indicated to the audience he was interested in a $500 billion deficit reduction package, to be passed by the 104th Congress.

I was struck by that figure, because that is exactly what we have already accomplished in the 103d Congress under President Clinton and the Democratic leadership. I am glad to hear that kind of figure is being thrown around. What the Senator from New Hampshire then said was perhaps as a part of the $500 billion—he would not go with the overall Republican contract idea of a $200 billion tax cut, I believe I am correctly characterizing his statement that that was too much—but he said, ''Maybe we would look at the President's $63 billion level, and perhaps have that included in the $500 billion.''

That got applause. People seemed to feel that was more sensible that a $200 billion tax cut. But then the Senator from Nebraska, the junior Senator from Nebraska, Senator KERREY, took the microphone and said to Senator GREGG, ''Now, how much will it take to balance the budget by the year 2002? What is the total figure?'' And the indication was that it was well over $1 trillion.

So Senator KERREY indicated that even if we do the $500 billion, we are less than half the way there. Senator KERREY said to this audience of people involved in city government that he was against tax cuts in any form.

I would think people would maybe nod or maybe even disagree. Instead it got a rousing applause. Everyone in the audience gave him a similar strong applause in saying he would fight any of the tax cuts, because they are not consistent with the notion of dealing with the deficit and caring about our children and our grandchildren.

So the common sense is out there. The common sense view that frankly helped fuel the debate on the balanced budget amendment and had a lot to do with that month-long debate. That common sense is out there.

If this institution is willing to listen, the first thing we will do is say we cannot afford either the Clinton tax cut or the Republican contract tax cut. Of course, I believe the American public would like to have a tax cut if they possibly could. But what they are saying clearly is, we cannot afford it until we get our house in order.

Mr. President, it is not easy to slay the tax cut dragon. I have noticed the allure of a tax cut to politicians, just as the allure of the balanced budget amendment has been very strong. I would have to say, compared to the first time I had a chance to oppose this in December, things look a lot better, especially here in the Senate.

Between November 8 and now I have gone from being the lone voice, according to the Los Angeles Times, against this to being one of many people who are criticizing the tax cut. In fact, I would call it now sort of a healthy competition between a lot of the leading Senators who are saying that they will oppose this.

I even think there is a good strong competition going on to see who can be

the toughest on opposing the tax cuts. I think that is very healthy. We do not get anything done around here by being 1 out of 535. I am extremely happy that so many of the leading Senators, especially on the Finance Committee, have openly stated their opposition to either all or part of the tax cuts.

Mr. President, as Senators recall, we did have our test vote on this issue during the balanced budget amendment. The proposition, that we ought to put the tax cut below deficit reduction, got 32 votes, including some of the leading Republicans in the Senate. That was amazing, because it was 32 Senators saying up front they are not for a tax cut.

A couple months ago, people would have said nobody would take that position. It was also very striking because a number of Senators told me they wanted to vote for the amendment, but they were not going to support any amendments to the balanced budget amendment. My guess is we are a lot closer to 50 or even higher than anyone would have imagined at this point.

For example, Mr. President, if we take a look at the reaction, we see in the Washington Post even today an editorial called ''Greasing the Tax Cut Rules,'' and I ask unanimous consent that it be printed in the RECORD.

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

GREASING THE TAX CUT RULES

The President and Congressional Republicans keep saying that to get control of the deficit they have to cut the cost of entitlements. They're right, but even as they've been making the speeches again this year, they're also preparing to change the budget rules to let entitlements partly off the hook.

The president and Republicans both want to cut taxes. It's a terrible competition for them to be engaged in; the government is in no position to give up the revenue. As a way of driving home the cost of tax cuts and creating a political barrier to their enactment, the budget rules used to provide that they be paid for either by offsetting tax increases or by entitlement cuts.

The administration relished neither alternative, and in its budget suggested a third. It proposed a change—it would say careful rereading—of the rules under which tax cuts could also be paid for by cuts in non-entitlement spending or appropriations. The House Republicans, far from objecting, have adopted the idea with enthusiasm. It sounds as if only accountants should care. If the dollars all come from the same Treasury, as they do, what difference does it make which category of programs is trimmed to produce them? A dollar saved one way is surely as good as another.

That's true, and an evasion at the same time. The easing of pressure on the entitlement side of the budget, where cuts are hardest to make because so many people are affected, represented a weakening of budget discipline. The tax cuts the House Republicans propose would cost about $200 billion their first five years and $500 billion the five after that. The Republicans would have found it hard to extract that much from entitlements without getting into the giant programs for the middle class, Social Security and Medicare. As it is, they'll propose to pay half the first-year cost by lowering—again—the caps that the budget rules also impose on appropriations.

The pressure will fall on domestic appropriations only, not defense. Most of the programs the government runs fall into this category—everything from Head Start and highway grants to the costs of operating the national parks and administering the Immigration and Naturalization Service—but together they make up only about a sixth of the budget and as a group have already been much cut in recent years. It's relatively easy, of course, to lower appropriations caps. They're an abstraction. The effect will be felt only later and be spread across enough programs so as to leave few clear political fingerprints. The Republicans say not to worry, that sooner or later they're going to have to cut the major entitlements too in order to balance the budget, as they've also promised. But the old rules would have forced the tax and entitlement cuts to be made at the same time. The new ones make it easier to blur the cost of an irresponsible policy.

Mr. FEINGOLD. Mr. President, the point of that editorial is that although there is this opposition growing in the Senate, there is an effort going on to change the budget rules in such a way that would allow these tax cuts in a way that would immunize, in effect, both entitlements and the defense budget, causing any cuts that might be made to pay for the tax cuts to come, essentially, out of the appropriations areas, out of discretionary funding.

The Washington Post does a good job of criticizing this move, pointing out that it does not bode well for the future of deficit reduction. They commented on what it would mean, given the need for further cuts in discretionary spending, on top of the fair amount we did in the 103d Congress. And they noted that not all of those cuts are going to be applied to reducing the Federal deficit, but instead would be used to promote this tax cut that I am having a hard time finding anyone favoring other than those in Washington.

So, Mr. President, despite the growing criticism of the tax cut around the country and in this body, the skids are being greased for a have-your-cake-and-eat-it-too approach, when it comes to balancing the budget and fixing the tax cut problem.

Mr. President, I turn again to a cartoon that I think describes the problem we have here in Washington. This cartoon refers to a new illness called deficit attention disorder. We talk about the balanced budget amendment, run around the country saying that a balanced budget is the top priority, and we come out here every day and say bringing the deficit under control is our top priority. But this cartoon shows the contrast of those words with the possible actions here. It shows folks running in and out of offices saying, ''$50 billion tax cut, $60 billion tax cut, $75 billion tax cut, $100 billion tax cut, $120 billion tax cut.''

The cartoon suggests a serious illness in this place. That is, the deficit attention disorder from which institution suffers. Mr. President, I think the worst example of this deficit attention disorder is the very document that the Republican Party says they campaigned and won on—the Republican contract, which calls for increased defense spending, balancing the budget, and tax cuts that dwarf what this cartoon suggests. Notice all the little people in the cartoon talking about tax cuts from $50 billion to $120 billion.

What the Republican contract calls for over the next 10 years is a $700 billion tax cut. What Congressman Archer proposed last week would cost $200 billion over the next 5 years. This includes the $500 tax credit for families making up to $200,000 per year, including changes in IRA's and a variety of other provisions.

Mr. President, this is a very serious example of how, even today, despite all the criticism and all the concern in the other House, the other body especially is continuing to move forward as if not only we do not have a deficit problem, but that we have a giant surplus that can be used for all these cuts.

Mr. President, on March 10, the Washington Post commented on these proposals in an editorial entitled ''The Tax Cuts and the Deficit,'' and I ask unanimous consent that it 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, Mar. 10, 1995]

THE TAX CUTS AND THE DEFICIT

The tax cuts from the House Republican ''Contract With America'' have been reduced to legislative form. The process hasn't improved them a bit. They remain a bad idea, the revenue loss from which would be more than the sponsors have acknowledged, and more than a government running a deficit of a fifth of a trillion dollars a year can afford to give up.

The cuts would make it harder to reduce the deficit even if the Republicans do come up with a way to pay for them, which despite their pledges they haven't yet. The stated purpose of several of them is to increase savings and investment, but by leaving the deficit larger than otherwise they would reduce the national savings rate. They are also poorly targeted, and the long-term effect of their enactment would likely be to widen the income gap between the better-off and the rest of society.

The last time the Republicans cut taxes, in 1981, they failed to make the spending cuts to match, and the deficit soared. This time they've said the spending cuts will come first; they're still saying that. But the only specific spending cuts of any size that they've advanced thus far have been in welfare and other programs for the poor; that's not the way to finance tax cuts. It is said they may next propose some generalized entitlement and appropriations cuts, lump sums that they will commit themselves to saving over time without spelling out how. That's not the way to do it either, the more so because they've promised that in cutting they won't touch defense or Social Security and can't touch interest on the debt. They've left themselves less than half the budget in which to work. Nor is it just their tax cuts that they have to finance. They've said they'll balance the budget as well. But the more spending cuts they dedicate to the first purpose, the fewer they'll have left for the second. That's the problem.

The Republicans keep saying they want to get at the cost of entitlements. The last Congress, at the administration's behest, did put a dent in the net cost of the largest entitlement, Social Security, by subjecting a larger share of benefits to the income tax. The bill that the House Ways and Means Committee will begin marking up next week would repeal that modest step in the right direction. In the name of capital formation, it would also cut the capital gains tax, create a new stream of wholly tax exempt investment income by expanding the individual retirement account or IRA provisions in current law, and enact a roundabout cut of as much as a third in the corporate income tax by liberalizing depreciation rules. All three of these provisions would be late bloomers. Two are set up in such a way that they look as if they would even raise revenue in the first years. That masks the full effect that they would have in terms of revenue lost; it wouldn't be felt until after the five-year estimating period. Who will pay for that?

These are damaging proposals—and unfortunately, the administration has already weakly concurred in some of them. We suppose they're likely to pass the House. In the Senate, however, some Republicans as well as some Democrats are saying that spending and the deficit should be cut first. They're right.

Mr. FEINGOLD. Mr. President, that article commented on the Contract With America, and specifically the Archer proposal, by saying the following:

The tax cuts from the House Republican ''Contract With America'' have been reduced to legislative form. The process hasn't improved them a bit. They remain a bad idea, the revenue loss from which would be more than the sponsors have acknowledged, and more than a government running a deficit of a fifth of a trillion dollars a year can afford it give up.

The cuts would make it harder to reduce the deficit even if the Republicans do come up with a way to pay for them, which despite their pledges, they haven't yet. The stated purpose of several of them is to increase savings and investment, but by leaving the deficit larger than otherwise, they would reduce the national savings rate.

The editorial also goes into a bit of a history:

The last time the Republicans cut taxes, in 1981, they failed to make the spending cuts to match, and the deficit soared. This time they've said the spending cuts will come first; they're still saying that. But the only specific spending cuts of any size that they've advanced thus far have been in welfare and other programs for the poor; that's not the way to finance tax cuts. It is said they next proposed some generalized entitlement and appropriations cuts, lump sums they will commit themselves to saving over time without spelling out how. That's not how to do it either, the more so because they've promised that in cutting they won't touch defense or Social Security and can't touch interest on the debt. They've left themselves less than half the budget in which to work. Nor is it just their tax cuts that they have to finance. They've said they'll balance the budget as well. But the more spending cuts they dedicate to the first purpose, the fewer they'll have left for the second. That's the problem.

Again, it is the harsh reality that the numbers cannot possibly add up, it cannot possibly be true that we can do all of these things laid out in the Archer proposal and then come up with a balanced budget, even in the long term, let alone doing it in the short term.

So, Mr. President, not only do we have a deficit attention disorder with regard to the Archer plan and the Republican contract, but time and again, whether it be the President's plan, the plan of the minority leader in the House, the plan of the senior Senator from Texas, in each case we have a plan for tax cuts that is not paid for.

I realize that there will be many opportunities to speak on this issue on the floor. I will not take the time today to outline all the opposition from different places in the country, whether it be editorials or polls or statements of economists. All I can say is that, although the news is troubling to me, although the tax cut keeps coming back and coming back, I see reason for optimism in the U.S. Senate. It appears that it is going to be up to the U.S. Senate to stop this fiscal irresponsibility.

I was very heartened to see the article in the Washington Post of last week on March 9 entitled ''Tax Cutters Lose Steam in Senate.''

I ask unanimous consent that article be printed in the RECORD.

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

[From the Washington Post, Mar. 9, 1995]

TAX CUTTERS LOSE STEAM IN SENATE; HOUSE PANEL TO UNVEIL GOP REVENUE PLAN

(By Eric Pianin)

Republican and Democratic opposition in the Senate to major tax cut legislation stiffened yesterday, while Ways and Means Committee Chairman Bill Archer (R-Tex.) prepared to unveil the details of a House GOP tax plan that could cost as much as $700 billion over 10 years.

Archer's plan, modeled after proposals within the House GOP ''Contract With America,'' includes a $500-per-child tax credit for families earning up to $200,000 a year, a 50 percent reduction in the capital gains tax, massive write-offs and tax breaks for businesses and a new Individual Retirement Account (IRA) for middle- and upper-income families.

The Ways and Means Committee is scheduled to vote on the proposal early next week. House leaders have pledged to make offsetting cuts in the 1995 budget and to alter welfare programs and Medicare to pay for the package. But in the wake of the defeat of the constitutional balanced budget amendment, Senate Finance Committee Chairman Bob Packwood (Ore.) and other deficit-conscious Republican tax writers warned yesterday that the tax package would take a back seat to further efforts to reduce the deficit.

''Almost every witness we've had has indicated the deficit is the biggest problem we face,'' Packwood said, ''and if we want to do more for the economy, then reducing the deficit is the most important thing to do.''

Sen. John H. Chafee (R-R.I.), a Finance Committee member, declared: ''Basically, I'm opposed to tax cuts * * * as much as we love to parcel them out.''

Sen. Alfonse M. D'Amato (R-N.Y.), another committee member, said the House GOP tax cut proposals ''all sound good,'' but Congress would accomplish far more by reducing the deficit and indirectly helping to lower interest rates and spur economic activity.

''Cut spending and get the deficit under control that's number one,'' D'Amato said. ''That's what people want. Otherwise, [the economy will falter and] we're going to end up Mexico II.''

President Clinton and liberal House Democrats also have proposed middle-class tax relief, including tax credits for families and other breaks to help cover educational costs. But the tax-cut fever that swept Washington shortly after the Republican takeover of Congress last November has begun to dissipate, as GOP leaders confront the harsh realities of trying to simultaneously eliminate the deficit and make good on their promise of generous tax cuts.

For their part, Senate Democratic leaders feel obliged to emphasize deficit reduction over tax relief after helping to defeat the popular balanced budget amendment last week. Senate Minority Leader Thomas A. Daschle (D-S.D.) told reporters yesterday he would not rule out passage of some type of tax reform this year, but members had little enthusiasm for proposed tax cuts that ''would compound our problems'' in reducing the deficit.

''It's apparent to all of us we have a big job ahead of us in deficit reduction, and we want to make everyone understand that that's our first priority,'' Daschle said.

House Republican leaders have cited little empirical evidence that a major tax cut is needed at a time when the economy is strongly rebounding, inflation is under control and the deficit is declining for the third year in a row.

Earlier this week, three prominent economists—Roger E. Brinner, Stephen S. Roach and Barry Bosworth—told the House Budget Committee that Congress would do little for the economy while complicating its deficit-reduction efforts if it cuts taxes.

Brinner, the chief economist for DRI/McGraw-Hill, described the $500-a-child tax credit, the most expensive measure in the Republican tax package, as ''possibly mediocre politics but definitely bad economics.''

House GOP leaders concede that the tax credit would do little, if anything, to stimulate the economy. But they insist the tax credit for children 18 and younger is important to providing relief to the middle class and ''strengthening'' the family unit.

Archer is scheduled to announce the details of the GOP tax plan this morning in an address to the conservative Family Research Council. According to committee sources, the package will approximate the Contract With America plan, which according to the Joint Committee on Taxation would cost $200 billion over five years but then balloon to $704.4 billion over a decade.

House GOP leaders, including Archer, have said the Contract With America plan was not ''written in stone'' and acknowledge that it may undergo substantial changes once it reaches the Senate. However, House leaders are more concerned about honoring the terms of the contract than developing a plan that is palatable to the Senate.

''We're committed to the contract,'' Archer told the Associated Press. ''We ran on it, we all signed it, and we'll do what we said we were going to do.''

Rep. Bill Thomas (R-Calif.), a senior member of the Ways and Means Committee, said that it doesn't make sense for the committee to put together a package that might pass muster in the Senate ''but that can't get out of the House.''

(Mr. ABRAHAM assumed the chair.)

Mr. FEINGOLD. Mr. President, as we move into the period where we actually take up issues such as the line-item veto and then the budget resolution and then the reconciliation package, there will be the opportunities to actually make this happen, to actually

force this institution through the work of the U.S. Senate to not waste the funds that could be used for deficit reduction.

I suggest that as we move into the budget resolution, either at the committee level or at the level of the entire Senate, if necessary, that an amendment be offered to the fiscal year 1996 budget resolution to change the revenue assumption to exclude or reject a major tax cut and instead to explicitly allocate the spending cuts that would offset such a tax cut to deficit reduction, to make sure that every dollar that was identified for spending cuts be immediately transferred into an account to reduce the Federal deficit.

I think that is the only way we avoid the kind of losses and deficit reduction that are the inevitable result of the President's plan and especially the result of the Republican contract and the Archer plan.

So I hope we can return to the wisdom that was indicated by the American people ever since the proposals were made, and I return to what is my favorite cartoon on the issue, which is the somewhat bizarre but rather effective portrayal of a giant deficit monster that is constantly calling out for more and more, in this case more fruit cake in the form of ''Tax Cuts R Us.'' The American people are onto the foolishness of this. They are onto it in the form of cartoons that ridicule a Congress that stands up and talks about fiscal responsibility but cannot resist the temptation to get some quick political gain by handing out a tax cut that will both hurt the economy and severely damage, if not permanently ruin, the possibility of ever having a balanced budget, whether it be in the next few years or by the year 2002.

Mr. President, we will be coming back to this, but I notice in this institution, if you do not keep bringing something up like this, it has a way of getting resolved in the middle of the night and, all of a sudden, you have an up-or-down vote on the whole package. Somehow, whether it be $10 billion or $100 billion or $700 billion, it could be lost instead of actually being used to almost eliminate the Federal deficit. I think that is the opportunity we have. Instead of feeding this monster, reject the tax cuts and take the next big step to eliminate the Federal deficit.

So, Mr. President, as I yield the floor, I urge my colleagues to cosponsor the sense-of-the-Senate resolution which Senator BUMPERS, of Arkansas, and I have offered to specifically go on record as a body saying the tax cuts have to take second place to this historic opportunity to eliminate the Federal deficit.

I thank the Chair, and I yield the floor.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

TAIWAN

Mr. THOMAS. Mr. President, I rise today as chairman of the Senate Subcommittee on East Asia and Pacific Affairs to join in the sentiments of my colleagues on Taiwan, and particularly on the visit of President Lee.

I need not repeat in detail for the Senate Taiwan's many accomplishments, either economic or political. These have often been discussed on the Senate floor. It is sufficient to note that this country is our fifth largest trading partner and imports over 17 billion dollars' worth of U.S. products annually. More importantly, though, Taiwan is a model emerging democracy in a region of the world not particularly noted for its long democratic tradition.

The Taiwanese Government has ended martial law, removed restrictions on freedom of the press, legalized the opposition parties, and instituted electoral reforms which last December resulted in free elections.

Taiwan is one of our staunchest friends. I think every Member of this body recognizes that and accords Taiwan a special place among our allies. Unfortunately, Mr. President, the administration apparently does not share our views. Rather, the administration goes out of its way to shun the Republic of China on Taiwan, almost as though it were a pariah state like Libya or Iran.

Sadly, the administration's shoddy treatment of Taiwan is based not on that country's faults or misdeeds but on the dictates of another country, the People's Republic of China. It is because the People's Republic of China continues to claim that it is the sole legitimate Government of Taiwan and because of the administration's almost slavish desire to avoid upsetting that view that the State Department regularly kowtows to Beijing and maltreats the Government of Taiwan. If this were not such a serious matter, it would almost be amusing, the lengths to which the administration goes to avoid any perceived official entanglements.

Representatives of the Taiwan Government are prohibited from physically entering the State Department or the Pentagon buildings. Any United States Government employee who goes to work to represent United States interests in Taiwan and who also works for the State Department must first resign from the State Department before being allowed to go. One has to carefully choose what one calls the island's government to avoid slighting Beijing: Is it the Republic of China, is it the Republic of China on Taiwan, Taiwan, or the Republic of Taiwan?

Finally, the last humiliation to which we subject our ally brings us here this morning. This administration refuses to allow the President of Taiwan to enter this country, even for a private visit—a private visit, Mr. President. President Lee is a graduate of Cornell University where he earned his Ph.D. He has expressed an interest in attending a class reunion at his alma mater this June and a United States-Taiwan Economic Council conference. Yet, the administration has made it clear it will not permit him entry.

The only people that this country systematically excludes from entry to its shores are felons or criminals, terrorists, and individuals with dangerous communicable diseases. How is it possible that this administration can see fit to add the President of Asia's oldest republic to the list? We have allowed representatives of the PLO and the Sinn Fein to enter this country, yet we exclude a visit by an upstanding private citizen?

I think we have made it clear to Beijing—I know I have tried to—of the great importance to us of our strong relationship with that country. This relationship should in my opinion transcend squabbles over diplomatic minutia. I will always seek to avoid any move that the Government of the People's Republic of China reasonably could find objectionable. I believe that countries like ours should try hard to accommodate each other's needs and concerns in order to further strengthen our relationships.

However, I believe that the People's Republic of China needs to recognize the reality of the situation. Both Taiwan and the People's Republic of China are strong, economically vibrant entities. Both share a common heritage and a common culture and yet have chosen political systems that are mutually exclusive. Despite these differences, the United States has a strong and important relationship with them both, and we need to continue those relationships.

Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I believe the Senator from Nebraska has 15 minutes allotted to him under the unanimous-consent agreement. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

(The remarks of Mr. EXON pertaining to the introduction of S. 550 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

UNFUNDED MANDATES CONFERENCE REPORT

Mr. EXON. Mr. President, I rise today in support of the conference report to the unfunded mandates bill. I am proud that we are so close to delivering this critical legislation to the nation's Governors, mayors, and town managers who have been laboring under the terrible weight of unfunded mandates.

When the President signs this bill, we will hear a collective sigh of relief from coast to coast. For too long, Congress shifted the cost of these regulations and mandates to the States. Their ledgers bled red from our actions. Their

treasuries were sapped to pay for compliance with the unfunded mandates that we have foisted upon them.

However, with this conference report, of which I was very happy to be a part, in working out the differences between the House and Senate versions of the mandate bill, we are taking an important step in the right direction. Equilibrium is restored. The fiscal responsibility shifts back where it belongs—with the authors of these rules.

Mr. President, I say to my colleagues this is a fair and just compromise. This is a conference report that addressed the unfunded mandates problems head on. This is a conference report all of us can support no matter on which side of the aisle we sit. I wish we could approach more of the business of the American people in such a bipartisan manner as we have addressed this in the Congress of the United States.

In closing, Mr. President, it is my opinion that the conferees did an excellent job knitting together the two different bills in this coherent and seamless package. We compromised without sacrificing the muscle and teeth of the Senate bill.

From my point of view as a Senate conferee, I was most pleased that the judicial review process was kept to a minimum. The current wording is certainly far more restrained than the broad House language which would have provided a field day for lawyers. Their loss is our gain, thank goodness.

I would also point out that the conference report maintained the amendment sponsored by the distinguished Senator from West Virginia [Mr. BYRD]. The language forces Congress to vote on an agency's decision on whether or not it can implement a mandate with the money appropriated. This conference report gives Congress the last word, to which I say ''amen.''

Mr. President, one of my favorite Presidents, Harry Truman, was famous for the sign on his desk that said, ''The buck stops here.'' We can learn a lot from those words. For too long, Congress has been passing the buck to the States. For too long, we have been passing the buck and passing the bill. It is time we took responsibility for our own actions. It is time we pulled the plug on unfunded mandates. It is time we passed this conference report, and I hope we will today.

Mr. President, I reserve the remainder of any time remaining, and I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

EXTENSION OF MORNING BUSINESS

Mrs. MURRAY. Mr. President, I ask unanimous consent to extend morning business for approximately 10 minutes.

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

Mrs. MURRAY. Mr. President, thank you.

THE NOMINATION OF DR. HENRY FOSTER

Mrs. MURRAY. Mr. President, I understand that the Senate Labor and Human Resources Committee has received all the necessary paperwork from the administration for Dr. Henry Foster's nomination for U.S. Surgeon General. I rise today to encourage the committee to move Dr. Foster's nomination expeditiously, and I look forward to his receiving a full and fair hearing.

Unlike some of my colleagues, I am very excited about Dr. Foster's nomination. Dr. Foster is an ob/gyn. I appreciate, and want to stress, the importance and relevance of his practice area. For far too long, women's health concerns have been neglected by our Government.

Women's health is critical to very family—every man, woman, and child—in this Nation. As a woman, and the mother of a son and a daughter, I find the selection of Dr. Foster reassuring. It is especially important at this time that President Clinton chose to nominate a physician who has dedicated his life to maternal and child health.

Dr. Foster is one of the country's leading experts on preventing teen pregnancy and drug abuse, as well as reducing infant mortality.

Dr. Foster is a very decent and dedicated physician who has been unfairly maligned. I hope my colleagues and the American public will hear the stories of some of the many people whose lives Dr. Foster has touched.

I hope they get a more complete picture of Dr. Foster and the work he has done.

For example, Dr. Foster worked tirelessly to help bring Christopher Hight into this world. Jeannette Hight and her husband Charles almost lost their baby twice during her pregnancy, but Dr. Foster helped nurse her through these crises.

Earlier this year, Jeannette and Charles Hight wrote to Dr. Foster:

> Without you, there would not be a Christopher Hight. Your talents and work have brought joy to our lives. You will be proud to know that your extraordinary efforts resulted in us having a son who is excelling at Rice University in architecture. His teachers, who are nationally renown, have told us that he has very special talents. No matter what happens, we are with you. We will always remember your special dedication, caring nature and skills.

Cliff and Wilda Denton from Moses Lake in my home State of Washington wrote the following to Dr. Foster:

> I can say in all humility, without you we could have lost our only daughter and first born grandson. Wilma was so very ill and dehydrated. All I had to do was call you. You would nourish her back to normal. This was thirty some years ago. When you were a doctor in the Air Force at Larson Air Force Base, her husband was away fighting a war. That's when we got acquainted with you. After the birth and both were well and healthy, I wrote you a letter, thanking you for all your good care. You told me I was the first person (white that is) to ever give you a compliment. Greg is now over thirty years old.
>
> We were so impressed when we visited you a few years ago and found you had dedicated your entire life to humanity . . . I feel confident you will be confirmed. . . .

Mr. President, these are just a few examples for Dr. Foster's great work. He has delivered many thousands of babies, and he has saved hundreds of lives.

Some of our colleagues would have the U.S. Senate exclude Dr. Foster from consideration because he has performed abortions. I disagree. Abortion should not be the determining factor in the selection of a Surgeon General. Abortion is a legal procedure, and every woman in this Nation has a constitutional right to choose whether and when to bear a child.

Whether Dr. Foster has performed 1 abortion or 1,000 abortions, he should not be disqualified from consideration.

I believe that the majority in this Nation will not allow an extremist minority to criminalize abortion through the Surgeon General nomination process. Furthermore, I believe the women in this Nation will not stand for perfunctory disqualification of candidates based on their practice areas, especially when the physician involved has dedicated his life to women's health.

Mr. President, why is no one concerned about the exact number of babies Dr. Foster has delivered in the course of his practice? Why is no one inquiring into exactly how many lives he has saved?

I am curious how many teenagers have benefited from his I Have A Future Program? I wonder how many unintended pregnancies he has prevented?

How many young people has he empowered and inspired?

Why is this man being attacked so viciously when he has dedicated his life to our well-being? Finally, how can a U.S. Senator vow to filibuster Dr. Foster's nomination before the doctor has even had a hearing?

Mr. President, I had to speak on Dr. Foster's behalf today because I cannot stand by and watch his nomination be railroaded. Senator KASSEBAUM has promised Dr. Foster a hearing and I believe she is committed to following through. Luckily, not everyone is rushing to prejudge this nominee.

Every day that goes by without a U.S. Surgeon General in place who can provide strong leadership for our Nation's future—is a day in which American lives can be changed.

Mr. President, having a Surgeon General in place who can speak to women's health issues is imperative. I urge the committee to move quickly on Dr. Foster's nomination. And, I look forward to consideration of Dr. Foster's nomination by the full Senate.

I yield the floor.

IN SUPPORT OF THE REPUBLIC OF CHINA—SENATE CONCURRENT RESOLUTION 9

Mr. CRAIG. Mr. President, I am pleased to join my colleague from Alaska, Senator MURKOWSKI, in submitting a concurrent resolution expressing the sense of the Congress that President Lee Teng-Hui of the Republic of China on Taiwan [ROC] should be allowed a private visit to the United States.

This concurrent resolution makes an important statement in the future direction of United States/Republic of China relations. The State Department's refusal last year to allow President Lee, a freely elected leader from a democratic nation, an overnight layover in Hawaii during his trip to Costa Rica, was very unfortunate. It is hoped that, with the passage of this legislation, the indiscretion that occurred last year will not be repeated. And, Mr. President, it is important to note that this bill expresses support for a private visit to the United States.

Last May I had an opportunity to visit the Republic of China on Taiwan. It was a wonderful experience forging new friendships and strengthening the many ties between the Republic of China and my home State, Idaho. I was very much impressed by the public officials with whom I met and enjoyed the engaging conversations about the politics in the Republic of China and the recent elections.

During my meeting with President Lee Teng-Hui, I learned of his genuine interest in seeing his country play a larger international role, which is a goal befitting Taiwan's economic power and place within the international community. President Lee urged all nations, especially the United States, to give their support to Taiwan's campaign to return to the United Nations. It is my hope that this goal will someday be realized. In addition, President Lee expressed a very sincere desire to travel privately to the United States. I shared with him an invitation extended by one of my constituents, who was concerned about the incident in Hawaii. In addition, I expressed my hope that he would be able to visit Idaho.

Mr. President, Idaho and the Republic of China have enjoyed the mutual benefits of a long and close relationship. During my visit last year I had the pleasure of joining then Governor of Idaho Cecil Andrus and Governor James Soong of the Taiwan provincial government to celebrate the 10th anniversary of the sister-state relationship between Idaho and the Taiwan Province. Through this friendship my State has greatly benefited by expanding trade, cultural, and educational exchanges. Idaho exports to the Republic of China range from agricultural and wood products to electronics. In addition, the growth in trade has been enhanced by the placement of an Idaho trade office in the world trade center, in Taipei. Eddie Yen, the gentleman that operates the office for the Idaho Department of Commerce has been an asset to our State and has played an essential role in furthering the Expansion of Idaho's trade to Taiwan.

The United States also benefits from a stable relationship with the Republic of China on Taiwan. After extensive internal review, there has been recent progress toward upgrading the relations between the United States and Taiwan, which was good news from the Clinton administration. The administration has agreed to help Taiwan enter certain international organizations, especially those that deal primarily with trade and commerce. I applaud and encourage that endeavor.

The Clinton administration has also agreed to allow the Republic of China to change the name of its offices in the United States from the Coordination Council for North American Affairs, to the Taipei Economic and Cultural Representative Office. These modest improvements in relations between our two countries are certainly a step in the right direction. It is hoped that we will see this pattern of improvement continued.

The concurrent resolution submitted by Senator MURKOWSKI is yet another step in the right direction. Mr. President, I hope that remaining issues or obstacles can be resolved so that President Lee Teng-Hui can be allowed to visit the United States. It is my understanding that a number of my colleagues have extended invitations to President Lee and other leaders from Taipei, to visit Capitol Hill. I know for a fact that President Lee has much insight to share with us, especially on East Asian affairs, and, Mr. President, since the Republic of China on Taiwan is a tremendous example of economic prosperity and democratic freedom for developing nations around the world, we would undoubtedly benefit from the insights of a leader such as President Lee Teng-Hui, who has played a central role in the achievements of the Republic of China on Taiwan.

NATIONAL MENTAL HEALTH COUNSELING WEEK, APRIL 30–MAY 6, 1995

Mr. HEFLIN. Mr. President, I come to the floor today to acknowledge the importance of mental health to everyone's and society's well-being and to call our attention to counseling as a vital part of maintaining good mental health.

Mental health counseling is provided along a continuum of patient needs, from educational and preventive services, to diagnosis and treatment of mental illness, to long-term and acute care. It assists individuals and groups with problem-solving, personal and social development, decision-making, and self-awareness.

Such counseling is offered through community mental health agencies, private practices, psychiatric hospitals, college campuses, and rehabilitation centers. It is often provided in conjunction with other mental health professionals, including psychiatrists, psychologists, social workers, psychiatric nurses, and marriage and family therapists so that the most appropriate treatment for each patient is assured. It is provided by professionals with advanced degrees in counseling or related disciplines, practicing within the scope of their training and experience. They are currently licensed in 40 States and the District of Columbia.

I want to congratulate the American Mental Health Counselors Association on their designation of April 30–May 6, 1995 as ''National Mental Health Counseling Week,'' and urge each and every American to seek the assistance of a qualified mental health counselor when needed. After all, our mental health is just as important as our physical health.

WELCOMING CROATIA'S DECISION ON U.N. TROOP PRESENCE

Mr. PELL. Mr. President, I welcome the decision by Croatian President Franjo Tudjman to allow an international force to remain in Croatia. As one who has long opposed sending United States ground troops to Bosnia or Croatia, the good news about President Tudjman's decision seemed to be tempered, however, by a report in this morning's New York Times.

According to that article, Secretary Perry announced that United States troops would be sent to Croatia to help with the reconfiguration of U.N. forces. Upon further examination, however, it appears that this morning's report may have been premature, as the President has not—repeat not—yet made a decision with regard to a commitment of United States troops. Moreover, the administration continues to assure me that if United States troops were deployed, it would not be for the purpose of helping with a reconfiguration or withdrawal of U.N. troops from Croatia.

Nonetheless, there is a great deal of confusion surrounding this issue, and accordingly, the administration needs to clarify its intentions with regard to troop commitments. Before any decision is made to send U.S. troops, I fully expect the administration to follow through on its commitment to consult with the Congress.

The issue of United States troops aside, President Tudjman's decision walks us back from the brink of disaster in Croatia and indeed, the entire former Yugoslavia. I can sympathize with President Tudjman's fear that a continuation of the status quo might have contributed to a permanent separation of Croatia, creating in effect, another Cyprus.

Despite Croatia's legitimate concerns, it would have been a grave mistake for U.N. troops to withdraw at this time. Following President Tudjman's January announcement that UNPROPFOR would have to begin withdrawing by March 31, there were

strong signs that the Krajina Serbs and the Croatian Army were girding for war. A renewed war in Croatia would almost certainly have drawn in Serbia as well as the Bosnian Serbs—leading to a greater Balkan conflict.

While the United Nations does not have a flawless record in Croatia, UNPROFOR's presence since early 1992 has prevented the reemergence of full-scale war. Let us hope that the reduced U.N. force, under a new mandate, will help maintain the peace. The reduced U.N. force also will have as part of its mandate the patrolling of Croatia's borders with Serbia and Bosnia-Hercegovina—which will go a long way toward legitimizing Croatia's international borders.

We are not out of the woods yet, however. Neither the Krajina Serbs, who control 30 percent of Croatia, nor Serbian President Milosevic, who serves as their patron, have indicated their views of the new mandate. Their response will be key to determining the ultimate success of the U.N. mission.

The larger question, however, is where we go from here, and how a reduced and newly reconfigured U.N. force fits into the big picture. It appears that renewed war in Croatia will be averted in the near future—thanks in no small part to United States efforts. But now we must ask whether we are going to continue simply to put out fires in former Yugoslavia or whether we have long-term interests to pursue there. I am afraid that if we do not answer this question affirmatively, we will find ourselves in a continual crisis mode. We may find ourselves meeting one deadline after another—the next of which is the end of the Bosnian cease-fire on April 30—without a clear sense of purpose. I hope this impending deadline does not divert all of our attention from the remaining unresolved issues in Croatia. The two conflicts are after all, interconnected, and we must address them simultaneously.

Before President Tudjman's January announcement that the United Nations would have to leave, an international plan to resolve the status of Croatia's U.N. Protected Areas [UNPA's] was on the table. By all accounts, the so-called Z–4 plan satisfies many of the concerns of both the Croatian Government and the Krajina Serbs. It calls for the restoration of Croatian sovereignty to all the U.N. areas, with considerable autonomy for the local Serbian population.

Now that the immediate crisis has been averted, I hope that we will not miss out on an opportunity to address the underlying issues in Croatia. Now is a good time to revisit the Z–4 plan.

RATIFICATION OF THE LAW OF THE SEA CONVENTION IS NEEDED TO PROTECT THE FISHERY INTERESTS OF THE UNITED STATES

Mr. PELL. Mr. President, many of my colleagues know that I have had an abiding interest in oceans issues in general and the Law of the Sea Convention in particular. Consequently, I was delighted when on October 7, 1994, the President transmitted to the Senate for its advice and consent the U.N. Convention on the Law of the Sea (Treaty Doc. 103–39). We are now in the unique position to become full participants in this Convention and finally reap the benefits of decades of constructive negotiations conducted by Democratic and Republican administrations.

There is no doubt in my mind that this Convention will serve the interests of the United States best from a national security perspective, from an economic perspective, from an ocean resources perspective and from an environmental perspective. I have addressed many of these perspectives during earlier remarks in the Senate. Today, I speak to the importance of this Convention to our Nation's fishery resources.

Some have argued that the United States should not ratify the Convention because of a perceived negative impact which it might have on international fisheries agreements negotiated by the United States with its international partners. I submit that quite the opposite is the case. Ratification of the Law of the Sea Convention will be an important step towards assuring the continued benefits of these other agreements and protecting the fishery interests of our country.

I would like to bring to the attention of my colleagues an address delivered by Ambassador David Colson, Deputy Assistant Secretary of State for Oceans, which addresses precisely this issue. In it, he shows the paramount role that the Law of the Sea Convention will play in the implementation of the important international agreements to which the United States is already a party: The 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, approved by the Senate on August 11, 1992, Treaty Doc. 102–30, Ex.Rpt 102–51; the U.N. General Assembly Resolution on Large-Scale High Seas Driftnet Fishing (approved by the Senate on November 26, 1991, Treaty Doc. 102–7, Ex.Rpt 102–20), the recently concluded Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, ''the Donut Hole Agreement'' (approved by the Senate on October 6, 1994, Treaty Doc. 103–27, Ex.Rpt 103–36) and the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (approved by the Senate on October 6, 1994, Treaty Doc. 103–24, Ex.Rpt 103–32).

The United States has long taken a pro-active approach to fisheries, both within its own exclusive economic zone and on the high seas. Through these recent successful negotiations, we have ensured that our international partners will be submitted to no less stringent rules. The United States will put an end to overfishing and further depletion of threatened stocks only if we can ensure that sound management practices are applied by the other major fishing nations. This is why the administration has negotiated in earnest to achieve what are widely perceived as breakthrough advances in strong and responsible arrangements.

Concerns have been expressed that ratification of the Law of the Sea Convention would jeopardize these agreements. Ambassador Colson shows that, far from hindering these processes, the entry into force of the Convention will actually benefit their implementation.

In the case of salmon, a very important commercial, recreational, and subsistence resource, the Law of the Sea Convention has provided a foundation upon which to build understandings for the States of the North Pacific region. The Law of the Sea Convention, in essence, prohibits fisheries for salmon on the high seas. It also recognizes that states in whose waters salmon originates have the primary interest in these stocks. The Anadromous Stocks Convention, approved by the Senate in 1992, achieved the major goal of ending all high seas fishing, thanks in great part to the clear mandate and requirements of the Law of the Sea Convention. Further, the implementation of this agreement will be facilitated by the entry into force of the Law of the Sea, as the prohibition on high seas salmon fishing will apply to all member states, not just the signatories to the Anadromous Stocks Convention.

The use of large-scale high seas drift nets in another issue that the United States has attempted to solve in international fora. A resolution was passed unanimously by the U.N. General Assembly that created a moratorium on the use of those drift nets on the world's oceans and seas at the end of 1992. The drift net moratorium builds upon basic principles of the Law of the Sea Convention, which provides for a limited and qualified right to fish on the high seas, making it subject to the obligation to cooperate in the conservation and management of high seas living resources. Enforcement will be facilitated in view of the fact that the Convention's standards would be violated by any high seas large-scale drift net fishing that occurs contrary to the moratorium.

With regards to the Bering Sea issue, problems arose for the United States when a straddling stocks fishery began outside our exclusive zone and Russia's. Concerns about stocks conditions led to measures to restrain fisheries in the U.S. zone and increasingly urgent calls by American fishermen for the Government to take steps to control the foreign fishery on the high seas. The Donut Hole Agreement approved by the Senate on October 6, 1994 was the result of lengthy negotiations between the United States and the other states involved in fishing in the area.

It is a state-of-the-art fishing convention that resolves various issues to the satisfaction of the United States and other states concerned. Again, this agreement could not have been negotiated without the framework and foundation provided by the Law of the Sea Convention. The dispute settlement provisions of the Law of the Sea Convention will facilitate the implementation of the Donut Hole Agreement by providing an additional enforcement mechanism to ensure that no vessel undertakes conduct in the Bering Sea contrary to its provisions. It will thus serve as both a deterrent and as a means to bring about final resolution should problems arise in the Donut Hole in the future.

Finally, the very important FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas approved by the Senate on October 6, 1994 could not have been successfully negotiated had the Law of the Sea Convention not come before it. The High Seas Agreement is part of the FAO's Code of Conduct for Responsible Fishing and rests upon basic principles regarding high seas fishing and flag state responsibility found in the Law of the Sea Convention. The Law of the Sea Convention does not set up the high seas as a sanctuary for irresponsible fishermen but spells out that states fishing on the high seas have a duty to cooperate with other states to ensure responsible conservation and management actions.

This is also true of the current negotiations at the U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. It is hoped that the final outcome of this conference will be a legally-binding agreement for the implementation of the provisions of the Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. The general principles embodied in this agreement will here again ensure more responsible fishing on the high seas and will build upon the framework provided by the Law of the Sea Convention.

Only last week, a Canadian vessel fired warning shots and seized a Spanish fishing vessel that was operating on the Grand Banks off the coast of Newfoundland. Had Canada and Spain both been party to the Law of the Sea Convention, this dispute could have been settled without the firing of shots. Regrettably, such incidents are the result of the growing uncertainty that prevails with regard to high seas fisheries and will only be avoided if the Convention on the Law of the Sea becomes a widely recognized instrument on which the Straddling Stocks Conference can build to establish a lasting regime for those fisheries.

Another instance where the ratification of the Law of the Sea Convention would be beneficial to the United States is in the settlement of disputes with other states. Recently, the Canadian Government levied a fee of $1,100 for United States vessels that transit from Puget Sound and the States of Oregon and Washington to Alaska. The State Department concluded that this transit fee was inconsistent with international law, and particularly with the transit rights guaranteed to vessels under customary international law and the Law of the Sea Convention. Had the United States and Canada both ratified the Law of the Sea Convention, the Canadian actions would have been in clear contravention of the convention. As such, the Canadians might have been more hesitant to take the steps they did. In any event the full force of the convention and the international community could have been brought to bear for a prompt resolution of the dispute.

Mr. President, it is clear in my mind that the long-term benefits of these very important fishery agreements will only be realized and mutual enforcement ensured if the underlying principles of the Law of the Sea Convention—the constitution of the seas—are ratified by the United States. The convention entered into force on November 16, 1994. To date 73 countries have ratified, including Australia, Germany, Iceland, and Italy. Other major industrialized nations, such as Canada, the European Community, France, the United Kingdom, the Netherlands, and Japan, have signed the convention and indicated their intention to ratify it in the near future.

Mr. President, I commend the address of Ambassador Colson, which so ably sets forth the importance of the ratification of the Law of the Sea Convention to the fishing interests of the United States.

I ask unanimous consent that the address be printed in the RECORD together with the current list of countries who have to date ratified the Law of the Sea Convention.

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

CONSERVING WORLD FISH STOCKS AND PROTECTING THE MARINE ENVIRONMENT UNDER THE LAW OF THE SEA CONVENTION

(By Ambassador David A. Colson)

Virtually every day we see another report about the decline of the world's fish resources or about ocean pollution.

We know that the world's population continues to grow dramatically. It is only logical to conclude that there is a direct correlation between more people and more impact on our fisheries and the marine environment.

We know that most of the world's population lives near the coast and intuitively we know that the result of an increased population is likely to be greater stress from human activity upon coastal environments be they wetlands, coral reefs, mangroves, beaches or coastal fisheries—all of which are in decline.

We know that the ocean is a large ecosystem made up of many smaller ones. We know that there are often relationships between areas, ocean systems, and species. We know that some fishery resources migrate over very long distances.

And we conclude that the oceans are a bridge between us; a tie that unites us. They are our sustenance; our life support.

They are integral to many global systems that we take for granted, but still do not understand. They are the future—their riches and their energy are yet to be fully tapped.

We know their health is important, but how little we really know about them. Yet in spite of our experience, we continue to pollute, to over-exploit—to assume that the ocean's vast regenerative capacity is unlimited.

We should know better.

And now, after so many years, the 1982 Law of the Sea Convention is in force. Will it help us do better?

I believe the Convention has, and it will. Already, for more than ten years, most States have acted consistently with its basic norms—and in those ten years advances in protecting the oceans have been made. And now that it is in force its specific implementation will bring more benefits and advance us further. I must be careful because I do not want to say that the Convention will solve all the ocean's problems. It will not. But can it help? The answer is yes.

In 1983, President Reagan said that the United States would act in accord with the balance of interests set forth in the Law of the Sea Convention, as long as other States would do likewise. I can report that in the intervening years basically all States have either expressly or by implication followed the basic rules set forth in the Convention. Thus, the positive achievements that have occurred in marine environmental protection and fisheries in the last ten years have taken place in the widely accepted Law of the Sea framework.

And there have been some very important advances. Today I want to review four of these which have occurred in the fisheries field. Before I do, I wish to emphasize the following point: the Law of the Sea Convention enabled the international community to reach these agreements. Even before its entry into force, the Convention was the foundation, the premise, upon which all governments operated in negotiating these understandings. Had we not had this basic foundation, had we not been in agreement about it, our task would have been much more difficult, indeed, perhaps impossible in some cases.

The four breakthrough advances are: (1) the 1992 Convention for the Conversation of Anadromous Stocks in the North Pacific Ocean (NPAFC); (2) the 1992 United Nations General Assembly Resolution on Large-Scale High Seas Driftnet Fishing (UNGA Resolution 46/215); (3) the recently concluded Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea; and (4) the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

NORTH PACIFIC ANADROMOUS STOCKS CONVENTION

Salmon, anadromous stocks, are very important commercial, recreational and subsistence resources for the States of the North Pacific region. From time to time international disputes in the region relating to salmon have reached the highest level of government. The Law of the Sea Convention framework, however, provides a foundation that has substantially narrowed debate; its basic rules have been a foundation upon which to build additional understandings.

Article 66 of the Law of the Sea Convention recognizes that States in whose waters salmon stocks originate have the primary interest in those stocks. The Law of the Sea Convention prohibits fisheries for salmon on

the high seas, with one narrowly drawn and now anachronistic exception—where that prohibition would result in economic dislocation for a State other than the State of origin. The Convention also requires that States cooperate with regard to the conservation and management of stocks when salmon which originate in the waters of one State migrate through the waters of another.

The Convention's prohibition on high seas salmon fisheries makes sense from both economic and conservation perspectives. Economically, salmon grow substantially in the last months of their lives and thereby tend to be a higher value and quality resource if taken in coastal zones and rivers and not the high seas. Moreover, maintenance and preservation of salmon producing areas in coastal rivers cannot be expected if other States fish for salmon on the high seas. And only the State of origin can effectively manage salmon resources in coastal waters and rivers, not the high seas where salmon stocks are mixed.

The rule of the Convention bans salmon fishing on the high seas for all States, including a State of origin. The only country that was fishing for salmon on the high seas, at the time these Convention provisions were negotiated, and thus the only one which might claim economic dislocation, was Japan. And, it was and is clear, as well, that Japan could claim a right to fish salmon on the high seas only so long as it could make a credible argument of economic dislocation, and so long as it did not assert coastal State rights.

As the 1980s passed, Japan's salmon interests shifted: its Coastal State interests in the production of salmon from its waters began to predominate and its reliance upon an economic dislocation argument to continue a high seas salmon fishery was not persuasive. In 1992, negotiations on a new salmon convention were completed by the United States, Japan, Russia and Canada, designed to replace the U.S.-Canada-Japan treaty that had created the International North Pacific Fisheries Commission. Provisions were included whereby these primary States of origin could invite other States of origin, such as China and Korea, to accede to the Convention. Japan agreed in this context to end its high seas salmon fishery. The fundamental rule of Article 66 of the LOS Convention was achieved by the Anadromous Stocks Convention: to end all high seas salmon fishing. This achievement came about among the States most concerned for many reasons—not the least of which is the clear mandate and requirement of Article 66 of the Law of the Sea Convention. Moreover, the respect in which the prohibition on high seas salmon fishing is held by all other States is a direct result of the Convention rule.

This positive result of the Anadromous Stocks Convention was achieved without the fundamental rule of Article 66 of the Law of the Sea Convention being binding on any State as a matter of treaty law. I have heard some people in the United States say that this result would never have been achieved if the U.S. had been party to the Law of the Sea Convention. I simply do not agree with that point of view; it is abundantly clear to me, as the United States negotiator for the Anadromous Stocks Convention, that the Law of the Sea Convention—although not in force—played a large role in bringing about this result—it certainly did not hinder it.

Let us examine a different question: will the Law of the Sea Convention help the parties to the Anadromous Stocks Convention in the future—if they become a party to the Law of the Sea Convention? The answer is clearly yes.

The Law of the Sea Convention does not require any change in the Anadromous Stocks Convention. The two treaties are completely consistent. What the Law of the Sea Convention does do is require all States Parties to it to abide by the prohibition on high seas salmon fishing—the basic rule of the Anadromous Stocks Convention. This is a major long-term benefit to salmon producing States. While salmon producing States assert our rights, the Law of the Sea Convention not only recognizes them, but prohibits all States from eroding those rights by engaging in high seas salmon fisheries.

There are additional benefits in the Law of the Sea for salmon producing States. Parties to the Law of the Sea Convention are also required to submit to compulsory binding dispute settlement in many circumstances. In some cases there are exceptions to this rule, but in this case there is not. If vessels of a State begin to fish for salmon on the high seas, one means of enforcing the prohibition on high seas salmon fishing would be to take that State to compulsory and binding dispute settlement under the Law of the Sea Convention.

For a moment, let me go into some additional detail on the dispute settlement provisions of the Law of the Sea Convention, as it is important that this subject, which is well understood by international lawyers, be understood by fishermen and political leaders as well.

International law requires States to settle their disputes by peaceful means. Where negotiated solutions are beyond reach, States more and more settle differences by going through a legal court-like process. There are several dispute settlement procedures and, as well, several more that can be used. The Law of the Sea Convention obliges States to use dispute settlement in certain circumstances when other means to resolve disputes have failed. Some such circumstances, as noted previously, include fisheries disputes.

To elaborate further, one must make a distinction between binding compulsory dispute settlement and nonbinding compulsory conciliation. The reason this distinction is important is that the Law of the Sea Convention uses it in relation to fisheries disputes.

With regard to certain fisheries disputes that may pertain to a coastal State's management in its exclusive economic zone, the Convention provides for non-binding compulsory conciliation. In regard to fisheries disputes that relate to high seas activities, the Convention provides for binding compulsory dispute settlement.

Nonbinding compulsory conciliation means, in essence, that if State A alleges that State B is mismanaging its 200-mile zone in a serious way, State A may require the establishment of a conciliation panel to look into the matter. While State B should participate in the proceedings, there is no penalty if it does not; and, any report the conciliation panel may issue has no binding or obligatory effect on State B.

Binding compulsory dispute settlement, which is required for high seas fishery disputes, is substantially different. If State A alleges that State B is violating Convention fishery rules and principles on the high seas, and if negotiations have failed, State A may institute a process that results in bringing the dispute before an international court or tribunal of some make-up. There are a number of variables concerning these courts or tribunals that we have not time to go into now. The point or bottom line is that pursuant to the Law of the Sea Convention, in such cases, State A can bring State B before such a court or tribunal on a matter pertaining to a high seas fishery dispute, and that court or tribunal can render a judgement which is binding on both State A and State B concerning that high sea fisheries dispute.

Returning now to salmon in the high seas of the North Pacific Ocean, the availability of such dispute settlement provides not only an effective tool to enforce the high seas salmon fishing prohibition; its very existence provides an effective deterrent against such fishing. So—for salmon—the Law of the Sea Convention has brought us much already; it consolidates and confirms present practice; it gives us clear rules which prohibit high seas salmon fishing by all States; and it provides a new and useful enforcement tool should someone break the rule in the future.

DRIFTNET FISHING

The use of large-scale high seas driftnets attracted significant international attention and concern in the 1980s. Ultimately, the General Assembly of the United Nations took up the matter and passed a consensus resolution in 1991. The 1991 Resolution, UNGA Resolution 46/215, created a moratorium on the use of large-scale high seas driftnets on the world's oceans and seas at the end of 1992.

This concerted action by the General Assembly was a vitally important step to protect fish stocks and other living species on the high seas from this very indiscriminate fishing method being used by more and more vessels, about 1,000 in the Pacific Ocean alone at the height of the fishery. Large-scale high seas driftnet fishing was a cause of concern in all regions of the world.

The driftnet moratorium of the United Nations builds upon basic principles of the Law of the Sea Convention. It applies only to the high seas—not exclusive economic zones or territorial seas. In the first instance it requires flag States to ensure the full implementation of the moratorium, but it also authorizes all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations. The moratorium is in implementation of the provisions of Part VII, Section 2 of the Law of the Sea Convention relating to the Conservation and Management of the Living Resources of the High Seas. It gives content to the principles of ''due regard'' for the rights and interests of other States and to the duty to cooperate in the conservation of living marine resources on the high seas.

Some have argued that the moratorium would never have been achieved through diplomacy if the Law of the Sea Convention had been in force. They argue that, had the Convention been in force, the driftnetting States would have refused to discuss the matter in the United Nations and might even have tried to use the dispute settlement provisions of the Convention to enforce their freedom to fish on the high seas against those States that sought to end driftnetting. I do not agree with this analysis at all.

First, this argument assumes that the freedom to fish on the high seas is an unfettered right. But that is not so. The Convention significantly limits and qualifies that right by making it subject to a number of important conditions, including the obligation to cooperate in the conservation and management of high seas living resources.

Second, the States that sought the moratorium were able to demonstrate that large-scale high seas driftnets, particularly in the North Pacific Ocean, intercepted salmon on the high seas in violation of Article 66 of the Convention and indiscriminately killed large numbers of other species, including marine mammals and birds, in contravention of the obligations in Part VII to conserve and manage living marine resources on the high seas

and those of Article 192 to protect and preserve the marine environment.

In light of this, there is no reason to believe that driftnetting States could have successfully challenged the moratorium through dispute settlement under the Convention. In my view, the moratorium would have been achieved whether or not the Convention was in force. A different question is whether the Law of the Sea Convention helps to ensure effective implementation of the moratorium.

The moratorium on the use of large-scale high seas drift nets is an important international understanding pertaining to the conservation of living marine resources on the high seas and the protection of the marine environment. It is consistent with and meets the general obligation of States found within Article 192 of the Convention to protect and preserve the marine environment. It is properly within the scope of constraints on fishing on the high seas that are noted in Article 116.

And, as in the Anadromous Stocks Convention situation, the Law of the Sea Convention's provisions make fishing beyond the EEZ—including driftnet fishing—subject to compulsory, binding dispute settlement. It is clear to me that the Convention's standards would be violated by any high seas large-scale diftnet fishing that occurs contrary to the moratorium. Thus, the dispute settlement provisions of the Law of the Sea Convention would provide a new additional means through which to ensure respect for the moratorium on high seas driftnet fishing by enforcing Articles 66, 116 and 192 of the convention in light of the General Assembly Resolutions on this subject.

THE CENTRAL BERING SEA POLLOCK FISHERY AGREEMENT

The problem of straddling fish stocks has vexed the international community since even before the Law of the Sea negotiations concluded in 1982.

For the United States, this problem arose in the Central Bering Sea. In the mid-1980s, a fishery began outside the U.S. and Russian 200-mile zones on a stock of pollock—the Aleutian Basin stock—largely associated with the U.S. zone and its fisheries. The international fishery on the high seas grew quickly to harvesting 1.5 million metric tons or more annually. Concerns about stock conditions led to measures to restrain fisheries in the U.S. zone and increasingly urgent calls by American fishermen for the U.S. government to take steps to control the foreign fishery on the high seas.

In 1991, negotiations began among Russia, Japan, Korea, China, Poland and the United States in an effort to structure a new fisheries relationship for the high seas area of the Bering Sea. The negotiations began with largely a legal debate about a fishery for a straddling stock on the high seas and the respective rights of coastal States and fishing nations in that regard. Fishing States were strongly of the view that they were entitled to fish there on an equal footing with other States, including coastal States. The United States and Russia were of the opinion that the coastal States—while not having jurisdiction over the fish in the high seas area—nonetheless had a special interest in these stocks. Our six country regional negotiation was more than mindful that the straddling stock issue was also being played out in other regions and was central to the U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, called for by UNCED.

Ultimately, the six countries reached agreement, but only after ten intense and difficult negotiating rounds over three years.

The agreement is contained in a convention that is called the Donut Hole Convention in the United States. It is a state-of-the-art fishing convention that resolves various issues to the satisfaction of the States concerned. It does not refer specifically to the special interests of coastal States, but it does reflect such an interest in the outcome of the negotiation on various issues while providing for fair fishing opportunities on the high seas for all countries if and when the stock recovers.

Again, the Donut Hole Convention could not have been negotiated without the framework and foundation provided by the Law of the Sea Convention. Nor did the Law of the Sea Convention hinder the attainment of the Donut Hole Convention in any way.

I do not have time to review its provisions here in any detail. However, I would like to mention a few because I believe that provisions such as these must and will be incorporated into fishing agreements around the world in the near future.

The Donut Hole Convention provides that fishing vessels will use real-time satellite position-fixing transmitters while in the Bering Sea and that information collected thereby will be exchanged on a real-time basis through bilateral channels. This is the first multilateral fisheries management agreement to contain such a requirement and it will enable States such as Japan and the United States to ensure that, for instance, Japanese fishing vessels authorized to fish in the Donut Hole are doing so as authorized as that their presence in the coastal State zones in the region is only for the legitimate purpose of navigating to and from the fishing ground.

The Donut Hole Convention also requires notification of entry into the Convention Area; notification of the location of transshipments 24 hours prior to such activity; the presence of trained observers on all vessels; and the collection and sharing of catch data on a timely basis. It also provides for boarding and inspection of fishing vessels by any party; and, in cases of serious violation, the continuation of such boarding until the flag State is in a position to take full responsibility for the fishing vessel.

The Donut Hole Convention also contains provisions that ensure that consensus decision-making does not lead to stalemate or the inability to make effective conservation and management decisions. This has been a major problem in traditional fishing agreements. However, in this convention, in the absence of consensus among the Parties, means and procedures are established to ensure that no fishing occurs in the Donut Hole except in accordance with sound conservation and management rules.

Provisions such as these break new ground in regional fishery management agreements. I believe we should look for more of this in the future. After all, we are close to the 21st century. We live in a world of space age communication and data management. Fisheries data collection and its availability to fisheries managers remains an archaic process, to say the least. There is no reason today—other than the reluctance of fishermen and their governments to compel them—that every fishing vessel on the high seas does not have on board a satellite transmitter capable of two way communication, a fax machine, and a computer capable of collecting, storing and transmitting data immediately in agreed formats This is the future to which we look forward. This is the direction true international fisheries cooperation will take us.

Let me return to the Donut Hole Convention. The United States is confident that the Donut Hole Convention will be fully and fairly implemented by its Parties and that in doing so it will contribute to the protection of the marine environment and the conservation of the Aleutian Basin pollock resource and associated species for many years to come. We look forward, as well, not just to seeing this state-of-the-art convention well implemented, but to seeing it evolve and continue to set a high standard for regional fisheries agreements.

Could the Law of the Sea Convention help the Parties to the Donut Hole Convention?

Certainly. First, the Law of the Sea Convention will require no change in the Donut Hole Convention. The Donut Hole Convention will operate as it was negotiated among its Parties. Second, the Law of the Sea Convention can help the Donut Hole Convention, as in the case of the Anadromous Stocks Convention and the Driftnet Moratorium, by providing an alternative enforcement mechanism to ensure that no vessel undertakes conduct in the Central Bering Sea contrary to the provisions of the Donut Hole Convention. The dispute settlement provisions of the Law of the Sea Convention enable its Parties to ensure enforcement of multilateral fishery conservation arrangements on the high seas. Dispute settlement does not replace other means that States have at their disposal to enforce multilateral conservation arrangements. It adds to the options available. The Law of the Sea dispute settlement option can act both as a deterrent and as a means to bring about final resolution should problems arise in the Donut Hole in the future.

THE FAO FLAGGING AGREEMENT

The FAO Agreement to Promote Compliance with International Conservation and Management Measures By Fishing Vessels on the High Seas is often called the ''Flagging Agreement,'' although it deals with much more than the flagging of fishing vessels. From my perspective, this very important Agreement could not have been successfully negotiated had the Law of the Sea Convention not come before it. Moreover, as with the other fishery agreements I've mentioned, States should be able to use the dispute settlement procedures of the Law of the Sea Convention to ensure observance of the FAO Agreement.

The FAO Agreement is part of the FAO's Code of Conduct on Responsible Fishing, an initiative begun at Mexico's Cancun Conference in 1992. It rests upon basic principles regarding high seas fishing and Flag State responsibility found in the Law of the Sea Convention. With respect to high seas fishing, as I have mentioned before, the LOS Convention does not permit a ''free-for-all,'' an unfettered right to fish, as some suggest. While the Convention acknowledges the general right of all States for their nationals to fish on the high seas, it makes this right subject to a number of important conditions, including:

(a) other treaty obligations of the State concerned;

(b) the rights and duties as well as the interests of coastal States; and

(c) obligations to cooperate in the conservation and management of high seas living resources.

With respect to Flag State responsibility, Article 91 of the Law of the Sea Convention gives States the right to grant nationality to their ships. Flag States must ensure that there is a genuine link between themselves and the vessels that fly their flag. In addition to cooperating in the conservation and management of highs seas resources, Flag States (like all States) must protect and preserve the marine environment, which includes living marine resources.

The FAO Agreement builds upon these principles to meet two basic objectives.

First, the Agreement sets forth a range of specific obligations for Flag States to ensure that their vessels act consistently with conservation and management needs developed by regional fishing arrangements. Second, the Agreement greatly promotes the transparency of high seas fishing operations through the collection and dissemination of information. By being Party to the FAO Agreement, a State fulfills basic responsibilities imposed by the LOS Convention to cooperate in the conservation and management of high seas living resources.

Flag State responsibility has a long tradition in the Law of the Sea, mostly—but not completely—for the good. It was originally justified on the notion that a ship should be regarded as an extension of the territory of the Flag State. Generally speaking, when a ship is on the high seas, no other State may exercise jurisdiction over it.

This exclusivity of jurisdiction has long been recognized to imply a duty—Flag States must control their vessels to ensure that they act consistently with international law. The Law of the Sea Convention makes this explicit—in exchange for exclusive jurisdiction over its vessels on the high seas, Flag States must ensure that such vessels act responsibly.

Today, high seas fishing vessels have harvesting capacities never imagined in the days when the notion of Flag State responsibility first arose. Modern fishing vessels and fleets can literally wipe out fish stocks. Flag States have a duty under the Law of the Sea Convention to exercise great vigilance over their fishing vessels which operate on the high seas. The FAO Agreement identifies vital elements of that duty. If they do not meet their duty, the fishery resources on which we all depend will collapse, and the Flag States will have failed to exercise their responsibility under the Law of the Sea Convention.

Some Flag States have begun to exercise this greater vigilance over their high seas fishing vessels. Others, unfortunately, continue to allow their flags to be flown by vessels over which they exercise virtually no control. This is improper under the Law of the Sea Convention. When such vessels fish in ways that break the rules and do harm to the marine environment, these States sometimes try to hide behind the tradition of Flag State responsibility, asserting that no other State may take action to compel proper fishing behavior on the high seas. When such vessels are suspected of fishing illegally in zones of national jurisdiction, and are later found on the high seas, there States sometimes refuse to cooperate with coastal States in investigating the alleged violations.

These patterns of conduct are inconsistent with Law of the Sea Convention requirements and jeopardize respect for the tradition of Flag State responsibility for fishing vessels on the high seas. The FAO Agreement represents one attempt to address part of the problem. It sets forth a reasonable set of specific duties for Flag States to ensure that their vessels do not undermine conservation rules on the high seas. As such, it elaborates upon basic duties in the Law of the Sea Convention.

All states should move quickly to become party to the FAO Agreement or otherwise observe its requirements. For those Flag States that do not, the international community can be expected to find another approach to fulfill the intent of the Law of the Sea Convention that the marine environment be preserved and protected against the actions of irresponsible high seas fishing vessels.

The message is that the Flag States of vessels fishing on the high seas must do more to cooperate among themselves and with coastal States. Some States argue that it is a derogation of sovereignty to cooperate with other States on the high seas in matters pertaining to boarding, inspection and other questions of compliance for responsible fishing behavior. We disagree. We see cooperation as an exercise of sovereignty.

Provision of high seas catch data to other States is not an infringement upon sovereignty or a derogation from the traditions of Flag State responsibility. It is a exercise of sovereignty and responsibility in fulfillment of the duty to cooperate to conserve the world's fishery resources and to protect the marine environment. Cooperating with coastal States on high seas enforcement problems, including boarding and inspection, either through formal or informal arrangements, is not an infringement on sovereignty or the traditions of Flag State responsibility. It is a practical decision by a sovereign State and an exercise of its Flag State duties to ensure that its flag vessels comply with international law and the rules and norms of responsible fishing behavior.

The Law of the Sea Convention does not set up the high seas as a sanctuary for irresponsible fishermen. States with fishing vessels on the high seas have a duty under the Law of the Sea Convention to cooperate with other States. That cooperation may take many forms—but it must be directed toward responsible conservation and management actions; and that means, at a minimum, monitoring and inspection of fishing vessels and reporting about their activities.

Within the context of regional fishery agreements, Flag States should consent to boarding and inspection of their fishing vessels on the high seas by other States to ensure compliance with those agreements. If a high seas fishing vessel is violating agreed fishing measures, the Flag State should either exercise responsibility for the vessel or authorize another State to exercise such responsibility on its behalf. If a vessel is suspected of violating coastal State rules, the Flag State should cooperate with the coastal State and provide the most efficient means of investigation including agreeing to coastal State boarding and inspection on the high seas when the Flag State is not in position to do so.

Numerous international extradition agreements include the ''prosecute or extradite'' rule. We believe international fishery agreements and relationships should include a similar approach. A State must either ensure that its flag vessels engage in responsible fishing on the high seas, or be prepared to allow other States to take the necessary steps. This approach fully respects the basic traditions of Flag State responsibility enshrined in the Law of the Sea Convention, while also meeting other responsibilities found in the Convention of equally compelling character to cooperate for the conservation and management of high seas living resources.

This approach, which the United States is advocating in the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, is completely consistent with the Law of the Sea Convention. If Flag States do not cooperate in this fashion, I believe that other members of the international community, particularly coastal States, will become more aggressive in asserting their rights and interests with respect to living marine resources. Indeed, we have begun to witness such actions in recent years.

We do not have time to go into this critical subject at greater length. We should recognize, however, the contributions that the FAO Agreement has made to giving content to the Flag State duties of the Law of the Sea Convention. We look forward to the FAO Agreement's entry into force and full implementation.

CONCLUSION

We generally ask too much of our international institutions. The Law of the Sea Convention is not a panacea that will make the oceans pristine and bountiful. Human behavior has a much greater role to play.

In the last ten years we have seen progress made on a number of fronts relating to the marine environment and high seas fisheries. And I should note that I have recounted just a few. These examples demonstrate, however, that it is possible to give real substantive, positive, beneficial, responsible content to that overused word ''cooperation.'' There are, as well, recent major achievements in protection of the marine environment from pollution, including, Marpol and the London Convention prohibitions on the ocean dumping of industrial waste and radioactive waste.

But, much remains to be done. The International Coral Reef Initiative in which Japan and the United States are playing a leading role is a step in the right direction. The Global Conference on Land Based Sources of Marine Pollution to be held in Washington at the end of 1995 offers the possibility of beginning to come to grips with the most insidious of ocean pollution problems. And, of course, there is the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in which we hope to make continuing progress in the field of international fisheries cooperation.

The progress made in these areas to date is no doubt due in part to the fact that we have begun to realize in a more forceful way that we have to take care of the oceans—that we have to agree to restrain our behavior—that we just can not do what we want, that ships under our flags must abide by rules of behavior to protect the marine environment and to conserve fisheries. It is also due in part to the fact that for eight years, from 1974–1982, the Third U.N. Conference on the Law of the Sea brought the entire world together to identify and negotiate the basic rules for traditional uses of the oceans and to set them out in the Law of the Sea Convention.

Thus, for the last ten years we have had a common foundation upon which to build. The progress made on ocean issues in the last ten years is directly attributable to the fact that everyone agreed on the basic rules.

The entry into force of the Law of the Sea Convention creates new opportunities to protect the marine environment and to conserve its fisheries. Not the least of these opportunities is found in the Convention's dispute settlement provisions, which no amount of rhetoric can make customary law.

No responsible actor, be it government, or individual, has anything to fear from compulsory dispute settlement. The Law of the Sea Convention's dispute settlement provisions, even if never used, can deter improper behavior and compel performance with basic rules and undertakings established by the international community to protect the marine environment and to conserve fisheries.

Let us ensure that we continue to make progress in these all important areas now that the Convention is in force.

THE 73 COUNTRIES THAT HAVE RATIFIED THE LAW OF THE SEA CONVENTION AS OF MARCH 1, 1995

Angola, Antigua and Barbuda, Australia, The Bahamas, Bahrain, Barbados, Belize, Bosnia-Herzegovina, Botswana, Brazil.

Cameroon, Cape Verde, Comoros, Cook Islands, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Djibouti, Dominica, Egypt, Federal Republic of Yugoslavia.

Fiji, the Gambia, Germany, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, Indonesia, Iraq.

Italy, Jamaica, Kenya, Kuwait, Lebanon, Former Yugoslav Republic of Macedonia, Mali, Malta, Marshall Islands, Mauritius.

Mexico, Federated States of Micronesia, Namibia, Nigeria, Oman, Paraguay, Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines.

Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Tanzania, Togo.

Trinidad and Tobago, Tunisia, Uganda, Uruguay, Vietnam, Yemen, Zaire, Zambia, Zimbabwe.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, and upon the recommendation of the minority leader, pursuant to Public Law 102–138, appoints the Senator from Alabama [Mr. HEFLIN] as Vice Chairman of the Senate Delegation to the British-American Interparliamentary Group during the 104th Congress.

THE NEW YORK TIMES PUBLISHES ITS 50,000TH ISSUE

Mr. MOYNIHAN. Mr. President, careful readers of the New York Times may have noticed something special below the nameplate on the front page of today's issue. Just beneath the familiar box—known as the left ear in newspaper parlance—announcing ''All the News That's Fit to Print,'' it says the following: ''Vol. CXLIV . . . No. 50,000.''

The New York Times published its 50,000th issue today, a noteworthy milestone even for a newspaper as seemingly eternal and immutable as the great presence on West 43rd Street. The first issue of what was then called the New-York Daily Times appeared 143 years, 7 days ago, on Thursday, September 18, 1851. With only a very few interruptions, there has been an issue of the Times every day ever since.

To give Senators a sense of the magnitude of this event: if one were to stack up 50,000 copies of the New York Times, the pile would be 300 feet taller than the Empire State Building, which is 102 stories tall.

Mr. President, I am sure all Senators will join me in offering congratulations and great good wishes to Arthur Ochs Sulzberger, the publisher of the New York Times, and to everyone else at the Nation's ''newpaper of record,'' on this historic occasion. I ask unanimous consent that an article about the 50,000th issue from today's New York Times be printed in the RECORD.

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

[From the New York Times, Mar. 14, 1995]

THE TIMES PUBLISHES ITS 50,000TH ISSUE: 143 YEARS OF HISTORY

(By James Barron)

This was front-page news in No. 1: ''In England, political affairs are quiet.'' So were two stories about New-York, a city that still had a hyphen in its name: a 35-year-old Manhattan woman had died in police custody, and two Death Row inmates were facing execution.

No. 25,320 was the one that said Lindbergh did it, flying to Paris in 33½ hours. No. 30,634 described the Japanese attack on Pearl Harbor. No. 35,178 reported that the Supreme Court had banned segregation in public schools. No. 40,721 said that men had walked on the moon, No. 46,669 that the Challenger had exploded.

Today, 143 years and 177 days after No. 1 hit the streets, The New York Times publishes Vol. CXLIV, No. 50,000—its 144th volume, or year, and 50,000th issue.

Except for the Super Bowl and the copyrights in late-late movies, Roman numerals have gone the way of long-playing phonograph records and rotary-dial telephones. And in an industry where the numbers that matter most involve circulation and advertising lineage, the 50,000th issue is the journalistic equivalent of a car odometer's rolling over. The day will be noted in passing at The Times. The newspaper is preparing to commemorate the 100th anniversary of Adolph S. Ochs's purchase of the paper next year.

''The best way we can celebrate'' No. 50,000, Arthur Ochs Sulzberger, the chairman of The New York Times Company, said yesterday in a memorandum to the staff, ''is by insuring that our 50,001st edition is the best newspaper we can possibly produce.'' He added: ''I'll fax you another memo when our 75,000th edition comes out.''

Still, 50,000 is a lot of anything. It is the number of copies of John Steinbeck's ''Grapes of Wrath'' sold every year in the United States, and the number of copies of Conrad Hilton's autobiography, ''Be My Guest,'' stolen every year from hotel rooms around the world, the number of rhinestones that were in Liberace's grand piano and the number of customers who crowd into Harrods in London every day.

If all 50,000 issues of The Times were stacked in a single pile, one copy apiece, they would be roughly 300 feet taller than the Empire State Building, or 200 feet taller than one of the twin towers at the World Trade Center.

The idea of 50,000 days of headlines summons memories. Going by the numbers, No. 18,806 said the Titanic had sunk after slamming into an iceberg near Newfoundland. No. 28,958 reported the explosion of the dirigible Hindenburg in Lakehurst, N.J., and No. 34,828 the conquering of Mount Everest. The 1965 blackout dominated No. 39,372; the one in 1977, No. 43,636.

The Times has covered 28 Presidents (29 if Grover Cleveland, who served two nonconsecutive terms, is counted twice), starting with Millard Fillmore. No. 4,230 reported the death of Abraham Lincoln, No. 38,654 the assassination of John F. Kennedy and No. 42,566 the resignation of Richard M. Nixon.

Ten thousand issues ago, No. 40,000 reported that a crib had been set up in the White House for Patrick Lyndon Nugent, the five-week-old grandson of President Lyndon B. Johnson. He was to stay in the White House while his parents took a vacation in the Bahamas.

No. 40,000 also reported that Ann W. Bradley was engaged to Ramsey W. Vehslage, the president of the Bonney-Vehslage Tool Company in Newark. No. 40,076, on Oct. 15, 1967, reported that their wedding had taken place the day before in Washington. Mr. Vehslage is still the president of the family-owned company. But the person who answered the phone at Bonney-Vehslage last week was Ramsey Jr., born on June 18, 1971 (an event not reported in No. 41,418, published that day).

Like No. 50,000 today, No. 30,000 hit the streets on a March 14—Thursday, March 14, 1940. No. 10,000, on Sept. 24, 1883, reported that J.P. Morgan's yacht had sunk. That issue had eight pages and a newsstand price of 2 cents. The daily-and-Sunday subscription price in those days was $7.50 a year.

Vol. I, No. 1 of The New-York Daily Times, as the newspaper was known, cost only a penny when it appeared on Thursday, Sept. 18, 1851. There were no Sunday issues until No. 2,990 on April 21, 1861. But each day brought a new number, and the continuity was preserved even when the paper was not published. After strikes in 1923, 1953 and 1958, special sections were printed containing pages that had been made up when the paper was not published.

Continuity was also preserved during a 114-day strike in 1962 and 1963. The Time's West Coast edition kept the numbers going. (The West Coast edition had no Sunday issue, but for the sake of continuity, the numbers skipped one between Saturday and Monday.)

In 1965, when a 24-day strike halted The Times's operations in New York, its international edition in Paris kept publishing. That justified keeping the numbers going, even though the international edition had its own different sequence. For that reason, the number of the issue published in New York on Sept. 16, 1965, the last day before the strike, was No. 39,317. The first day after the strike was No. 39,342. The numbers from 39,318 to 39,341 were never used.

No such attempt at continuity was made during an 88-day strike in 1978. By then, the Times had suspended its international edition and become a partner in The International Herald Tribune. The last issue of The Times before the strike was No. 44,027. The first issue after the strike was No. 44, 028.

The Times is one of the last papers in America to print the volume number (in Roman numerals) and the issue number (in Arabic) on its front page. Dr. Holt Parker, an associate professor of classics at the University of Cincinnati, knows when this tradition began: in the Middle Ages, when scribes copied texts by hand.

Why does it continue? Dr. Parker can think of only one reason. ''Because,'' he said, ''it looks good.''

THE DEATH OF JUDGE VINCENT L. BRODERICK

Mr. MOYNIHAN. Mr. President, New York and the Nation lost a most distinguished attorney, jurist, and public servant with the death on March 3 of the Honorable Vincent L. Broderick.

Judge Broderick, or Vince as he was known to family and friends, was born in 1920 into a family with a long tradition of public service. His father, Joseph A. Broderick, was Gov. Franklin D. Roosevelt's superintendent of banks, and was later appointed by President Roosevelt to the Federal Reserve Board. His uncle, James Lyons, served as Bronx borough president for 20 years. I might add that this tradition continues among other members of the family: Judge Broderick's nephew, Christopher Finn, who was my administrative assistant here in the Senate from 1987 to 1989, is now executive vice president of the Overseas Private Investment Corporation.

As a young man, Vincent Broderick was a leader of the Young Democrats in the late 1940's. He was active in the presidential campaign of Robert F. Kennedy, and, after the assassination in 1968, in the campaign of Hubert Humphrey. In 1969, after briefly considering running for mayor of New York City, Mr. Broderick sought the nomination for city comptroller. He was defeated in the primary by Abraham Beame. He continued to be active in Democratic politics in New York, working on Senator George McGovern's presidential campaign in New York in 1972.

Judge Broderick was the sort of uniquely able man who was called to duty by his Government again and again for the most difficult assignments. During World War II, he interrupted his studies at the Harvard Law School to enlist in the Army, where he served as a member of the amphibious engineers in the Pacific. He rose to the rank of captain before returning to law school, which he finished in 1948.

After practicing law with the Wall Street law firm of Hatch, Root & Barrett in the 1950's, Vincent Broderick became deputy commissioner for legal matters of the New York City Police Department. He later served as general counsel of the National Association of Investment Companies before becoming chief assistant U.S. attorney for the southern district of New York.

In 1965, Vincent Broderick was appointed police commissioner by New York City Mayor Robert F. Wagner. Running the Nation's largest police force in the Nation's largest city has always been an extremely difficult job, and never more so than in 1965, when New York City experienced a terrible blackout, a crippling transit strike, the first ever visit by a Pope—Paul VI—and a bitter dispute with Mayor John V. Lindsay over the handling of complaints against the police. Despite these challenges, Vincent Broderick excelled as police commissioner and became known as a leader who refused to tolerate excessive force or racial prejudice in his department.

After returning to private practice for a time, Vince Broderick was nominated to the U.S. District Court for the southern district of New York by President Ford, where he further distinguished himself as a jurist of great wisdom and fairness. From 1990 to 1993, he served as chairman of the criminal law committee of the Judicial Conference of the United States. He remained active as a senior judge in the southern district until shortly before he died.

Judge Vincent Broderick was a public man of singular accomplishments and abilities, a model public servant and model gentleman whose extraordinary career and accomplishments in government and the law will be studied and admired for many years to come.

Mr. President, I commend to the attention of Senators Judge Broderick's obituary, which appeared last week in the New York Times, and I ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, Mar. 7, 1995]

V. L. BRODERICK, JUDGE AND POLICE HEAD, 74, DIES

(By Lawrence Van Gelder)

Judge Vincent L. Broderick, who was a senior judge on the Federal District Court for the Southern District of New York and who served as New York City Police Commissioner during the tumultuous period of transition, died on Friday at the Stanley R. Tippett Hospice in Needham, Mass. He was 74.

Judge Broderick, who lived in Pelham Manor, N.Y., died of cancer, said his daughter Kathleen Broderick Baird of Needham.

In the eight months after he was appointed Police Commissioner by Mayor Robert F. Wagner in May 1865, Judge Broderick led the police force through the blackout that blanketed the Northeast, through the biggest transit strike in the city's history, through the first visit to New York by a Pope, Paul VI, and through a conflict with Mayor John V. Lindsay over the creation of a civilian board to review complaints against the police.

Lean, calm and reflective, Judge Broderick was a relative rarity in the ranks of commissioners—a man who had never walked a beat. But he came from a background in law, law enforcement and public service, having been deputy police commissioner in charge of legal matters and, at the time of his appointment as head of the 27,000-member force at the age of 45, the chief assistant United States Attorney for the Southern District of New York.

''Its a problem job,'' he said when Mayor Wagner named him to fill the unexpired term of Michael J. Murphy. ''It always has been a problem job, and it always will be. But I think I have the capacity to handle it.''

Judge Broderick wasted no time making clear where he stood. In his first major appointment after assuming office, he named a black captain, Eldridge Waith, to command the 32d Precinct in Harlem. Two weeks later, at a time of racial tensions throughout the country, Judge Broderick issued a warning at a police officers' promotion ceremony:

''If you will tolerate in your men one attitude toward a white citizen who speaks English, and a different attitude toward another citizen, who is a Negro or speaks Spanish—get out right now. You don't belong in a command position.

''If you will tolerate physical abuse by your men of any citizen—get out right now. You don't belong in a command position.

''If you do not realize the incendiary potential in a racial slur, if you will tolerate from your men the racial slur—get out right now.''

In that same speech, Judge Broderick made clear where he stood on the subject that prompted Mayor Lindsay to deny him reappointment the following February: Judge Broderick opposed a civilian review of the police. Recalling testimony he had just given the City Council, he said, ''I opposed it on the ground that we have civilian control of the Police Department; that we have civilian review of citizens' complaints; that outside review would dilute the quantum and quality of discipline within the department, and that outside review would impair the effectiveness of the police officer in coping with crime on the streets.''

On leaving the Police Department, Judge Broderick, a Democrat, returned to the private practice of law until 1976, when he was appointed to the Federal bench by President Gerald R. Ford, a Republican.

As a senior judge of the United States District Court for the Southern District, he remained active until shortly before his death. He presided over one of the longest criminal trials in the Federal courts, an organized-crime racketeering case that lasted more than 18 months. And, in a ruling sustained by the Untied States Supreme Court that resulted in new hiring practices by governments, he held for the first time that political considerations had no place in selecting personnel for nonpolitical government jobs.

He served from 1990 to 1993 as chairman of the criminal law committee of the Judicial Conference of the United States, the policy-making arm of the judiciary, a position from which he led a fight to permit judicial flexibility in sentencing.

In 1993, he told a House subcommittee that an inherent vice of mandatory minimum sentences is that they are designed for the most culpable criminal, but they capture many who are considerably less culpable and who, on any test of fairness, justice and proportionality, would not be ensnared. The 1994 crime bill incorporated his view by permitting departures from the mandatory guidelines.

Judge Broderick's father, Joseph, was Superintendent of Banks for New York State and a governor of the Federal Reserve Board. His brother Francis was a chancellor of the University of Massachusetts in Boston.

Judge Broderick, who grew up in the Washington Heights section of Manhattan, graduated from Princeton in 1941, began studies at Harvard Law School and then enlisted in the Army. As a member of the amphibious engineers he served in Cape Cod, New Guinea, the Philippines and postwar Japan before leaving service with the rank of captain to resume his studies at Harvard. He graduated in 1948.

For the next six years, Judge Broderick practiced with the Wall Street firm of Hatch, Root & Barrett. Then he was chosen for the job of deputy commissioner for legal matters. After two years, Judge Broderick left to become general counsel of the National Association of Investment Companies.

In 1961, Robert M. Morgenthau, then the United States Attorney for the Southern District, named him chief assistant, and he served as acting United States Attorney in 1962, when Mr. Morgenthau ran unsuccessfully for governor against Nelson A. Rockefeller.

In addition to his daughter Kathleen, Mr. Broderick is survived by his wife, the former Sally Brine, of Pelham Manor; three other daughters, Mary Broderick of East Lyme, Conn., Ellen Broderick of East Chatham, N.Y., and Joan Broderick of East Sandwich, Mass.; two sons, Vincent J. Broderick of Westwood, Mass., and Justin Broderick of Cambridge, Mass.; a brother, Joseph, of Chapel Hill, N.C., and eight grandchildren.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:37 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 889, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an Executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

The PRESIDING OFFICER. The chair, in his capacity as a Senator from the State of Indiana, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, the Senator from West Virginia [Mr. BYRD] is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

What is the pending question before the Senate?

The PRESIDING OFFICER. The business before the Senate is the Kassebaum amendment, No. 331, to H.R. 889.

Mr. BYRD. I thank the Chair.

Mr. President, although this amendment only directly affects workers involved in Government contracts, there is a deeper principle—a principle which goes to the rights of other workers to act in concert—in other words, to strike—to bring about improved working conditions, better wages, safety and health protection, and so on. It is a principle for which many men have given their lives, and, as one who grew up in the southern coal mining counties of West Virginia, I rise today in opposition to this amendment.

I was raised by a coal miner; I married a coal miner's daughter; my days as a boy and as a young man were spent in coal mining surroundings, and as a young man I worked in the coal mining company stores in Raleigh County and Fayette County, West Virginia. I lived at various times in Mercer and McDowell and Raleigh and Fayette Counties—all of which were big coal producers—and my uncle, who raised me, worked in the mines of Mercer, McDowell and Raleigh counties. Therefore, I shall reflect in my remarks today, on the conditions under which the coal miners worked when I was a boy and which led to the unionization of the miners. I shall refer to the social conditions under which the coal miners labored to raise their families, and I shall also speak of the trials and turmoils that attended the coming of the union to the southern counties of my State. To fully comprehend the importance of the ability of workers to collectively bargain—in other words, to strike—and to belong to a union, no industry is more illustrive than the mining industry in West Virginia.

Geologists place the beginnings of the Coal Age at about 315 million years ago, at the start of what is known in geologic time as the Pennsylvanian period. This, together with the earlier Mississippian period, make up the Carboniferous Age. The first Coal Age is thought to have lasted approximately 45 million years. Almost all of the valuable coal seams were laid during the Pennsylvanian period. These deposits stretched from the Canadian maritime provinces south to Alabama, generally paralleling the Appalachian Mountain chain. West Virginia was blessed with a great concentration of this natural resource, and from the beginnings of coal mining in the early 1800's, the economy, welfare, and political life of West Virginia had been largely dependent upon this ''black gold,'' which underlies a great portion of my State. Coal was not a very important resource in West Virginia until after the Civil War, when the advent of the railroads made the coal fields accessible and brought thousands of miners into the State.

Since the advent of coal mining, West Virginia has been fertile ground for outside exploitation, massive labor confrontations, union organizing, and a multitude of political intrigues. The coal fields have provided great wealth to individuals and to corporations—many or most of which, as I have stated, were outsiders—while many of the miners and their families have known equally great poverty. Great wealth for the outside interests; great poverty for the men who toiled in the mines to bring out the coal. West Virginians have seen their State's landscapes altered by underground mining and more recently by the impact of strip mining, and the State's economy has been buffeted by the up-and-down cycle brought on by vacillating prices and other economic factors, many or most of which were beyond the immediate control of the coal miners themselves.

As Stan Cohen states in his fascinating treatise, titled ''King Coal, a Pictorial Heritage of West Virginia Coal Mining,'' coal was sighted as early as 1790 in the northern part of the State, which, at that time, was a part of the State of Virginia. As transportation methods improved, the thick Pittsburgh coal seam, prominent in northern West Virginia, assured the area of a steady growth in coal production as transportation methods improved. I quote from Mr. Cohen's work:

> Mines were operating in the Fairmont region by 1850 for local consumption. When the Baltimore and Ohio Railroad reached Fairmont in 1853, markets opened up as far East as Baltimore. The coal fields around Wheeling, and the Northern Panhandle, were also mined prior to the Civil War; the coal was needed for a fledgling iron industry in that city that had begun before the War of 1812. The Baltimore and Ohio reached Wheeling in the early 1850's, providing access to eastern markets.
>
> The northern coal fields assumed greater importance during the Civil War, when supplies from Virginia were cut off. The larger cities of the East needed a steady supply of coal for heating purposes and war-related industries. Union forces were able to keep the Baltimore and Ohio and the Norfolk and Western railroads open to Washington, D.C., and Baltimore, notwithstanding constant raids by the Confederates. The end of the war saw the expansion of coal mining in Marion, Taylor, Preston, Monongalia, Barbour, and Harrison Counties.
>
> The coal fields in southern West Virginia—those in Logan, Mingo, Wyoming, Mercer, McDowell, Wayne, and Summers—had to wait for the coming of the railroads to that section in the late 19th century to realize their vast potential.

Mr. President, coal mining in southern West Virginia is a vast storehouse of history. It is a story of struggle, oftentimes violent struggle—a story of courageous men and women demanding and fighting for their rights, for their dignity, and for their freedom. As David Alan Corbin, relates in his work titled ''The West Virginian Mine Wars'':

> Like the Civil Rights movement of the 1960's, the miners' organizing effort had good and bad characters. Each story involved brutality, destruction, and death. And both movements are stories of oppressed, exploited people fighting for dignity, self-respect, human rights, and freedom. Both are stories of courageous men and women doing heroic things under extraordinary circumstances against extraordinary foes.

Corbin refers to the Matewan massacre in 1920 as having parallels to the

> Old-West-style shootout on the main street of town. The killings of Sid Hatfield and Ed Chambers on the steps of the McDowell County courthouse in Welch was a gangland type ''hit'', and the ensuing march on Logan was Civil War.

And if ever my colleagues have the opportunity, I hope they will visit Matewan, in Mingo County, the southernmost part of West Virginia. McDowell County is an adjoining county. I lived in McDowell County as a little boy, and my coal miner dad worked in mines at Landgraff.

There on the courthouse steps, ascending the hill leading to the McDowell County Courthouse in Welch, can still be seen the bullet holes. Sid Hatfield and his wife, Ed Chambers and his wife, were ascending the steps. Sid Hatfield and Ed Chambers were shot dead by the Baldwin-Felts gunmen.

Mr. President, the West Virginia mine wars involved nearly every form of violence. Automatic rifles, machine guns, shotguns, handguns, and grenades were utilized, and there was a train, ''Bull Moose Special.'' It was fitted with guns and armor. There were passwords, spies, scouts, sentries, medical units, medics, and officers. It was a war fought also with legal artillery—injunctions, yellow-dog contracts, housing contracts and evictions, economic sanctions—as well as by jailings, beatings, and murders. The West Virginia mine wars have been the subject of several interesting historical studies, including Lon Savage's, ''Thunder in the Mountains,'' Howard Lee's ''Blood Letting in Appalachia,'' and David Corbin's work titled ''Life, Work, and Rebellion in the Coal Fields.''

I do not recommend watching movies except excellent ones and there are not many American movies that are excellent. But I do recommend, if my colleagues ever have the opportunity of doing so and they have not done so already, I recommend they see ''Matewan.''

The coal miners' struggle for unionization was the culmination of decades of exploitation and oppression, and it was fought for dignity, and political and social rights. Coal mining operations ran an authoritarian system, the heart of which was the coal company town. The coal companies, owned by outside interests, exercised enormous social control over the miners. The coal company town was really not a town in the usual sense of the word. But it was a complete, autonomous system. In addition to owning and controlling all the institutions in the town, coal company rule in southern West Virginia, according to David Corbin, and I can bear witness to the facts that he describes, because I grew up in those surroundings.

Coal company rule in southern West Virginia,

> included the company doctor who delivered the babies, the mines in which the children went to work, and the cemeteries where they eventually were buried.

I have helped to bury coal miners on those hills. It is an experience, carrying those heavy caskets along the hillsides and digging the graves, as well. Company rule also included the company police in the form of mine guards, who would toss the miners into the company jail—not into the county jail but the company jail—or administer the company beating when the miners attempted to organize into a union. It was a complete rule, and it was a ruthless rule in many instances. Consequently, when the miners went on strike for their union, they did so not for simple wage increases always, but, in many instances, for their very dignity and freedom.

For millions of centuries, the hills and low mountains that cover so much of West Virginia slumbered in solitude. Mountain people were hard working, tough, clannish, and, while normally friendly, they looked upon strangers with suspicion. Life on the whole was simple.

In the early days of the mining industry, a miner learned how to mine by experience. He would work with another miner or with his father until he felt confident enough to work at the coal face alone. The early miner performed all mining tasks himself, including laying the track for the coal car, loading the car, and supporting the mine roof. As production increased and companies grew, a division of labor was instituted, with each miner having a specific task to perform. Young boys—12-year-olds, for example—often went into the mines with their fathers to learn the job. They were given odd jobs at first, such as door-tending, or ''trapping,'' which consisted of sitting near a ventilation door and opening it—this is along the mine entrance. The mine perhaps had been driven a mile, two miles, or three miles or more into the bowels of the Earth, and there were large fans that would circulate the air through the entries. There were trap doors through which the motor, or earlier, the mules or ponies that pulled the mine cars, would travel. These boys would be employed to open the door and close the door after the cart or the mine car had passed through the door with its load of coal.

So these boys were given odd jobs at first, such as door-tending or ''Trapping,'' which consisted of sitting near a ventilation door and opening it as the mule drivers, or ''skinners,'' as they were sometimes called, passed through with their loads of coal.

In the days when my coal miner dad worked in the coal mines, the coal was dug and loaded by hand, and the miner's work area around him was referred to as his ''place.'' That is why a few days ago, when speaking against this amendment, I referred to, on one occasion, the ''coal miner's place.'' If he did not clean it up during the 9 or 10 or 12 hours, then someone else might take his job. The miners were told to clean up their ''place,'' and there was always someone waiting on their job. That meant he had to shovel up the coal, the rock, the slate—whatever fell down when the dynamite went off—and clean it up, load it into the car. Many times the miner worked on his knees, loading that coal into the mining car.

Dynamite was used to bring down the coal, and the fallen coal was shoveled into one of the empty mine cars—a difficult job, especially in the low seams. There were some mines and some seams which enabled the miners to stand erect and work, but there were some seams that were so low, the miners had to work on their knees—they could not stand erect—with millions of tons of rock overhead, working in the darkness to bring out the coal. Especially in low seams, as I say, it was a difficult job and, in many instances, the miners worked in water holes.

While loading the coal, the miner had to remove the larger pieces of rock and slate so that he would not be ''docked'' for sending out ''dirty'' coal. Lump coal sold at a premium price while pea-sized or slack coal sold for a lesser price. A miner hung a brass ''check'' on each car that he loaded in order to get proper credit for the coal that he dug.

My dad's check number, I recall, was 232. Each car of coal that he loaded, he attached his brass check with No. 232 on it, so that when the coal car was unloaded into the tipple and later into the railroad cars, he would get credit for having dug and loaded that carload of coal.

In the mid 1920's, a miner would sometimes load more than 10 tons of coal a day. Companies in those days would haul the coal to the surface using mules or ponies, until small electric locomotives were introduced.

One source of constant tension between miners and coal companies in those days was the matter of fair payment to the miner for the coal that he had dug and loaded. ''Short weighing,'' practiced by some unscrupulous companies to cheat the miners, occurred when the company weighman would record a weight less than the actual amount of coal in the car. ''Dockage,'' to which I referred a little earlier, was an arbitrary reduction in payment for impurities such as slate and rock loaded in the coal car. These practices became so commonplace that one of the first demands of the miners when the union was formed was for their own check-weighman to monitor the company check-weighman, because the miners felt that only with such a system would they be paid a fair amount for the coal that they had so arduously dug and loaded.

With the coming of hydraulically controlled machines, mining has become an automated industry, and highly skilled men and women operate the complicated mining machinery of today. The pick and shovel mining, which constituted the life and times of the coal miners of my dad's day, are gone forever.

So, Mr. President, the West Virginia mountains had stood in untouched solitude throughout the hundreds of millions or billions of years. With the coming of large coal mining operations, in my boyhood and early manhood years, coal mining camps were to be found all over the southern counties of West Virginia. Large mine-mouths gaped bleakly from the hillsides. You travel along and see these mine openings in the Earth—large mine entry openings. Gaunt tipples, miners' bathhouses, and other buildings stared down upon the mining community itself from the slopes of the mountains. Railroads sent their sidings in many directions, and long lines of squat mine cars ran along the narrow gauge tracks and disappeared around the curves of the hills.

When unionism invaded these peaceful valleys, it made itself familiar

often through bloody scenes. To the miner, his employment in the mines was his only way of making a living—he knew no other trade—and if a considerable number of mines closed down, whole mining communities sat around idle. Many times, I have looked into family cupboards of miners and they contained only a little food, perhaps for a single meager meal. I have seen the haunted look in the eyes of men who did not know how they were going to provide for the immediate wants of their children and wives.

Outside interests, as I have stated, had bought up the land in large quantities, and many corporations sprang into existence, some of them with the intention of mining the coal themselves, while others planned to lease their land to those who would do the mining. Some of the land was bought by railroad companies that wanted it for the coal that it held, as well as for rights of way. They used the coal to propel the large steam engines that pulled the long lines of coal cars over the hills and down the valleys. Manufacturing establishments in northern and eastern cities acquired some of it for their own future supplies of coal, and public utility corporations did the same thing.

The first railroads into the State were the Chesapeake and Ohio, the Baltimore and Ohio, the Norfolk and Western and the Virginia. Miners came into the West Virginia valleys from western and central and southern Europe, as well as from the southern cotton fields of the United States. Operators would advertise for workers to take mining jobs, and they came even from European countries and in the cotton fields of the South.

Welsh coal diggers came from the pits of Kidwelley; Englishmen came from Lancashire, and these mingled with Scotsmen and Hungarians and Czechoslovakians and Germans, Poles, and Austrians. There were large numbers of Italians. As many as 25 or 30 nationalities can still be found in the city of Weirton, in West Virginia's northern panhandle.

The typical coal mining community was not a town in the ordinary sense. The place where the town stood was the point at which a coal seam had been opened, buildings had been erected, and machinery had been installed. The dwellings, or shacks, clustered about the tipple or straggled along the bed of the creek, and there seemed to be always a creek in those coal mining communities. And these dwellings were occupied solely by the men who worked in the mines. Oh, there were some management personnel—the store manager, company doctor, principal of the nearby school. But other than that type of personnel, the houses were occupied by miners.

These communities were really not called towns. They were more often called ''camps''—the mining camp down the way, or the Glen White mining camp, the Stotesbury mining camp, or the Slab Fork mining camp, the Tams mining camp, or the mining camp at Helen, West Virginia.

No one owned his own house. He could not acquire title to the property. No one owned a grocery store or a garage or a haberdashery. There was no Main Street of small independent businesses in the mining camps. There was no body of elected councilmen to pass on repairs for the roads or sanitation problems. There was no family physician who built up a successful practice by competing with other physicians. The coal company owned all of the houses and rented them to the miners. It owned the company store. It owned the pool room. It owned the movie theater. It built the church. The company employed the physician and collected a small sum monthly from each miner to help pay the company doctor. The coal company controlled life and activities of the little community. It was responsible for the sanitation and sewage disposal. The company's ownership usually extended to the dirt roads that ran alongside the railroad tracks or through the middle of the mining camp along by the creek.

Semimonthly paydays occurred and miners were given statements showing how much they owed the company and how much the company owed them. Among the items charged against the miners in this account were the indebtedness incurred by the miners at the company store, rent for their house, electricity for their house, heating, meaning coal; the miners heated their houses with coal, and they bought this coal from the company for which they worked. They got it at a cheaper price, but they paid for their coal. And also included in this account was a monthly checkoff for doctor services or use of the hospitals. The hospitals usually were several miles away and located in the incorporated towns. There was a charge for use of the company washhouse in which to clean up after a day's work. The miner paid the same amount for doctor and hospital services whether there was an illness in his family or not. An additional sum would be paid for such services as occurred with childbirth.

I was employed by the coal mining community company store at Stotesbury. I first worked in a gas station pumping gas. We did not have service stations in those days. Those were gas stations. And then I was a produce salesman for the coal company, at the coal company store, and I was also a meat cutter. And when our first daughter was born, my wife and I had two rooms in one of those coal company houses. The company doctor attended my wife on that occasion. The doctor and I sat in the kitchen beside a wood-burning stove. My wife gave birth to our older daughter in the adjoining room. My wife's mother attended my wife.

The next morning, after the baby was born, the doctor was leaving the house. I said, ''How much do I owe you, Doctor?'' He said, ''$15.'' So my wife and I still refer to our older daughter, Mona, as our ''$15 baby.'' But that is the way it was in those days.

The miners used scrip largely in making purchases at the company store. The scrip was in the form of small metal tokens rounded like coins, stamped in various denominations. The companies accepted this scrip in lieu of real money at the pool room, at the movie theater, and at the company store.

Some mining towns were unsightly, unhealthful, and poorly looked after. The surface privy was nearly everywhere in evidence and was a prevalent cause of soil pollution and its contents usually washed toward the bed of the creek. There was not a sidewalk in many of the mining communities. On the other hand, some of the mining communities were neat and attractive in appearance and well cared for. I can say that about the mining community in which I lived as a boy. Many coal mining companies offered prizes for the best gardens, and they tried in other ways to keep the town pleasant in appearance. It was a subservient existence—a civilization within a civilization. There was no escape from it.

One might leave this mining community, if he could get a job in another mining community, but he just moved from one mining community to another mining community, and it was all the same—a civilization within a civilization. There was no escape from it, and its paternalism touched the miners' lives at every point. Any collective voice among them was smothered.

The United Mine Workers of America came to southern West Virginia when I was in my teens. By belonging to a labor union strong enough to negotiate with the organized groups of coal operators—and the coal operators were organized—the miners were able to insist on better working conditions, and they were able to bring about higher wages and shorter hours of work. They were able to exert collective pressure for a greater degree of safety in the mines, and thus to reduce the number of fatalities, as well as the number of maimed and broken men. To miners who were pressed down by the pervading dependence of their existence in company towns, the opportunity afforded by unions for joining with their fellow miners in some kind of collective effort was a welcome escape.

From the cradle to the grave, the miners lived by the grace of the absentee coal owner, one of whose visible representatives was a deputy sheriff, who was often in the pay of the coal owner. Everything belonged to the coal owners, and as I have already stated, home ownership was not permitted. To quote David Corbin:

> The lease of the Logan Mining Company reads that when the miner's employment ceases, ''either for cause or without cause, the right of said employee and his family to

use and occupy premises shall simultaneously end and terminate.''

Almost every coal operation had its armed guard—in many instances two or more guards. Mine guards were an institution all along the creeks in the nonunion sections of the State. As a rule, they were supplied by the Baldwin-Felts Detective Agency of Roanoke, Virginia and Bluefield, West Virginia. I again quote from David Corbin's work. David Corbin is writing about the mine guards, about the employees of the Baldwin-Felts Detective Agency:

It is said the total number in the mining regions of West Virginia reaches well up to 2500. Ordinarily they are recruited from the country towns of Virginia and West Virginia . . . and frequently have been the ''bad men'' of the towns from which they came. And these towns have produced some pretty hard characters. The ruffian of the West Virginia mining town would not take off his hat to the desperado of the wildest town of the wildest west.

These Baldwin guards who are engaged by the mining companies to do their ''rough work'' take the place of the Pinkertons who formerly were used for such work by the coal companies.

No class of men on Earth were more cordially hated by the miners than were those mine guards. If a worker became too inquisitive, if he showed too much independence or complained too much about his condition, Corbin states,

. . . he is beaten up some night as he passes under a coal tipple, but the man who does the beating has no feeling against him personally; it is simply a matter of business to him.

In reference to the mine guards, Corbin writes,

They are the Ishmaelites of the coal regions for their hands are supposed to be against every miner, and every miner's hand is raised against them. They go about in constant peril—they are paid to face danger and they face it all the time. But they are afraid, for they never know when they may get a charge of buckshot or a bullet from an old Springfield army rifle that will make a hole in a man's body big enough for you to put your fist in.

On May 19, 1920, several Baldwin-Felts agents with guns came to Mingo County to evict employees of the Stone Mountain Coal Company, who had become union members. An altercation arose between the Baldwin-Felts men and persons gathered around the little railroad station in Matewan—miners and citizens—the Mayor was shot to death, a battle ensued, seven Baldwin-Felts men were shot dead, along with two union miners, and, as I have already stated, the Mayor of Matewan.

When the UMWA began organizing in southern West Virginia, mine owners would discharge men as rapidly as they joined the union—a spy system furnished the information in many instances—and the discharged men were also dispossessed, without advance notice, from company-owned houses. As one coal miner was quoted in Dave Corbin's book,

I joined the union one morning in Williamson, and when I got back to the mine in the afternoon, I was told to get my pay and get out of my house before supper.

County Sheriffs and their Deputies were often in the pay of the coal operators, and the State government itself was clearly in alliance with the employers against the mine strikers. Scores of union men were jailed, and Sid Hatfield and Ed Chambers, two union sympathizers, were shot dead by Baldwin-Felts Detectives on the courthouse steps at Welch, in McDowell County, on August 1, 1921. At Blair Mountain, in Logan County—I have crossed that mountain many times—a 3-day battle was fought. Quoting from a piece by James M. Cain, which appeared in the ''Atlantic Monthly,'' October, 1922:

The operators hired four airplanes and bombed the miners. Both sides used machine guns; both sides had a number of men killed. Civil War had broken out afresh. It did not stop until 2,000 federal troops were sent in on September 3. This aroused the public again, but the thing was quickly forgotten, and except for a Senatorial investigation, nothing was done.

Corbin wrote:

Upon moving into a company town, a miner had to live in a company house and sign a housing contract—

I had to do that. My wife's father had to do that.

that the courts of West Virginia subsequently ruled created a condition not of landlord and tenant, but of ''Master and Servant.''

Consequently, the coal company was allowed to unreasonably search and seize a man's house without any notice.

If we rent a miner a home, it is incidental to his employment. And if a miner would undertake to keep anyone at that home that was undesirable or against the interest of the company, we will have him leave or have the miner removed.

On August 7, 1921, 6 days after the murder of Hatfield and Chambers on the steps of the McDowell County courthouse, 5,000 coal miners met in Charleston, the State capital. Meetings were held in Kanawha, Fayette, Raleigh, and Boone Counties to protest martial law in Mingo County and the Governor's refusal to lift it. There occurred an uprising of the southern West Virginia miners against the coal establishment. Exploitation, oppression, and injustice had created a common identity and solidarity among the miners, and their geographic mobility had turned the hundreds of seemingly isolated company towns into a single gigantic community.

Thousands of miners descended upon a place called Lens Creek, about 10 miles south of Charleston. Their announced intentions were to march through Logan County, hang the county sheriff, blow up the county courthouse on the way, and then to move on Mingo County, where they would overthrow martial law and liberate their union brothers from the county jail. In the process, they would abolish the mine guard system and unionize the remainder of southern West Virginia. The marchers were going to fight for their union.

On August 26, the miners arrived at a 25-mile mountain ridge that surrounds Logan and Mingo Counties. Here they met an equally strong, determined and well entrenched army composed of deputy sheriffs of the two counties, State police, State militia, and Baldwin-Felts guards. I quote from Corbin's work once more:

The miners who participated in the events swore themselves to secrecy * * * the marcher used sentries, patrols, codes, and passwords to guard the secrets from spies and reporters. The secrecy was so tight that agents for the Department of Justice and the Bureau of Investigation, as well as reporters, though disguised as miners, were unable to attend the most important meetings.

About 4,000 miners constituted the original army that gathered at Lens Creek, but more miners joined the march after it was underway. * * * Ten days after the miners had assembled at Lens Creek, Governor Morgan reported that the ''number of insurrectionaries are constantly growing.'' Although an army officer sent to the battle observed that it is ''humanly impossible'' to say how many miners participated, an estimate of between 15,000 and 20,000 is probably safe.

The marchers had their own doctors, nurses, and hospital facilities. They had sanitary facilities. The marchers were fed three meals a day. The marchers bought every loaf of bread, 1,200 dozen, in Charleston and transported the loaves to their campsites * * *. To guard against infiltrators and spies, the marchers used patrol systems and issued passes. Orders were given on papers that carried the union seal and had to be signed by a union official. The marchers used passwords and codes. To attend a meeting during a march, a miner had to give the password and his local union number to the posted sentries. Discovering the password, a reporter from the Washington Evening Star attempted to infiltrate a meeting by giving a fake local union number. As he approached the platform from which Keeney was about to talk, two miners grabbed him from behind and carried him toward the woods. A last minute shout to Keeney, whom he had interviewed before the march, saved the reporter * * *. Keeney instructed the miners merely to escort the reporter out of the meeting grounds.

The miners were prepared to fight; they had to be, for they not only sustained a week-long fight, but they also defeated Sheriff Chafin's army of over 2,000 men, who were equipped with machine guns and bombing planes. [Bill] Blizzard was probably the generalissimo of the march. Approximately 2,000 army veterans were the field commanders, and they instructed the other miners in military tactics. A former member of the National Rifle Team of the U.S. Marine Corp and a former Captain in the Italian Army gave shooting lessons. Several former officers, including an ex-Major drilled the miners. * * * After watching several ex-servicemen drill the miners * * *, a reporter walked to another area and heard an ex-serviceman tell a squad of miners how to fight machine guns: ''lie down, watch the bullets cut the trees, out flank'em, get the snipers. * * *'' The local at Blair, having been given prior instructions, had dug trenches in preparation for the marchers. An advance patrol of 500 to 800 miners cut down the telephone and telegraph lines and cleared a 65-mile area of Baldwin-Felts guards. * * * The armed marchers were in complete control of the

area from South of Charleston to the mountain range surrounding Logan and Mingo Counties. * * * Company officials and their families fled the area.

Sentries were posted along the Blair Mountain ridge. Sharp shooters with telescopic rifles were stationed at strategic locations to ''clean out Sheriff Chapin's machine gun nests.'' The battle raged for over a week. Both armies took prisoners, * * * and both sides killed. * * * The federal government moved to end the struggle that President Harding called a ''Civil War''. The U.S. War Department sent Brigadier General Henry Bandholtz to the battle front * * * and ordered the miners to disburse. On August 30, the President placed the entire state of West Virginia under marshal law and issued a proclamation instructing the miners to cease fighting and to return home.

By the morning of September 1, the miners had captured one-half of the 25-mile ridge and were ready to descend upon Logan and Mingo Counties. The President had already issued orders for 2500 federal troops, 14 bombing planes, gas and percussion bombs and machine guns to be sent into the area. The armed march and the Mingo County strike were doomed; Chafin, the Baldwin-Felts mine guard system, and the southern West Virginia coal establishment were saved.

The depression came, Franklin D. Roosevelt was elected President, the UMWA organized miners in West Virginia, and the long struggle was ended. The coal miners had fought bloody battles, and they had won. The evictions stopped, the mine guards became a thing of the past, and collective bargaining brought better living conditions to the families of those who worked for King Coal. The coming of the miner's union also resulted, over a period time, in improved health and safety conditions in and around the mines.

Many terrible mining tragedies occurred during the early half of the 20th century, and it will be my purpose here to afford only a brief glimpse of some of these. My purpose is not to condemn or to blame those in charge of the industry, nor the State government inspectors who, at times, may have been lax or coerced politically and who may have looked the other way when dangerous situations prevailed, hoping that such conditions would go away. But in some such cases, the mine blew up and many men died.

From January 21, 1886, when the explosion occurred in the mine at Newburg, West Virginia, to November 20, 1968, at least 43 major mine blasts in West Virginia took place. There were even more lesser ones, for example, the explosion at McAlpin, West Virginia, a mining community adjoining the Stotesbury community, where I lived as a boy and as a young man; where I married, where our first daughter was born, where I worked in the company store. The McAlpin explosion took place on Monday, October 22, 1928.

I can remember it as though it were yesterday.

It was a dust explosion, since the mine had never shown any methane gas reading. One of my classmates at Mark Twain School suffered the loss of a brother in that explosion. Sitting at the Mark Twain School, where I was a student, one could look out the window across a little valley to the mountain on the other side of the Virginian and C&O Railroads and there on that mountain was the opening of the drift mine, owned by the McAlpin Coal Company.

When the blast went off, no word of mouth was needed to tell the people that something was wrong at the mine. The running and shouting of the men outside the mine was dreadful news to those in view. It happened about 2:30 in the afternoon on an overcast day, weather being almost always adverse when a mine disaster happened. There were 60 men inside the mine who were unhurt, because the blast was confined to a small area. It was decided that a miner had used a ''dobie'' shot which blew him several feet down the entry. The five other victims presumably died from afterdamp or asphyxiation from smoke and fumes. By 8:30 that evening, all bodies had been brought from the mine. I can recall being at the foot of the hill leading to the mine that evening, when miners' wives boiled coffee over fires built at the foot of the hillside and served it to the rescue men and to other workmen and onlookers. I shall never forget the tearful faces of women who were wives or mothers or sisters of the men who were in the explosion. Relatives at the scene asked to see the bodies that were brought to the outside of the mine to get a glimpse or to identify their kin. The weeping and wailing of wives and mothers and children were a sight that never leaves one's memory.

The calamity at Newburg in 1886 was West Virginia's initiation into the horrors of mine explosions. The explosion killed 39 miners in the twinkle of an eye on that cold afternoon on January 21, 1886, in this small community just 12 miles east of Grafton in Taylor County. Not a soul is alive today who remembers the Newburg mine disaster. However, the town of Newburg keeps its history well. The people are aware that, once upon a time long ago, 39 men and boys died horribly underground. A cemetery on the hill holds the remains of nearly all of them. The town no longer has a mine. The spot where the shaft was sunk is now a barren space. The old crumbling coke ovens are now buried in a jungle of undergrowth and big trees. Newburg was once an exciting town with its crack B&O passenger train with sleek pullmans, pulled by high-wheeler coal-burning engines en route from Baltimore to Cincinnati and points West. All stopped at Newburg. There were grist mills, good hardware stores, and numerous businesses. A bank stood on the corner, and nearby was a drugstore. Of course, today, the railroad station is no more. The bank is gone. And, as always, there were interesting stories to be told. Two men who died in the blast were married together on Christmas Eve, they lived under the same roof, and they died together in the explosion 28 days later, on January 21. The cemetery where many of the victims lie is still visible.

Men who volunteer to enter a blast-torn mine are a breed of men who stand alone—men who dare to go where an explosive element may regenerate and blow again or to enter where the deadly afterdamp or various gas combinations may destroy them. They hope that men alive may be huddled inside a barricaded room awaiting rescue, not death. Miners never hedge, but prepare, and then go inside if heat and smoke do not drive them back.

For many years, Mr. President, there was only charity—only charity—to assist families that were left destitute by the loss of the family provider. There was no Social Security. There were no welfare programs. There was no workers' compensation. Many years passed and many miners suffered before a system of compensation and Social Security was set up.

The most devastating mine explosion in West Virginia history occurred at Monongah, West Virginia. Those are the first eight letters in the name of the river, the Monongahela River. The town was named Monongah.

This devastating mine explosion took place on December 6, just a few days before Christmas, in 1907. Lacy A. Dillon, in his book ''They Died in the Darkness,'' tells the awful story.

On Friday morning, December 6, 1907, the men and boys walked to the pits in a cold, drizzling rain. The barometer was low and the humidity high. . . . When 361 men entered the mine that December 6 morning, they took 361 reasons for an explosion by carrying 361 open-flame lights.

My dad worked in the mines. He used a cloth cap and affixed to that cloth cap was a carbide lamp. He would send me to the store to buy some carbide or a flint for his carbide lamp. And the carbide lamp furnished the light for the working place. It was an open flame. And so, 361 men walked into that mine on that morning with 361 carbide lamps, open-flame lights.

Every time the motor arm arced on the trolley wire, a chance for a blowup existed; as did countless other ways that today are prohibited by State and Federal laws. The method of forcing air into a mine, or sucking the air through a mine, as the case might be, was not so well tested in 1907. . . . The Monongah mine blew with a jar, an artillery-like report, a flame, and earth-shake, and billows of smoke. Concrete sidewalks buckled and broke, the streets opened in fissures, buildings shook, and some old weak ones collapsed. People rushed outside in horror and amazement, knowing what had happened, since mining towns near ''hot'' mines are always aware that the mines can explode. Soon, panic broke loose with people rushing downhill toward the mines, . . . that such a blast must have killed all men and boys inside, was felt by all. Those related to the men inside, especially the women, became near crazed. One woman pulled her hair out by the handful; another woman disfigured her face with her fingernails, screaming frantically in the meantime. The force of the explosion blew away the fan house, wrecked the fan's workings, destroyed the boiler house completely, . . . some of the buildings

near the drift mouth were blown across the Westfork River, landing in pieces on the far bank. In 1907, there were no organized and equipped rescue squads as came into use later. Rescue and recovery of bodies depended on volunteers. . . . Women, children, and other relatives grouped as near as possible to the pit-mouths hoping for a miracle. Some of the women had become stoically philosophical, showing much restraint, while others gave vent to their grief. . . .

Mechanics worked frantically to restore air into the mines . . . crews went inside hanging brattices . . . the men began finding the dead ponies and mules following the explosion, the coal company employed a troop of doctors from Fairmont to report to Monongah. They stood around bonfires all night waiting to administer to survivors. None ever came. They remained through Saturday, and by that time, it was known that the only big need for professionals was undertakers. Coffins by the carload were ordered from Pittsburgh, Pennsylvania and Zanesville, Ohio. They were nothing more than plain rectangular wooden boxes with no inside lining. Additional men were employed to tack cloth inside them to keep the body from the bare walls. By Tuesday night, 149 bodies had been recovered. The full crew of men were digging graves on the hillsides in Monongah. The town was overrun with curious spectators. When evening began to fall, everyone tried to leave at the same time and on the same street car. As soon as possible after the explosion, an appeal was sent out, first, to the people of West Virginia, and then to the nation, to come to the assistance of Monongah. Money, lots of it, was needed at once (in those days, as I stated, there was no compensation, no Social Security), as well as clothing, food, medicine. It was winter, and snow fell two days after the blast. The Fairmont Coal Company gave $17,500 while Andrew Carnegie of Pittsburgh sent $2,500. Other organizations and individuals all over the nation began to respond.

Over 250 women became widows, and 1,000 children became fatherless. A survey indicated that 64 widows were pregnant. The company cancelled all debts for the widows and other dependents at the company store. Credit was then allowed for all of them. Those who lived in the company houses were notified that no house rent would be collected so long as they remained single. By noon Monday, December 12, there had been recovered 297 bodies. The temporary morgue was working overtime. As soon as a body could be prepared it was taken to the home of the victim to await funeral services, for burial quickly was necessary. Extra ministers of different faiths came in to assist. On December 19, just 6 days before Christmas, superintendent W.C. Watson announced that 338 bodies had been brought from the mine. The blast mangled and burnt some of them beyond recognition and some were never identified.

Human interest stories, as I said a moment ago, always occur in times of tragedy, one pitiful case was when the corpse was brought home, seven days after the explosion, the widow gave birth to a child two hours later. Then there was a Mrs. Davies, who lived on the west side of Monongah, lost her husband in the explosion and his body was never found. She went down the hill each day the mines ran after the explosion and got a burlap sack of coal from the mine cars, carried her burden home up the mountainside and deposited it near her house. She never burned a lump of it or allowed anyone else to do so. When asked why she piled this unused coal daily, she stated that she had hopes of retrieving some of her lost husband's body. She was a young woman when the tragedy happened, and she lived to be an old lady. At her death, her sons gave the coal to the churches of Monongah. The coal pile had grown to an enormous size.

Many of the widows were foreigners and unaccustomed to American ways. After the catastrophe, several of them were frustrated and wanted to return to their homelands. Money was given and arrangements made for them to go. Several widows were also in Europe when the mine blew. One boarding house in Monongah kept only miners, and all of them reported for work on that fateful morning. None of them came to supper that evening, leaving 17 empty chairs at the dining table. Their bodies lay somewhere under the mountain sprawled in total darkness, burned and mangled. The final count showed that 171 Italians, 52 Hungarians, 15 Austrians, 31 Russians, and 5 Turkish subjects were killed.

The last major mine explosion in West Virginia occurred at Farmington, in Marion County, on November 20, 1968, and perhaps some of my colleagues will remember having read about that catastrophe. The mine was owned and operated by the Consolidation Coal Company. After several days had passed, and repeated efforts had been made to reenter the mines and remove the bodies, the mine officials made their final decision. They concluded that the 78 men who remained in the mine were dead, and that the mine must be sealed. The officials sent word to the relatives of the entombed men and other concerned citizens to meet at the little Methodist Church. The people assembled in the evening, a somber time and in dreary weather. The lights inside dispelling the outside gloom, and the fact that all assembled were in the House of God, relieved some of the despair of man's inevitable fate.

The company official announced the decision to the weeping and praying people who felt that this announcement was coming. The official was humble and brotherly and his statements showed much compassion for the bereaved. The 78 humans, created in God's own image, lay inert and today they lie in the totally dark caverns of the Consol Mine to await the day when mankind will kindly bring their bodies or their skeletons to daylight.

Mr. President, these are but a few of the many tragic stories of sorrow and death that have occurred in the history of coal mining in West Virginia. It was not until the union came to West Virginia, that enlightened state and federal governments acted to legislate health and safety laws to protect the lives of the men who bring out the coal. It has been a long history—a long history—of struggle and deprivation, of poverty and want, of harassment, intimidation, and murder, and it has been a story of courage and determination. The coal miner is a breed almost to himself. He lives dangerously, and he has borne humbly the edict, pronounced by the Lord when Adam and Eve were driven from the Garden of earthly paradise: ''In the sweat of thy face shalt thou eat bread, til thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return.''

Mr. President, this short history of the introduction of collective bargaining in the coal mining towns of West Virginia is illustrative of many struggles waged by other working people throughout the United States. In those days about which I have spoken, unions and strikes were instrumental in winning minimum safety, health, and wage levels for workers. Management fought against the unions, and against any improvements in working conditions or benefits that cost them money and ate into their profits.

Today, however, unions are fighting a rearguard action. They are fighting to protect wages, safety and health benefits and pensions from cuts that owners and managers claim are necessary in order to be competitive. Unions have been willing to make concessions, many concessions, in order to keep the companies their members work for competitive and profitable. American productivity has been increasing. Today in West Virginia, we have roughly 20,000 coal miners. They produce the same amount of coal that was produced by 125,000 coal miners when I first came to the Congress 42 years ago. But the unions owe it to their members to protect them from deep cuts in wages and benefits, from cuts that push workers and their families to the poverty level. Unions also owe it to their members to protect the pensions that will allow union workers to maintain a reasonable standard of living into their old age.

This is important work. Many nations do not have unions, or they actively discourage workers from bargaining collectively. In the overview of the ''1994 Report to Congress on Human Rights Practices,'' released in February, 1995, the Department of State notes that

> [t]he universal right most pertinent to the workplace is freedom of association, which is the foundation on which workers can form and organize trade unions, bargain collectively, press grievances, and protect themselves from unsafe working conditions. Just as they did, Mr. President, in the mining communities of West Virginia when I was a boy and when my dad was a coal miner, when my wife's father was a coal miner, when my brother-in-law's father was a coal miner and was killed in a slate fall, when my brother-in-law was a coal miner, my brother-in-law who later died of pneumoconiosis, black lung.

The report goes on to say,

> In many countries, workers have far to go in realizing their rights. Restrictions on workers range from outright state control of all forms of worker organization to webs of legislation whose complexity is meant to overwhelm and disarm workers . . . Trade unions are banned outright in a number of countries, including several in the Middle East, and in many more, there is little protection of worker efforts to organize and bargain collectively. Some protesting workers

have paid with their lives; others, most notably in China and Indonesia, have gone to jail simply for trying to inform fellow workers of their rights. We also see inadequate enforcement of labor legislation, especially with regard to health and safety in the workplace.

These, then, Mr. President, are the countries that U.S. businesses are trying to compete with. These are the kind of working conditions that American workers, through their unions, have fought so hard against.

If American workers lose their ability to strike—and I do not condone all strikes or all strikers; I have never condoned lawlessness in the course of a strike—never—but most of the strikes have been lawful strikes. Lawful—that is what we are talking about here today, in connection with this amendment and in connection with the President's order. And I say parenthetically that I am not enthusiastic about Executive Orders. It is my information that there have been over 14,000 Presidential Executive orders going back over the many decades, and I am doing a little research on that. I hope one day I will have a little more information than I now have in that regard.

But I have to oppose this amendment. How can anyone do otherwise coming from my background—my background—with flesh and blood ties with the men who bring out the coal?

If American workers lose their ability to strike and play their trump card against owners and management, many will not accede to reasonable concerns about reductions and working conditions, hours, wages or benefits, and American workers could return to the days of the coal miners before collective bargaining.

The miner's only capital, the miner's only capital are his hands, his back, his feet, and his salty sweat.

Furthermore in Canada, Japan, France, Germany, and other countries of Europe, the rights of employees to strike are protected, and the use of permanent replacement workers is not permitted. These restrictions apply to the use of permanent replacement workers during all legal strikes, not just workers involved with government contracts.

If the Senate upholds the amendment now before us, I think it sends a terrible signal. If this amendment is passed, management is given a green light to simply replace workers who do not accept whatever management decrees. It sends a red light to workers and unions to stop striking, no matter how unreasonable the cuts or conditions, and no matter how obdurate the management negotiators. Not all management is cold and heartless, not all by any means. But we do not want to go backward in time, and the coal miners do not rush to return from whence they came. If you strike, no one will support you, and management will just hire new workers, desperate for any job, no matter if it is unsafe, or for wages and benefits more suitable to a Third World country than to the United States.

The amendment before us, opponents will say, affects only the President's Executive order, which only affects Federal contracts in excess of $100,000. That is true, but the message that the passage of this amendment sends, affects far more than the Executive order. It speaks as a matter of principle to the entire spectrum of labor relations and undermines the basic right of workers to organize, to bargain collectively, and to strike if necessity demands it.

Mr. President, I have seen what life in the United States can be like without that right, as I have recalled today, and I cannot support what this amendment would do. I urge the defeat of the cloture motion and this amendment.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ABRAHAM). The absence of a quorum having been noted, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

Mr. KEMPTHORNE. Mr. President, I submit a report of the committee of conference on the Unfunded Mandate Reform Act of 1995 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of March 13, 1995.)

The PRESIDING OFFICER. There will be 3 hours debate equally divided on the conference report.

Mr. KEMPTHORNE. Mr. President, I ask for the yeas and nays on the vote on the conference report on S. 1.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KEMPTHORNE. It is my understanding that vote will occur tomorrow, immediately following the 10:30 cloture vote.

The PRESIDING OFFICER. The Senator is correct.

Mr. KEMPTHORNE. Mr. President, we have certainly come a long way since May 1993 when we first began this effort. Now, 22 months later—with Governors, mayors, county commissioners, tribal leaders, school board members, and business leaders throughout the country looking on—Congress is about to end the debate on mandate relief, and begin a new partnership with States, cities, counties, tribes, schools, and the private sector by voting on final passage of the conference report on S. 1 the Unfunded Mandates Reform Act of 1995.

This bill has been described as landmark legislation, as far-reaching and visionary. It is all of those. Ever since 1791 when the 10th amendment was first ratified the Federal Government has slowly eroded the power of the States. Today, with passage of S. 1, we begin to reverse that role. S. 1 is founded on the premise of responsibility and accountability. This will change the mind set of Washington, DC, from this point forward.

First, it requires the Federal Government to know and pay for the costs of mandates before imposing them on State, local, and tribal government.

Second, the Federal Government should know the costs and impacts of mandates before imposing them on the private sector.

S. 1 thoroughly reforms the process by which Congress and Federal agencies impose new mandates on the public and private sector. Congress must identify the costs of new mandates imposed on State and local governments and the private sector. Congress must pay the costs of the new mandates on State and local governments by either providing spending, increasing receipts or through appropriations. If a mandate is to be paid for with a future appropriation, the appropriation must be provided for the mandate to take effect. If subsequent appropriations are insufficient to pay for the mandates, the mandates will cease to be effective unless Congress provides otherwise by law within 90 days of the beginning of the fiscal year.

This process is enforced by a point of order. Legislation that does not meet these requirements can be ruled out of order, blocking further consideration in the House and Senate. Debate continues only if a majority of the House and Senate votes to do so. A rollcall

vote will decide whether the Senate and House should consider unfunded mandate legislation. S. 1 applies to all legislation—committee bills, House and Senate floor amendments, motions and conference reports—containing mandates.

Required cost estimates of legislated mandates will be done by the nonpartisan Congressional Budget Office. CBO will consult with State and local officials in preparing estimates.

Existing State and local government mandates will be reviewed by the Advisory Commission on Intergovernmental Relations. This Commission, comprised of State, local and Federal officials, will report to the President and Congress on existing mandates that should be modified or repealed. The Commission's final report is due in 12 months.

In developing legislation and Federal rules affecting State and local governments, Congress and Federal agencies are to consult with State and local government officials in the drafting of legislation.

S. 1 does not apply to certain mandates, including those that enforce constitutional rights of individuals, prohibit discriminations on the basis of race, age, religion, national origin, handicapped or disability status, are necessary to protect national security or provide for emergencies.

S. 1 applies to legislation being considered in Congress that imposes mandates of greater than $50 million on State and local governments and $100 million on the private sector. S. 1 applies to regulations being considered by Federal agencies that are greater than $100 million. S. 1 will apply to legislation considered in Congress either 90 days after additional appropriations are provided to CBO to do required cost estimates or January 1, 1996, whichever comes first.

S. 1 got better and smarter during the legislative process. S. 1 was better than last year's bill; after floor consideration, S. 1 was better than when it was first introduced. The record will show that a number of Senators made important contributions to this bill. My approach to amendments was simple. If they improved the bill, if they clarified the bill, if they made the bill smarter, I wanted to get those amendments in this bill. There were 9 strengthening amendments to S. 1 that were agreed to and we tabled 18 weakening amendments. Two examples of amendments that strengthen S. 1 were Senator BYRD'S amendment that improved and perfected the point of order and Senator MCCAIN'S amendment that applied the point of order to appropriations.

I felt we took a solid bill in S. 1 to the conference committee, and as chairman of the conference, I worked to protect the Senate position. Virtually every amendment adopted by the Senate is in this report.

As Senators know, it took several weeks of negotiations between the House and Senate to write this final conference report. I want to review the major issues that the conferees had to resolve.

First, there is the issue of judicial review. As Senators know S. 1 said that nothing in this bill was judicially reviewable. The House bill provided that virtually everything contained in its unfunded mandates bill would be reviewed by courts.

To understand the significance of these two approaches, remember that in S. 1 we required that federal agencies do cost/benefits analyses of mandates imposed on State, local and tribal Governments. In S. 1 we added a cost benefits analysis for the private sector. This requirement began as a codification of the Reagan Executive order on federalism and was designed to provide general direction to agencies and foster greater sensitivity on the issue of mandates. The Executive order did not provide for review of agency compliance with the Executive order's requirements and it also allowed agencies to seek waivers of the requirements imposed by the Executive order for cause.

I supported the lack of judicial review in S. 1 for good reason. First, my State of Idaho has been devastated by the ability of private individuals and philosophically motivated groups to slow down or stop legitimate and necessary natural resource industries in my State through the use of judicial review of agency decisionmaking. Timber and salvage sales for one have been delayed to the point that the forests of Idaho have been turned into a tinder box for yearly summer forest fires. Second, I supported the concept of no judicial review in the original S. 1 because I did not think that the requirements of title I of this bill, with their emphasis on legislative operation should allow judicial review. I saw a possibility of unconstitutional interference if we were to invite the judicial branch into the workings of Congress.

The House bill, H.R. 5, differed from S. 1 in a most significant way. The House did not include in its bill a prohibition of judicial review. In fact instead of addressing it, the House bill simply avoided the issue entirely. As a result, under H.R. 5, all agency rulemakings would be subject to the Administrative Procedures Act in title 5 of the United States Code. Under the House bill, virtually everything could be reviewed and interpreted by the courts. Courts could have the power to say whether a cost estimate was correctly prepared, whether agencies had consulted enough economists, or had consulted the right experts. Further, courts could have stopped any and all rules from being issued pending the completion of this analysis.

I am no fan of agency rulemakings. I support agency rulemaking moratoriums. We have had enough rules and the people of America want and need a rest from the heavyhanded Federal bureaucrats who make their livelihoods from dictating Federal policy to the people who pick up the tab. But neither am I a proponent of putting lawyers to work challenging rules for the sake of delay or wasting the taxpayers money in time consuming Federal rules that languish in the courts.

Therefore, in conference we were faced with a couple of very difficult problems. We had a Senate bill which passed with a 90-percent majority without judicial review and we had a House bill which had passed with an almost identical percentage of approval which had virtually unfettered judicial review. The main reason that the House wanted judicial review was the belief that Federal agencies were ignoring the requirements of Congress. One of the statutes they cited in support of their assertion was the Regulatory Flexibility Act. That act is not judicially reviewable and there is general belief that the agencies have a poor record of compliance. The House therefore wanted to make sure that the executive branch would observe the requirements of Congress—not an unreasonable request.

As a result of the inherent conflict between the parties on this issue, I suggested that we develop a checklist approach to a limited judicial review. The theory would be that we should provide a method which would ensure that agencies would provide the analysis without allowing courts to impose their judgement on the subjective quality of the agency's compliance. It is important to note that the analyses required by S. 1 act as additional requirements on statutes creating mandates. We call the statute actually creating the mandate the underlying statute. We wanted to ensure that the cost/benefits requirements of S. 1 would not supersede cost/benefit analyses in either an existing law or require a cost benefit analysis where one was specifically prohibited in an underlying statute.

The conference committee reviewed what title II directed agencies to do to make sure that agencies could meet the requirements. We cannot complain of an agency's failure of compliance with the requirements of Congress if we are irresponsible in what we ask them to do and if we are vague in our instructions. Therefore we had to redraft the requirements of title II in S. 1 to make sure that those requirements were tighter, more efficient and addressed the problem we sought to resolve.

Let me take a second to talk about the changes to title II of S. 1 as it comes out of conference. Recognize that most of the changes to title II are as a result of our need to tighten up the requirements if we are going to have judicial review.

S. 1 as passed by the Senate provided that agencies would assess the effect of mandates on State, local government and the private sector and seek to minimize the burdens. However, if you are going to allow judicial review, minimizing the burden is so unspecific and

so subjective that virtually every rulemaking would be challenged on that basis alone.

S. 1, as passed by the Senate, provided that agencies would develop a plan to allow elected State, local and tribal officials to have input into agency rulemakings, but there was some fear that the Federal Advisory Committee Act could be used to prevent local officials from meeting with Federal officials. Judicial review of this issue would be a haven for lawyers. As a result of some of these problems and others, we knew that some redrafting of title II would be in order and would be necessary.

Title II as it comes out of conference is more objective, more achievable and more effective than in either the House or Senate passed bills.

Title II provides that for every rulemaking each agency should assess the effects of regulatory action on States, local governments and the private sector. For significant rulemakings, which are judicially reviewable, an agency shall provide; a written statement of the authority under which the agency is proceeding; a qualitative and quantitative assessment of the cost and benefits of the rule; estimates, to the extent its feasible to determine it, of the future compliance costs of the mandate and any disproportionate effect on particular regions of the country or sectors of the economy; a macro economic analysis of the effect of the rule on the national economy; and, a description of the agency's contacts with State, local and tribal governments.

New in title II is a provision which clarifies that the Federal Advisory Committee Act does not apply to meetings between Federal officials and elected officers of State, local and tribal governments where those officials want to make their views, and the views of their constituents known. Local officials should not be shut out of the process. We want to know their views and get their advice.

We also added a provision previously in the House bill which requires that agencies identify and consider the least costly, most cost-effective or least burdensome alternative to achieve the objective of the rule containing a federal mandate. We require the OMB director to report specifically on this least burdensome regulation requirement in 1 year and we require an annual statement from the OMB director on agency compliance with title II.

The judicial review provision in the conference report of S. 1, provides limited scope of review under the APA if an agency unlawfully withholds or unreasonably delays compliance with the requirements of S. 1. A court would look to see if the agency had prepared the written statement required by section 202 and 203. If the analyses, statement, description or written plan were not completed the court could compel the agency to complete the requirements of section 202 and 203. However, to ensure that Federal rules were not delayed by endless litigation, S. 1 provides that failure by the agency to provide the analyses, statement, description or written plan could not be used to stay, enjoin, invalidate or otherwise affect the rule.

We also wanted to make sure that the underlying analysis needed to substantiate a rule under the requirements of S. 1 couldn't be used to invalidate the rule under some other rulemaking requirement in the underlying statute which imposed a mandate. But, if the analysis which was used to meet S. 1 requirements was provided pursuant to the underlying statute which imposed a mandate, then a court in review could invalidate the rulemaking based on that underlying statute.

Finally, S. 1 provides a limitation of 180 days on the time under which an action could be filed unless the underlying statute provided a different period. The judicial review provisions apply to proposed regulations issued after October 1, 1995.

No other provision of S. 1 is judicially reviewable. Title I deals with the requirements of Congress, and judicial review is not appropriate for the internal actions of Congress. Title III deals with ACIR's review of existing mandates and judicial review is not at issue. The remainder of title II deals with either general requirements that do not lend themselves to judicial review or with analyses which are essentially subjective—like the least burdensome option requirement added to the conference report on S. 1.

In all, I think we have developed a system which addressed the concerns in the House compelling agencies to comply with the requirements of Congress while being responsible to the agencies we have asked to perform.

Last December I spoke at the annual meeting of the Council of State Governments. On the stage, next to the podium, was the flag of the United States of America. And behind us, as a backdrop, were the flags of each of the 50 States. I told the folks who were gathered there, ''That flag of the United States of America represents the greatest nation in the world! But let us not lose sight of the fact that its greatness is comprised of the 50 sovereign states that make up the United States. We are the United States of America, we are not the Federal Government of America!''

For the past two decades, the Federal Government has dominated our States and cities. Congress and the executive branch have not been partners with States and cities. The Federal Government has been the overseer and the mandate maker, telling States and cities what to do, when, where, and how, but never paying for it.

Congress passed legislation without ever knowing the costs or consequences of their actions on State and local governments. The mandates made Congress feel good, and, for a while, even look good back home.

But this is not the federalism that our Founding Fathers intended. Stanley Aranoff, who is the senate president in Ohio, stated,

> The Constitution, and specifically the 10th Amendment, guarantees that certain functions will be performed by certain levels of government, thus ensuring direct accountability of the elected official to the voters. Our Constitution guarantees a federal, state, and local partnership. Unfunded mandates undermines, blurs, and corrupts that fundamental understanding upon which our governmental framework is based.

One of the big steps forward, I believe, in helping to reaffirm the 10th amendment rights is the effort to stop these unfunded Federal mandates which are simply hidden Federal taxes. We should not be paying for national programs with local property taxes.

This legislation forces Congress and agencies to know the mandate costs it imposes on the public and private sector. It requires Congress to pay for mandates imposed on State and local governments, and go on record with a vote when it does not.

S. 1 reflects a philosophy of limited government, that the best government is the government that governs least and to let local issues be decided by local officials and their citizens.

Those local officials set their priorities based on their finite resources. But for years, Congress has not had to worry about that. We come to the floor, and stand up and argue righteously and with great passion about the problems that are facing the United States, knowing full well that until now, we have not been held accountable. Congress has not had to pay for it. Those mandates have not been part of the Federal budget process, and the local governments end up paying for it, because it is mandated by Congress.

The Federal Government has, in essence, made local and State elected leaders nothing more than Federal tax collectors. Those officials have been very vocal about how they resent that, and they have every right to resent it.

Ben Nelson, the Democratic Governor of Nebraska, pretty well sums up the frustration of the States when he says: ''I was elected Governor, not the Administrator of Federal programs for Nebraska.''

Now, people say, ''How much do these Federal mandates cost?'' Nobody knows. Congress does not know, because we have never, ever asked that question before voting on them.

And so we must be intellectually honest. If it is a Federal program, pay for it with Federal money, if it is State, pay for it with State money, and if it is local, pay for it at the local level.

Mr. President, this moment would not be possible without my partners in State and local government, and the private sector. I close my remarks by reminding Senators that S. 1 is strongly endorsed by the: U.S. Conference of Mayors, National Association of Counties, National Governors Association,

National Conference of State Legislatures, National Association of School Boards, National League of Cities, the U.S. Chamber of Commerce, National Association of Homebuilders, National Association of Realtors, NFIB, and the Small Business Legislative Exchange Council.

I want to thank the citizens of Idaho for the opportunity they have given me in serving in the Senate. I hope they will take a small measure of pride that the effort to reform unfunded mandates was born in Idaho.

There are many people who made significant contributions to this process that I would like to thank. I want to especially thank our majority leader, Senator BOB DOLE. His support and commitment to mandate relief was critical to our success. His designation of our mandate legislation as S. 1 insured that we would have the highest priority for the 104th Congress. I also want to acknowledge the dedication and hard work for my Senate colleagues on the conference committee. First, of course, is my long time partner on mandate relief Senator JOHN GLENN. As we began this crusade we repeatedly stressed that relief from Federal mandates was not a Republican issue or a Democratic issue. We knew that if we were to be successful we had to keep the debate nonpartisan and focused on the merits of the issue. Without JOHN GLENN that would not have been possible and we would not be here today voting on final passage of mandate relief legislation. I believe our friendship and partnership have deepened during this process.

I note that last session, when the Democratic Party was the majority party and Senator GLENN was the chairman of the Governmental Affairs Committee, this was not necessarily a popular issue to take up. But he scheduled the hearings, he held the hearings, and he forged a partnership with me so we could come forward. It has allowed us to be where we are today. Ohio is rightfully proud of Senator GLENN.

Two key members of our conference team were the Republican chairmen of the two committees of jurisdiction, Senator ROTH of Governmental Affairs and Senator DOMENICI of the Budget Committee. These two experienced and knowledgeable leaders gave me valuable advice and constant support throughout the conference process and were instrumental in moving us toward the successful conclusion we have before us today.

Also my friend Senator JIM EXON, the ranking member of the Budget Committee who offered valuable insight during the committee process. Senator EXON has been a long-time supporter of relief from mandates and cosponsored my original bill in the last session of Congress.

Many other Senators—Democrats and Republicans—on both sides of the aisle have made enormous contributions to this legislation. I want to thank Senators CRAIG, BURNS, COVERDELL, and GREGG for being the original cosponsors of the first bill I introduced in Congress, and to Senators HATCH and BROWN for their help.

And I must give a great amount of credit and thanks to our House colleagues.

Speaker GINGRICH also made this a high priority, and he so stated repeatedly. Chairman BILL CLINGER of the Government Reform and Oversight Committee and Congressman ROB PORTMAN were terrific teammates and diligent partners on this legislation. We have had other strong partners in Congressmen GARY CONDIT, DAVID DREIER, and TOM DAVIS.

I have often mentioned that mandate relief legislation was my top priority when I came to Congress. I want to acknowledge those members of my personal staff that worked so long and hard in helping me accomplish this important personal goal. My lead person in conference and the principal author of the final bill, my legislative director W.H. ''Buzz'' Fawcett, who was my city attorney when I was mayor of Boise, Gary L. Smith, my deputy legislative director who also came with me from Boise where he was a city council member and my administrative assistant, and my current administrative assistant in the Senate, Brian Waidmann who brought his invaluable experience and expertise on congressional process to our team.

But most of all I would like to share this victory with my family: my wife Patricia, my daughter Heather, and son Jeff. Perhaps only other Members of Congress can fully appreciate the sacrifices our families make on our behalf. I have a very special family that I appreciate very much.

I want to conclude by reading to you a quote from a Founding Father, James Madison. Here is what he said:

> Ambitious encroachments of the federal government on the authority of the state governments, would not excite the opposition of a single state, or of a few states only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened, plans of resistance would be concerted, one spirit would animate and conduct the whole.

James Madison, the great visionary, predicted that this sort of thing would happen by the Federal Government. But he also said that someone will band together and stop it. And that is what S. 1 is all about.

Mr. President, I yield the floor and reserve the remainder of my time.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, this is a day that has been long in coming. We have worked for the better part of 2 years to get this legislation to the point where it is now, out of conference and here to get its final stamp of approval by the U.S. Senate. And with the same action taking place over in the House, that means this legislation will finally go to the President, who has announced his support for this legislation.

This has been a long process. To those not directly involved in all the committee work and I do not know how many hundreds of meetings and so on involved with all of this, without having been involved directly with some of that, I think it is difficult to appreciate what has happened with regard to this legislation.

It is landmark legislation. I think we have come up with a very excellent product here, one that literally does change the relationship between the Federal, State and local governments for the first time in probably 55 or 60 years.

This is legislation that passed the Senate back in January by a vote of 86 to 10, and my hope is that we will be able to pass this bill through the House and Senate tomorrow morning and get it to the President shortly.

Before I go into a description of the conference report, I would like to provide just a little bit of background to the whole unfunded Federal mandates debate.

On October 27, 1993, State and local elected officials from all over the Nation came to Washington and declared that day to be ''National Unfunded Mandates Day.'' These officials conveyed a very powerful message to Congress and the Clinton administration on the need for Federal mandate reform and relief. They raised four major objections to unfunded Federal mandates.

First, unfunded Federal mandates impose unreasonable fiscal burdens on their budgets.

Second, they limit State and local government flexibility to address more pressing local problems like crime and education.

Third, Federal mandates too often come in a one-size-fits-all box that stifles the development of what might be more innovative local efforts—efforts that ultimately may be more effective in solving the problem the Federal mandate is meant to address.

And, fourth, they allow Congress to get credit for passing some worthy mandate or program, while leaving State and local governments with the difficult task of cutting services or raising taxes in order to pay for it. And that fourth item was probably the most important of all.

In hearings held by the Committee on Governmental Affairs in both this and the last Congress, we heard testimony from elected State and local officials from both parties representing all sizes of government—State, local, county, townships, all levels and all sizes of government. It was clear from the testimony that unfunded mandates hit small counties and townships just as hard as they do big cities and larger States.

I think it is worth stepping back and taking a look at the evolution of the Federal-State-local relationship over the last decade and a half, so we can

put this debate into some historical context. I believe the seeds from which sprang the mandate reform movement can literally be traced clear back to the so-called policy of new federalism, a policy which resulted in a gradual but steady shift in governing responsibilities from the Federal Government to State and local government over the last 10 to 15 years. During that time period, Federal aid to State and local governments was severely cut or even eliminated in a number of key domestic program areas. At the same time, enactment and subsequent implementation of various Federal statutes passed on new costs to State and local governments. In simple terms, State and local governments ended up receiving less of the Federal carrot and more of the Federal stick.

The actual cost of Federal mandates.

Let us examine the cost issue first. While there has been substantial debate on the actual costs of Federal mandates, suffice it to say that almost all participants in the debate agree that there is not complete data on Federal mandates to State and local governments. In fact, one of the major objectives of S. 1 is to develop better information and data on the cost of mandates and to force that to be considered up front. Likewise, there is even less information available on estimates of what potential benefits might be derived from selected Federal mandates—a point made by representatives from the disability, environmental, and labor community in the committee's second hearing in the last Congress.

Nonetheless, there have been efforts made in the past to measure the cost impacts of Federal mandates on State and local governments.

And those efforts do show that costs appear to be rising. Since 1981, CBO, the Congressional Budget Office, has been preparing cost estimates of major legislation reported by committee with an expected annual cost to State and local governments in excess of $200 million. According to CBO, 89 bills, with an estimated annual cost in excess of $200 million each, were reported out of committee between 1983 and 1988.

I would point out one major caveat with CBO's analysis—it does not indicate whether these bills funded the costs or not, nor how many of the bills were eventually enacted. Still, even with a rough calculation, CBO's analysis shows that committees reported out bills with an average estimated new cost of at least $17.8 billion per year to State and local governments. In total, 382 bills were reported from committees over the 6-year period with some new costs to State and local government. So, if anything, the $17.8 billion figure is a conservative estimate for reported bills.

Federal environmental mandates head the list of areas that State and local officials claim to be the most burdensome. A closer look at two of the studies done on the cost of State and local governments of compliance with environmental statutes does indicate that these costs appear to be rising. A 1990 EPA study, titled ''Environmental Investments: The Cost of a Clean Environment,'' estimates that total annual costs of environmental mandates from all levels of Government to State and local governments will rise from $22.2 billion in 1987 to $37.1 billion by the year 2000—an increase in real terms of 67 percent.

EPA estimates that the cost of environmental mandates to State governments will rise from $3 billion in 1987 to $4.5 billion by the year 2000, a 48-percent increase. Over the same timeframe, the annual costs of environmental mandates to local governments is estimated to increase from $19.2 billion to $32.6 billion. That is a 70-percent gain.

According to the Vice President's National Performance Review, the total annual cost of environmental mandates to State and local governments, when adjusted for inflation, will reach close to $44 billion by the end of this century.

The city of Columbus, in my home State of Ohio, also noted a trend in rising costs for city compliance with Federal environmental mandates. The mayor of Columbus, Gregg Lashutka, has taken a personal interest in this and has done a superb job in detailing what the impact is on a medium-sized U.S. city from Federal mandates.

Our Governor, George Voinovich, has represented the National Governors Association in his representation of wanting this legislation through all and has given a lot of information that has come from the Governors across the country on this. Probably the most definitive study of all, as far as the impact on the city, is what Mayor Lashutka has done in Columbus, OH.

In his study, the city concluded that its cost of compliance for environmental statutes would rise from $62.1 million in 1991 to $107.4 million in 1995. That is—in 1991 constant dollars—a 73-percent increase. The city estimates that its share of the total city budget going to pay for the mandates will increase from 10.6 percent to 18.3 percent over that timeframe. This is just one medium-sized American city.

In addition to environmental requirements, State and local officials in our committee hearings cited other Federal requirements as burdensome and costly. They highlighted compliance with the Americans with Disabilities Act and the Motor-Voter Registration Act, complying with the administrative requirements that go with implementing many Federal programs and meeting Federal criminal justice and education requirements.

Now, I note that while each of these individual programs or requirements clearly carries with them costs to State and local governments, costs which we have too often ignored in the past, I believe that on a case-by-case basis, each of these mandates has substantial benefits to our society and our Nation as a whole.

Otherwise I, along with many of my colleagues in the Senate, would not have voted to enact them in the first place. State and local officials readily concede that individual mandates on a case-by-case basis may indeed be worthy, but when looking at all mandates spanning across the entire mammoth of Federal laws and regulations, we begin to understand that it is the aggregate impact of all Federal mandates that has spurred the calls for mandate reform and relief.

The Advisory Commission on Intergovernmental Relations testified in our April hearings that the number of major Federal statutes with explicit mandates on State and local governments went from zero during the period of 1941 to 1964. In other words, we did not pass along the bill during that period from 1941 to 1964.

But then it went to the Federal mandates during the rest of the 1960's, went to 25 in the 1970's, and 27 in the 1980's. However, to truly reach a better understanding of the Federal mandates debate, we must also look at the Federal funding picture, vis-a-vis State and local governments.

Addressing that first under Federal aid and to State and local governments, the record shows that Federal discretionary aid to State and local governments to both implement Federal policies and directives, as well as complying with them, saw a sharp drop in the 1980's.

An examination of Census Bureau data on sources of State and local government revenue shows a decreasing Federal role in the funding of State and local governments. In 1979, the Federal Government's contribution to State and local governments' revenues reached 18.6 percent. By 1989, the Federal contribution of the State and local revenue pie had instead daily shrunk to 13.2 percent before edging up to 14.3 percent in 1991, the latest year data was available.

What contributed to the declining trend in the Federal financing of State and local governments? A closer look at patterns in Federal discretionary aid programs to State and local governments during the 1980's provides the answer. According to the Federal Funds Information Service, between 1981 and 1990, Federal discretionary program funding to State and local government rose slightly from $47.5 to $51.6 billion.

However, this figure, when adjusted for inflation, tells a much different story. Federal aid dropped 28 percent in real terms over the decade. A number of vital Federal aid programs to State and local government experienced sharp cuts, and in some cases outright elimination, during the decade.

In 1986, the administration and Congress agreed to terminate the General Revenue Sharing Program. We all remember that one. That was a program

that provided approximately $4.5 billion annually to local governments and allowed them very broad discretion on how to spend the funds.

Since its inception in 1972, general revenue sharing has provided approximately $83 billion to State and local government. Unfortunately, the Reagan administration succeeded in terminating the program. Congress followed its lead and approved that. There were other important Federal and State and local programs that were substantially cut back between 1981 and 1990. They include the economic development assistance, community development block grants, mass transit, refugee assistance, and low-income home energy assistance.

Luckily, under both the Bush and Clinton administrations, we managed to restore some of the needed funding—I repeat, needed funding—to these programs. And still, in real dollars, funds for discretionary aid programs to State and local governments remain today 18 percent below their 1981 levels. That is despite the fact we have put more of an unfunded mandates load onto the backs of the State and local governments.

Looking at our committee's legislative efforts in the last Congress, eight bills were referred to the Governmental Affairs Committee that touched on this aspect of the unfunded mandates Federal mandates problem.

After two hearings, we marked up a bill. I think it could be called, at least in part, a compromise bill. The basic part of it, though, was the bill that Senator KEMPTHORNE has submitted, and it became the vehicle that borrowed the best of the various provisions and requirements from the bills that had been submitted. It was basically—the basic bill—his work.

We worked closely in a deliberative, bipartisan fashion, and he was the de facto leadership on this issue. Along with other Members, and with the administration, we moved ahead with this legislation. What became known as the Kempthorne-Glenn compromise has the endorsement and strong support of the seven groups representing State and local governments. They are the National Governors Association, the National Conference of State Legislators, the Council on State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the International City Management Association. It had the backing of the Clinton administration, and was endorsed by such editorial boards as the New York Times, the Cleveland Plain Dealer, and other newspapers across the country, both large and small. That largely embodies or includes, also, all that we had last year in Senate bill 993.

Let me just say that on this bill, if there is anyone who can be looked at as the father of this bill and the one who really kept going on this and kept interest going, it is Senator KEMPTHORNE. He did a magnificent job on this bill, not only here in Washington, but he traveled all over the country, meeting repeatedly with different groups representing those seven organizations that I just mentioned in getting their views on this legislation and bringing it back, putting it together. And he did a superb job in keeping contact with all these people. He deserves the full credit for being the sparkplug for this legislation.

(Mr. GORTON assumed the chair.)

Mr. GLENN. Mr. President, let me explain what the bill does.

It requires the Congressional Budget Office to conduct State, local and tribal cost estimates on legislation that imposes new Federal mandates in excess of $50 million annually onto the budgets of State, local, and tribal governments. The current law requires these estimates at a $200 million threshold, and I believe that that high a figure allows a lot of Federal mandates to slip through without being scored. Two hundred million dollars spread equally among all the States may not be much, but if it falls particularly hard on any one State or any one region, which does happen with legislation, it can be a substantial impact.

Let me make clear, however, that what CBO will score here are new Federal mandates—new Federal mandates—not what State, local, and tribal governments are spending now to comply with existing mandates, nor what they are spending to comply with their own laws and mandates.

Second, and I think most importantly, is that the bill holds Congress accountable for imposing additional unfunded Federal mandates. We do this by requiring a majority point-of-order vote on any legislation that imposes new unfunded Federal mandates in excess of a $50 million annual cost to State, local, or tribal governments.

To avoid the point of order, the sponsor of the bill would have to authorize funding to cover the cost to State and local governments of the Federal mandate or otherwise find ways to pay for the mandate. This could come from the expansion of an existing grant or subsidized loan program or the creation of a new one or perhaps a raising of new revenues or user fees.

The authorizing committee must also build into the legislation certain provisions to go into effect if funds for the mandate are not fully appropriated or not appropriated at all. This was the basic thrust of the Byrd amendment which the House receded to in conference and accepted in its entirety. The House bill would have left the fate of an unfunded or underfunded mandate in the hands of the Federal bureaucracy rather than in the hands of Congress where it properly lies.

Under the Byrd amendment, the authorizing committee would have to put expedited procedures into the underlying intergovernmental mandates bill that would direct the relevant Federal agency to submit a statement based on a reestimate done in consultation with State, local, and tribal governments that appropriations are sufficient to pay for the mandate or the agency submits legislative recommendations to implement a less costly mandate or to render the mandate ineffective for the fiscal year.

Under the expedited procedures, the authorizing committee must provide for consideration in both Houses of the agency statement or legislative recommendations within 60 calendar days. After the 60-day time period expires, the mandate ceases to be effective unless Congress provides otherwise by law. And I will discuss the Byrd amendment in greater detail a little later in my statement.

The conference report on S. 1 also includes provisions for the analysis of legislation that imposes mandates on the private sector. CBO would have to complete a private sector cost estimate on bills reported by committee with a $100 million or more annual cost threshold. In the Senate bill, we had a threshold of $200 million and the House had $50 million as their threshold, so we split the difference and wound up with $100 million being our threshold.

We do exempt certain Federal laws from this bill. Civil rights and constitutional rights are excluded. National security, emergency legislation, and ratification of international treaties are also exempt.

I want to also point out that the bill does not prohibit Congress from passing unfunded Federal mandates. Let me repeat that. It does not prohibit Congress from passing unfunded Federal mandates. There may be times when it is appropriate, for whatever purpose, to ask State and local governments to pick up the tab for Federal mandates. But the legislation does force us to take into consideration the cost of the unfunded mandates up front, consider it in its entirety with a point of order to lie against it if it is not funded. But the debate over whether it is appropriate to ask State and local governments at times whether it is a constitutional matter or whatever it might be, to pick up the tab across the country—all States—let that debate take place on the Senate floor, as it will under this legislation, and let the majority work its will on the specific mandate in the legislation.

The Kempthorne-Glenn bill also addresses regulatory mandates. We all know how the Federal bureaucracy can impose burdensome and inflexible regulations on State and local governments, as well as on others who end up trapped in the bureaucracy's regulatory net. In the committee's November hearing in 1993, we heard testimony from Susan Ritter. She is county auditor for Renville County, ND. Ms. Ritter noted that she comes from the town of Sherwood in her State with a total population of 286 people, and they will have to spend $2,000, which is one-half of their annual budget on testing the water supply in order to comply with certain EPA regulations.

Clearly, there is no way that that town is going to be able to meet this kind of a requirement. So, consistent with the President's Executive orders, we have required that Federal agencies conduct cost-benefit analysis and assessments on major regulations that impact State, local, and tribal governments, as well as the private sector. We have allowed a limited judicial review of agency preparation of some of those assessments and analysis. The House would have allowed full scale judicial review of practically everything, of both the agency analysis and the CBO cost estimates. This could have been a way of almost shutting down the whole regulatory process, as we saw it.

Enactment of these provisions also would have resulted in what I termed the Lawyers Full Employment Act, and would have had the law firms along K Street breaking out the champagne all over. So we significantly curtailed and narrowed and focused the judicial review requirements, which I will discuss in a little more detail a little later on also.

Further under S. 1, agencies must develop a timely and effective means of allowing State and local input into the regulatory process. Given the State and local governments are responsible for implementing many of our Federal laws, it is not only fair they be considered partners in the Federal regulatory process, but it is also good public policy as well.

The bill also requires Federal agencies to make a special effort in performing outreach to the smallest governments. Then maybe we will be able to minimize the occurrence of situations like the one that took place in the town of Sherwood that I mentioned a moment ago.

Let me put the issue into a larger perspective. As we all know, the Federal, State, and local relationship is a very complicated, a very complex one. It is a blurry line between where one line's level of responsibility ends and another begins. All three levels of government need to work together in a constructive fashion to provide the best possible delivery of services to the American people in the most cost-effective fashion. After all, as Federal, State, and local officials, we all serve the same constituency.

Further, we serve the American people at a time when their confidence in all three levels of government may be at an all-time low. There are numerous explanations for this lack of confidence in government, and we will not go into a long discussion of those here. Vice President GORE's National Performance Review attributes ''an increasingly hidebound and paralyzed intergovernmental process'' as at least a part of the reason why many Americans feel that government is wasteful, inefficient, and ineffective. We need to restore balance to the intergovernmental partnership, as well as strengthen it so that government at all levels can operate in a more cost-effective manner.

Both the administration and a number of my colleagues have made proposals to shift a number of Federal programs and responsibilities to State and local governments. Clearly, as this mandates debate has shown us, I believe we ought to at least experiment to see if State and local governments can carry out some of these programs in a more effective fashion than we have been doing at the Federal level.

I know from my years as chairman of the Governmental Affairs Committee that Americans do want more efficient and less costly government, and I, for one, do not believe that efficiency and government need necessarily be an oxymoron statement. We worked on the Governmental Affairs Committee to bring forth better ways of dealing with efficiency in the Federal Government, such as the Chief Financial Officer Act, the Inspectors General Act, Financial Management Act, and so on, and a number of different things we have done in that area. So it is not that we have ignored the efficiencies of government, but certainly we want to make the Government a more efficient and better and less costly government.

That certainly is a big move. Maybe one way to help accomplish that objective is to grant more flexibility to State and local governments and let them run some of these programs.

Where I think we should proceed with some degree of caution, we need to remember the reason many of these programs became part of the Federal level was back some 50 or 60 years ago when the country was in dire straits and we were not able, either would not or could not, at the State and local level to address problems and concerns of our citizens that had been dealt with in the family and local communities up to that time. We found soup kitchens on the corners, and we had people because of weather changes also—we remember the movies, famous movies of the Okies going West with a mattress on top of the car, and so on. The United States had lost its way at that time.

I grew up in that Great Depression. I learned that State and local governments do not have sometimes the wherewithal and resources to meet all human needs. That is why President Roosevelt came through with the New Deal. That was to address economic and social problems that previously were dealt with by State and local governments or by the local communities and families themselves more likely. And we followed the New Deal up with the Great Society and moved more of these programs up to a national level.

Now, I am the first to say many of these programs may have gone too far and so we need to tailor things back somewhat. But there has been and will continue to be the need for Federal involvement and decisionmaking in many domestic policy areas. But that should not preclude us from maybe loosening the reins on State and local governments in some areas or even dropping them entirely.

But we should be careful and look at it on a case-by-case basis, not with a meat ax approach, not just swinging the ax and taking whole programs out without considering what is going to happen to a lot of people.

Unfortunately, the House, in its race to devolve, as they call it, and seemingly block grant the entire Federal Government, I believe, is moving much too quickly in areas which should require closer scrutiny and greater deliberation.

I believe that the conference report on S. 1 will help to restore the intergovernmental partnership and bring needed perspective and balance to future Federal decisionmaking.

I think S. 1 is landmark legislation, as I said in starting out my remarks. I think it is landmark legislation that will help to redefine for the first time in 60 years the entire Federal, State and local relationship. And so I obviously urge my colleagues to vote for passage of this legislation.

I have some remaining remarks concerning the conference report, and I would like to clarify some of the provisions of the proposed legislation.

I would first refer to section 425(a)(2)(B)(iii)(III) of the conference report. Subsection (III) establishes a timeframe for expedited procedures under which Congress will consider the agency statement or legislative recommendations under subsections (aa) or (bb). The timeframe is 60 calendar days from which the agency submits its statement or legislative recommendations. Under such an expedited process, the mandate would cease to be effective 60 calendar days after the agency submission unless Congress provides otherwise by law.

The Senate Parliamentarian has provided us with his interpretation of the 60-day time period in a letter which has been attached as an appendix to the conference report. The letter states that a sine die adjournment ''will result in the beginning again of the day counting process and that the sine die adjournment of a Congress results in all legislative action being terminated and any process [the counting of the 60 days] ended so that it must begin again in a new Congress.''

Thus, if Congress adjourns sine die prior to the end of the 60-day time period after the agency submission of its statement or legislative recommendations then the the 60-day time clock terminates and would start all over again, beginning with day one, when Congress convenes the next year. In those instances, Congress would then have 60 calendar days to act on the agency submission or the mandate would cease to be effective after the 60-day period expires. Depending on when we convened in January, the time period would likely expire sometime during the month of March.

After a discussion with the Parliamentarian, I understand that his interpretation on the counting of days would also apply after sine die adjournment of the 1st session of a Congress as well.

This clarification by the Parliamentarian over the counting of days under S. 1 is critically important. During election years we usually adjourn sometime in early October. My concern had been that with a continuous 60-day clock we might be forced in those years to reconvene for a lame-duck session in December to vote on an agency statement or legislative recommendation or otherwise the mandate would cease to be effective. I think as a general rule we should avoid having to convene lameduck sessions except in emergencies and times of national crisis.

So I am pleased that the Parliamentarian's ruling would avoid putting us in a situation of having to schedule lameduck sessions to deal with agency statements or legislative recommendations.

I would like to clarify another provision in the act. Section 202(a)(2) requires Federal agencies to prepare qualitative and quantitative assessments of the costs and benefits of Federal mandates as well as its effect on health, safety, and natural environment. I believe that the meaning of the word ''effect'' would include both qualitative and quantitative costs and benefits to health, safety and the environment as well as other impacts in those areas. Further, the statement of conferees states that included in the agency written statement under section 202 ''must be a qualitative, and if possible, quantitative assessment of the costs and benefits of the intergovernmental mandate.'' The word ''intergovernmental'' should be crossed out to make the sentence consistent with the statutory language. However, the sentence properly notes that a quantifiable assessment of the costs and benefits of a particular mandate may not be possible. This difficulty in preparing accurate quantitative assessments and estimates is noted in the statutory language for both section 202(a) (3) and (4). Indirect costs and benefits are particularly difficult to quantify and may be better addressed as part of an agency qualitative assessment of the Federal mandate.

In addition to addressing indirect costs and benefits, such a qualitative assessment would also include an assessment of considerations other than economic costs and benefits but are still necessary and important in guiding an agency in the promulgation of a major rule.

I would also like to discuss section 204, dealing with State, local, and tribal government input into the Federal regulatory process. Both the House and Senate bills required Federal agencies to develop an effective process to permit elected State, local, and tribal officials to provide timely and meaningful input into the development of agency regulatory proposals containing significant intergovernmental mandates. The language in both bills was consistent with the President's Executive order. The House bill, however, implicitly exempted all meetings and communications between Federal and State, local, and tribal officials under this process from the Federal Advisory Committee Act. The House felt that FACA was a bureaucratic encumbrance that impeded closer coordination between Federal, State, and local officials in the administration of programs with shared intergovernmental responsibilities. The Committee on Governmental Affairs has examined problems with FACA in the past and 3 years ago reported out unanimously legislation I wrote to reform FACA. The bill exempted elected State and local officials from some of its requirements. So I was sympathetic with the House position in this case. However, I believed that the House language needed to be tightened and narrowed so as not to give State and local officials an unfair advantage over others in the administrative process. So we developed compromise language in section 204(b) to provide an exemption from FACA for elected State, local, or tribal officials—or their designated employees with authority to act on their behalf—for meetings concerning the implementation or management of Federal programs that ''explicitly or inherently share intergovernmental responsibilities or administration.'' So we have been careful to limit the FACA exemption to instances where Federal officials and State, local, and tribal officials are coimplementers or managers of a program. We did not want to allow a FACA exemption in instances where State and local officials are acting as advocates, which is what the House bill would have likely allowed. Further, we have asked the administration to promulgate regulations to implement section 204 and to ensure that there are proper safeguards in place.

I would note that the effective date of title I is January 1, 1996 or 90 days earlier if CBO receives appropriations as authorized. Thus, title I would apply to any bill, joint resolution, amendment, motion, or conference report considered by the House or Senate on or after January 1, 1996.

Finally, I would like to describe and explain the provisions of section 401, which deals with the subject of judicial review.

The version of S. 1 that passed the Senate contained an absolute bar on all judicial review. However, the bill that passed the House authorized judicial review of regulatory agency compliance with many requirements in the bill.

The conferees agreed to a compromise between the Senate and the House positions. Our goal was to provide for meaningful judicial review, so as to reassure the regulated community that agencies will prepare certain key statements and plans that are called for under S. 1. However, we also wanted to assure that agency rules and enforcement would not be stayed or invalidated by the judicial review, and that the regulatory process would not get bogged down in excessive litigation. I believe that section 401 achieves these goals.

Sections 401(a) (1) and (2) provide for limited judicial review of agency compliance with section 202 and sections 203(a) (1) and (2). As I discussed a moment ago, section 202 requires preparation of statements to accompany significant regulatory actions, and sections 203(a) (1) and (2) require agencies to develop small agency plans before establishing certain regulatory requirements.

Subparagraph (A) of section 401(a)(2) provides that judicial review is available only under section 706(1) of the Administrative Procedure Act. Section 706(1) of the APA authorizes a court to compel agency action unlawfully withheld or unreasonably delayed. Subparagraph (A) also states that such review will only be as provided under subparagraph (B). Subparagraph (B) states that, if an agency fails to prepare the written statement under section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such a written statement.

Sections 401(a) (1) and (2) specify that the only remedy that a court may provide is to compel the agency to prepare the statement. So, for example, the court may not stay, enjoin, invalidate, or otherwise affect a rule. Nor may the court postpone the effective date of the rule, stay enforcement of the rule, or take any other action to preserve status or rights pending conclusion of the review proceeding or pending compliance by the agency with any court order to prepare a statement.

Furthermore, in this review under sections 401(a) (1) and (2), the court may not review the adequacy of a written statement under section 202 or of a written plan under sections 203(a) (1) and (2). This is because paragraph (2)(B) provides that a court may compel preparation of a written statement only if the agency actually fails to prepare the written statement under section 202 or actually fails to prepare the written plan under sections 203(a) (1) and (2).

Sections 401(a) (1) and (2) deal with the situation where rules that are subject to sections 202 and 203(a) and (b) undergo judicial review under Federal law other than section 401(a) (1) and (2).

Paragraph (3) states that, in any such judicial review, the failure of an agency to prepare a required statement or plan shall not be used as a basis for staying, enjoining, invalidating, or otherwise affecting the agency rule. Subparagraph (3) further provides that, if the agency does prepare a statement or plan, any inadequacy of the statement or plan shall not be used as a basis for staying, enjoining, invalidating, or otherwise affecting the agency rule. Subsection (3) not only forbids a

court to use the inadequacy or failure to prepare a statement or plan as the sole basis for invalidating or otherwise affecting a rule; the subsection also prohibits the court from using such inadequacy or failure as any basis, even if considered together with other deficiencies in the rulemaking, for invalidating or otherwise affecting a rule.

Subparagraph (4) states the circumstances when the information generated under section 202 or section 203(a) (1) and (2) may be considered by a court in the course of reviewing the rule under law other than sections 401(a) (1) and (2). Subparagraph (4) has two elements. First, the information may be considered by the court only if it is made part of the rulemaking record for judicial review. Second, if the information is made part of the record for review, then the information may be considered by the court as part of the entire record for the judicial review under the other law.

The question of whether the information is made part of the record for judicial review is not determined by any provision of S. 1; the contents of the record is governed by the law and court procedures under which the judicial review takes place. In judicial review of agency rules, the agency makes the initial decision of what documents to include in the rulemaking record for judicial review. Thus, the agency would make the initial decision of whether to include any information generated under sections 202 and 203(a) (1) and (2) in the record for judicial review. If the agency makes such information part of the record for judicial review, the court may then proceed to consider such information as part of the record for judicial review pursuant to the other law.

In no event may a court review whether the information generated under sections 202 or 203(a) (1) or (2) is adequate to satisfy requirements of S. 1. Such review is clearly prohibited by subparagraph (3). However, in reviewing a rule under law other than sections 401(a) (1) and (2), if information generated under section 202 or 203(a) (1) or (2) is included in the record for review, the court may consider whether such information is adequate or inadequate to satisfy the requirements of such other law.

Any information that is made part of the record subject to judicial review, including information generated under sections 202 and 203(a) (1) and (2) that is made part of the record, may be considered by the court, to the extent relevant under the law governing the judicial review, as part of the entire record in determining whether the record before it supports the rule under the arbitrary capricious or substantial evidence or other applicable standard. Pursuant to the appropriate Federal law, a court looks at the totality of the record in assessing whether a particular rulemaking proceeding lacks sufficient support in the record.

Section 401(a)(5) states that a petition under paragraph (2) to compel the agency to prepare a written statement shall be controlled by provisions of law that govern review of the rule under other law. This applies to such matters as exhaustion of administrative remedies, the time for and manner of seeking review, and venue. Consequently, the petition under paragraph (2) may be filed only after the final rule has been promulgated, at which time review of the rule may be available under other law. The petition under subparagraph (2) may be filed only in a court where a petition for review of the rule itself could also be filed under other law. And the same requirements for exhaustion of administrative remedies that would apply in review of the rule shall also apply to the petition under paragraph (2). However, if the other law does not have a statute of limitations that is less than 180 days, then paragraph (5) limits the time for filing a petition under paragraph (2) to 180 days.

Section 401(a)(6) states the effective date for the judicial review provided under subsection (a). The effective date is October 1, 1995, and subsection (a) will apply to any agency rule for which a general notice of proposed rulemaking is promulgated on or after such date. Consequently, in the case of rules for which a general notice of proposed rulemaking is promulgated before October 1, 1995, subsection (a) does not apply. For these rules that are not subject to subsection (a), a petition under subsection (a)(2) may not be filed, and information generated under section 202 and 203(a) may not be considered as part of the record for judicial review pursuant to subsection (4).

Section 401(b)(1) broadly prohibits all judicial review except as provided in subsection (a). Thus, all of title I, those portions of title II not expressly referenced in subsection (a), and all of title III are completely exempt from judicial review. This section also prohibits judicial review of any estimate, analysis, statement, description or report prepared under S. 1. This list is intended to cover all forms of documentation or analysis generated under S. 1, so that no such documentation or analysis is subject to any form of judicial review except as provided in subsection (a). For example, not only is an agency's compliance with section 205 not subject to judicial review; but also the regulatory alternatives and the explanations prepared under section 205, and other records of the agency's activities under section 205, may not be reviewed in any judicial proceeding.

Subsection (b)(2) further states that, except as provided in subsection (a), no provision of S. 1 shall be construed to create any right or benefit enforceable by any person.

Finally, the provisions of S. 1 do not affect the standards of underlying law, under which courts will review agency rules. In other words, insofar as they provide the basis for judicial review of a rule, neither the standards of the statute that authorizes promulgation of the rule, nor the procedural standards for rulemaking under the authorizing statute or the APA, nor the standards for judicial review of the rule, nor agency or court interpretations, are affected by the provisions of S. 1.

Likewise, to the extent that applicable law vests discretion in an agency to determine what information and analysis to consider in developing a rule, nothing in S. 1 changes the standards under which a court will review and determine whether the agency properly exercised such discretion. Thus, even where the authorizing statute is vague or silent about what factors the agency must or may consider in promulgating a rule, a court reviewing the rule may not consider the requirements of section 202 or of any other provisions of S. 1 in interpreting the requirements of the statute. This is because, except as provided by a petition under section 401(a)(2), section 401 prohibits all judicial review of compliance or noncompliance with S. 1. If courts were allowed to interpret S. 1 as implicitly amending or superseding the provisions of another statute or to constrain the agency's discretion under another statute, and if the conference report had been written to allow a court to consider an agency's compliance or noncompliance with these amended or superseded provisions of the other statute, this would be the same thing as judicial review of the agency's compliance or noncompliance with the provisions of S. 1. But section 401 of the conference report clearly prohibits courts from doing this.

Furthermore, even when an agency prepares any statement under section 202, nothing in section 202 authorizes or requires consideration of the statement in development of the rule. Where the conference report intends to require that agencies consider certain factors, the language of the bill is drafted to say so explicitly, as in the provision of section 205 requiring that agencies consider a reasonable number of regulatory alternatives under certain circumstances. Furthermore, an agency may choose to prepare a statement even if consideration is clearly prohibited under other statute, and an agency may prepare a statement even if the applicable statute affords discretion to the agency to consider or not to consider the statement. Therefore, neither the provisions of S. 1 nor the fact that an agency prepares any statement under S. 1 affects the standards and interpretations under which courts will review the rule and the agency's exercise of discretion in developing the rule.

Mr. President, I would like to close by acknowledging some people who deserve a great deal of credit for this legislation. This has been tough legislation to bring through, and we had a long debate in the Chamber about it

after it came out of committee. We remember some of the difficulties of getting it out of the committee, and I will not go into all the details of that.

I indicated earlier in my remarks, of all the people who have brought this through, Senator DIRK KEMPTHORNE certainly deserves credit as the spark plug for this legislation. I have been glad and honored to join him in it. W.H. ''Buzz'' Fawcett, who is sitting here with him today, deserves credit for his work on this, and Gary Smith, who is on the floor also today.

On our side of the aisle, those people who deserve a tremendous amount of credit are Sebastion O'Kelly, who is with me here today, who has worked on very little but this for the last couple of months, I guess, or ever since we came back into session; Larry Novey, who is not on the floor with us today—yes, he is back in the back. Larry worked on this legislation also, as did our minority staff director on the Governmental Affairs Committee, Len Weiss, who is here with us today.

Congressman ROB PORTMAN over in the House, who was the real sponsor of this and the prime mover of it, deserves a lot of credit, along with his principal staff person who worked on this, John Bridgeland; Congressman WILLIAM CLINGER over there, and the person on his staff, Christine Simmons, who worked so hard on this; Congresswoman CARDISS COLLINS and her staff person, Tom Goldberg, who met repeatedly with the group; GARY CONDIT over there, and his staffer, Steve Jones, played a vital role in this.

And back on our side again, Senator JIM EXON and Meg Duncan on his staff, and on our Governmental Affairs staff again Senator CARL LEVIN and Linda Gustitis, who has done such yeoman work on a number of pieces of legislation on our Governmental Affairs Committee staff.

I know to people out there maybe who watch this on television, the names are not associated directly with the people involved. You may or may not have seen them in the Chamber from time to time when we were debating the bill, sitting here beside us, keeping some of the legislative matters straight as we were debating some different parts of this bill. But they are people who should be known because they are the ones who have to write things up overnight, spend two-thirds of the night writing things up for our approval in the morning to go to another meeting and try to work things out, work differences out and different views on legislation. And this legislation did have a lot of things we had to work out together. It was together that we worked these things out. There was a lot of togetherness, legislative togetherness that let us get to the point where we are today.

So I urge my colleagues to vote for passage of this bill. I think it is landmark legislation, and we have so many people who have been part of this I probably have left some people out. I regret that. But I am glad we have come to this day, and I look forward to tomorrow when we will have a record rollcall vote. I hope it will be unanimous.

I yield the floor. I reserve the remainder of my time.

Mr. KEMPTHORNE. Mr. President, I certainly appreciate the remarks of the Senator from Ohio and the great role that he has played in bringing us to this point where we can have successful passage of this conference report.

I should like to associate myself with his remarks about the different staff members who have all played a key role. I would now like to yield 7 minutes to the Senator from Minnesota, who again has been one of those Senators on this issue who every time we needed to have assistance was there.

Mr. GRAMS. I thank the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise today in support of the unfunded mandates conference report.

By forcing Congress to know the costs of any legislation it passes down to our States, counties, cities, and townships, by forcing Congress to vote—openly in the light of day—to specifically impose those costs if it does not come up with the dollars itself, this legislation is a good first step toward loosening the noose of costly Federal requirements.

And it is also a good first step toward a return to States rights, and an end to what has too often amounted to taxation without representation by the Federal Government.

In Redwood Falls, MN, former Mayor Gary Revier echoes what I have heard time and time again since debate began in Washington on unfunded mandates.

He said to me recently:

> How can cities like Redwood Falls meet their own needs when our scarce dollars are continually going to meet Washington's needs?
>
> How do we tell our residents that we may need to reduce services or raise local taxes because a bureaucrat 2,000 miles away thinks he knows best how to spend our dollars?

I agree with Mr. Revier. In fact, I have asked him to chair my unfunded mandates task force, where he will play a key role in formulating a strategy to reduce the Federal Government's reach into Minnesota pockets.

Even with the Unfunded Mandates Relief Act in place, we must be vigilant of the unintended costs our actions here in Congress may represent on the local level.

Future legislation needs to be carefully scrutinized so that we avoid new and unwelcome financial pressures on the local level.

Other regulatory relief measures we consider this year will further enable local governments to get back to doing local business, and away from having to do the Federal Government's bidding.

We could learn a lot from Florida Gov. Lawton Chiles, who wants to repeal at least half of his State's nearly 29,000 regulations and replace them with loose guidelines, guidelines that promote accountability.

While trading archaic rules for common sense may not make sense to the Washington bureaucrats, it makes a lot of sense back home, and it is an approach we ought to encourage on the Federal level.

For all the good accomplished by the Unfunded Mandates Relief Act, it leaves untouched most of the 200 previously enacted unfunded mandates passed by this institution—and passed on to local governments—over the last two decades.

Implementing the requirements of the 10 costliest mandates—contained in bills like OSHA, the Clean Water and Clean Air Acts, and the Endangered Species Act—cost cities an estimated $6.5 billion in 1993.

By the year 2000, the price tag for those mandates will rise to nearly $54 billion.

It may be too late to change things with this bill, but it is not too late to change things with the next.

In the House, Speaker GINGRICH will begin monthly Corrections Days, and I urge my colleagues in the Senate to follow suit.

We will pull out the most inefficient Federal laws and regulations and bring them up for a vote.

We will begin stripping away the layers of Federal bureaucracy that, like bad varnish over good wood, have obscured for too long the role of the Government envisioned by our Founding Fathers.

Maybe, with the help of the Unfunded Mandates Relief Act and 2 years of Corrections Days, we will be able to say by the end of the 104th Congress that we have truly made a difference to the people back home who sent us here to change Washington.

I reiterate, this change begins with passage of the Unfunded Mandates Relief Act.

With that, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I note Senator HUTCHISON was here a short time ago. She had hoped to speak on this issue but unfortunately a previous commitment had caused her to leave the floor. I wish she could have been able to remain because during the 11 days of the debate that we had on S. 1, there were different occasions when it was necessary to seek someone with her background in State government to come be an advocate and spokesperson for this bill. Whenever we called, she was there. I want to acknowledge her role in this as well.

With that, Mr. President, I know there are additional speakers who are on their way to the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator suggest the time be divided equally on both sides, under the quorum call?

Mr. KEMPTHORNE. Mr. President, that will be fine.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Who yields time?

Mr. KEMPTHORNE. Mr. President, I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the distinguished Senator from Idaho for yielding.

Mr. President, I have been most interested in what I think is our first major success in both Chambers. And certainly it is due to the perseverance of the Senator from Idaho that we are where we are today. I watched with interest what is happening in the House and, of course, what is happening over here. I think it is so significant because this symbolizes what I think is one of the products of the revolution that took place on November 8.

I have often joked around with many Members of both bodies in Washington. I said, ''If you want to know what a real tough job it is to become a mayor in a major city, there is no hiding place there. If they do not like you, they trash you and they throw it in your front yard.''

Of all the problems—and even though there are people serving in this body, distinguished Senators, who have had distinguished careers, including being mayor of major cities such as the Senator from California, Mrs. FEINSTEIN, and many of us may disagree philosophically on certain subjects, but if you were to ask any city official, any mayor, any city commissioner, city council member in America what the most serious problem is, they will not say, as you might expect, the crime problem or the welfare problem or other problems like that. They would say it is unfunded mandates. I had the honor of serving as mayor for three terms in the city of Tulsa, OK, with a half-million people.

There are so many aspects of unfunded mandates that people do not talk about because sometimes it is politically sensitive to talk about it, such as the Davis-Bacon Act and how that affects what we do with capital improvements in many of our large cities.

I can remember when I became mayor of the city of Tulsa, even though I was conservative it was very uncomfortable to do this. I had to pass a 1-cent sales tax increase for capital improvement because our city had been neglected in its infrastructure. Unfortunately, it is a political reality. Until you can visibly see the problems, you do not really do anything about it. So we passed it.

We calculated afterward that, if we had not had to comply with the Davis-Bacon Act, the taxpayers would have benefited so much more than they did. Without the Davis-Bacon Act, we could have produced 17 percent more in capital improvements for the citizens of Tulsa. Keep in mind this is all totally funded within the city with a 1-cent sales tax increase—6 more miles of roads and streets within one city, Tulsa, OK; 34 more miles of water and sewer lines. And we could have hired—this is simply the labor issue that you hear so much about—we could have hired 500 more people during that timeframe. At that time our unemployment was high. It was something that we needed. So it was one of those deals where no one would have been punished by our successfully not having to serve under the mandates of the Davis-Bacon Act.

A lot of us in Oklahoma put the pencil to these things so that we would know how many dollars it saved. The motor-voter law that came in is going to cost about $1 million a year. We are still working with that right now. That was something that came in that sounded very good when it surfaced. A lot of the authorities were certainly well meaning. But it was a very expensive thing for the people of Oklahoma. We went and looked at some of the things that happened in the city. Certainly we all know or are sensitive today to the League of Cities which is having their annual meeting here in Washington.

In one city, Oklahoma City, the compliance with storm water management and the Clean Water Act, in Oklahoma City alone it is estimated to be $2.7 million. The transportation regulations, which is the metric conversion, some of their anticipated fees are in excess of $2 million over the next 5 years. Land use regulations—that is the recycling and landfill requirements that have come—$2.5 million; the Clean Water Act, Safe Drinking Water Act is somewhere in the millions. We cannot even put the pencil to that.

In my city of Tulsa, OK, the other large city in Oklahoma, the Clean Water Act compliance was $10 million. The Safe Drinking Water Act was $16 million. The solid waste regulations, $700,000. And the lead-based paint, because it is a unique industry which we have there, it will cost in excess of $1 million. But when you look at the smaller communities like Broken Arrow, OK, the Clean Water Act, the storm water regulations were $100,000; the safe drinking water regulations were $40,000. This is a small community that has a very difficult time making ends meet. Yet, they look at these and they wonder why is it that we in Washington somehow have this infinite wisdom that we know what is better for them and we are willing to mandate things for them to do. Yet, we are not going to fund it.

I think if we face the reality and the truth, Mr. President, I suggest that it is because people in Washington, after being here for a while, cannot resist the insatiable appetite to spend money we do not have. One tricky way of doing that is to take credit for something politically at home in terms of the environment or something that we are needing to do that generally the people want and turn around and cause the people at home to pay for it.

I think we should look at this in another way, also. That is, what is going to happen with the frustration around the country if we do not do this? I was heartened the other day to see what is happening in Catron County, NM. In the frustration of dealing with the U.S. Forest Service, they enacted the U.S. Constitution as a county ordinance and put the Federal officials on notice to show up at the county supervisors meeting to get permission to impose future mandates.

I think we are looking at something here that either we do, or it is going to be done for us. I have never been prouder of an organization that is able to come in on both the House and Senate side and recognize that this is not a Republican program, this is not a Democratic program, this is not a conservative or liberal program; this is something that everyone is for if they are really for getting the maximum out of the tax dollars that are paid.

So, again, let me throw all the accolades I can on the distinguished Senator from Idaho, who has been so effective in getting this through. Thank you on behalf of all America.

I yield the floor.

Mr. KEMPTHORNE. Mr. President, I want to thank the Senator from Oklahoma. Not only is he a tremendous addition to the U.S. Senate, but his experience as a former mayor—I really think there are few training grounds that can better equip you for the issues we deal with than to be a mayor who deals with the pragmatic issues of government. He is a welcome addition here.

I yield 7 minutes to the chairman of the Budget Committee, the Senator from New Mexico, Senator DOMENICI.

Mr. DOMENICI. Mr. President, I know that the occupant of the chair would like the Senate to finish its business at the earliest possible moment. While he has not told me that, it seems to me that is the attitude he exhibited when I told him I was going to speak. I promise you that it will be reasonably interesting and very, very short.

First, let me say that this bill could not be passed by the U.S. Senate, this conference, at a better time, because in the confines of this city over the last 72 hours, councilmen and mayors and councilwomen from all across America were here as part of the National League of Cities' conference. I used to belong to that organization many years ago when I was an ex officio

mayor of my home city. And our distinguished Senator, to whom we extend accolades here today, Senator KEMPTHORNE, also served as mayor, but much later than I. I knew about the government way back then, and he knew about it even more vividly.

But I might say to the Senate that there is no question that the exhilaration in the language and words of thanks and profuse gratitude from those who came from far and wide across America as mayors and council people, saying this was the first step in some kind of revitalization of federalism in a prudent and realistic manner, seem to me to be right on the mark. We were on the mark when we passed it.

So this bill begins a redefinition of the relationship between the Federal Government, States, and local governments and even our Indian tribes. In addition, due to the provisions of title II of this bill, it also begins a little bit to move the relationship of the Federal Government's regulatory processes, vis-a-vis the private sector, in a direction of somewhat more accountability for the bureaucracy's actions that bind our American people and business people. We are not there yet on private sector mandates. This is the very first step.

In the past, we have piled mandates on the States and the American people with very little idea of their economic impact. It seems to me these mandates were imposed with too much confidence that we could leave very open-ended, generalized kinds of authority to the regulators, expecting them to establish commonsense regulations. Instead, we have found the exact opposite. In many instances, you have to stretch your mind in terms of trying to figure out how they could arrive at certain regulations from the laws we have passed.

So, at the very best, we did not fully understand the cost of our laws, the cost and implications of our regulations on State and local governments and tribal governments, or the private sector. At the worst, we had no idea how much these laws and regulations cost the American people. One estimate places the aggregate cost of existing mandates from hundreds of laws and thousands of regulations at $580 billion annually.

Somebody pays that and somewhere it finds itself in either the cost of living of our people, or the cost of buying goods and services from our companies, because this huge cost does not just disappear into the ether. It is there every day, in our front rooms, kitchens, on our grocery shelves, the furniture and gasoline we buy, and all of the other things that we have seen fit to regulate without any real evidence of the risk and the cost and how it affects people.

In my own State—I repeat to the Senate—local officials, whether it be the secretary of state or labor implementing motor vehicle registrations, or the mayor of the little town of Las Vegas, NM, attempting to meet the needs of his small city, I have heard their appeals and they clearly are tired of the Federal Government telling them precisely how to do things by regulation when they believe they could do just as well in different ways at less cost to their people.

Small business in New Mexico first points to Federal regulations when asked what is slowing down employment and economic growth and causing them to expand less than they think they could. Their answer, I repeat, is most frequently: Regulations that burden us unduly, that cost more than they are worth. They are even raising this today more frequently than they are talking about higher taxes and how taxes burden them.

That is not to say that taxes are not a burden to small business and that they would not like to see some relief. But I am giving you my best version of what I have heard for the last 14 months, because I did call small business together in New Mexico. We had an advocacy group and we hold it together, and we have had about 800 small businesses go to five cities and just lay before me what is wrong with the Federal Government. It comes up over and over again that they are being regulated beyond belief, at costs that are significant, with achievements and goals that are irrelevant or very misleading in terms of their worth.

So I am hopeful that this bill will change the culture of the Federal Government by modifying the process by which we impose mandates on our people. This bill requires Congress and Federal regulatory agencies to consider the impact of mandates before they are legislated and implemented.

I congratulate Senator KEMPTHORNE on this bill. I congratulate his staff and my staff, some of them from the Budget Committee. He is just a freshman Senator, but actually we have all found that he is a powerful one and a good one. He introduced the bill, and our leader, Senator DOLE, said, ''Manage it, since you feel so strongly about it.''

I remember him asking me, ''Do you think I can do it? What is managing a bill all about?''

And I said, ''Nobody can tell you until you have done it.''

I asked him the other day, and he had a mixed reaction to it all. He is not so leery about managing another one, but he was not totally sanguine about what he had to go through either.

We do have to go through some contortions here on the floor to accommodate fellow Senators. He, obviously, had to do that. And for some who wanted to delay this process, he had to do that.

But over the past 2 years I helped where I could and I believe we strengthened the bill in many respects. First, through Senator EXON's and my efforts, the point of order in this bill has been broadened to apply to all legislation and the bill's new legislative mandate control procedures have been folded into the Budget Act, where we have established precedents to show us how a point of order will work and how it will not work.

Second, Senators NICKLES, DORGAN and myself have worked to make sure that the new procedures in this bill apply to the private sector.

This bill may be just a start in that direction, but let me suggest for those who are overburdened in the private sector, this bill will send a signal that we have not forgotten about them as we talk about mandates. Because many small businesses in America, because of the type of regulations being imposed and the attitude of those who impose it, believe the Federal Government is their adversary, their enemy, not their friend, not working in partnership and cooperation to see that regulations and the mandates of our laws get carried out. This bill is going to make one first step. Agencies are going to have to assess the impact on small business, and it holds agencies accountable for their actions. There is one judicial review process that will be available to them.

I am very hopeful that, as we move through regulatory reform, we will find some more precise and better ways to address the huge, huge almost malaise that is out there from the regulations and that we will start to make sense of it. And if, in a couple of years, the small business community is saying, ''Our Government cares about us, they work with us, the regulators work with us instead of starting as enemies and wanting to penalize us, to fine us,'' we will have made a very giant step in the right direction.

I thank Senator KEMPTHORNE for yielding me time and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I wish to thank Senator DOMENICI for his comments. Again, we have a former mayor who has just spoken, and who, from experience, knows what these unfunded mandates are all about, but more importantly helped do something about it. During what was the Christmas recess, when, traditionally, there is some time off, we did not take the time off. We worked diligently so that we could be ready with S. 1, so that it could be ready the first day.

So I appreciate Senator DOMENICI's help on that. And to acknowledge his staff, Bill Hoagland, Austin Smythe, and Kay Davies, who worked diligently with us through this process.

Mr. President, I also think it is worth noting—and this is important—that of the conferees that were appointed—5 in the Senate, 8 in the House; a total of 13—we stated going into this, Senator GLENN has affirmed this point repeatedly, that this was a bipartisan effort.

I think it is significant that three Democrat Members of the House were

appointed to the conference and not all three had voted for this, which, at that time, was H.R. 5 in the Senate. Not all voted for it but, significantly, all Members, all 13 conferees, signed this conference report. CARDISS COLLINS, EDOLPHUS TOWNS, and JOE MOAKLEY, we want to thank them for their efforts throughout this process. Again, you have a conference report now that has been unanimously signed by all conferees.

Mr. ROTH. Mr. President, as Chairman of the Governmental Affairs Committee, I am pleased to join with the Senator from Idaho in bringing to the floor this conference agreement on the unfunded mandates legislation. In chairing the conference on S. 1, Senator KEMPTHORNE did an excellent job of preserving the strong bipartisan support for this important reform that was the hallmark of its passage in both Houses.

This bill, as it now appears before us, is a careful balance of the demands for strong, effective reform, with the necessity for reasonable procedures and practical requirements. For example, we have provided for judicial review of agency compliance with requirements for certain types of analysis of regulatory impacts but without allowing such review to become a device that grinds the regulatory process to a halt. We require agencies to seek the least costly or least burdensome option when developing regulations but we only require that they do so for a reasonable number of alternatives.

We have also struck fair compromises where the two versions of the legislation imposed differing requirements. For example, we now require a Congressional Budget Office analysis of any mandate on the private sector that exceeds $100, million per year in costs while the original Senate bill had set the threshold at $200, million and the House threshold had been $50, million. We have also tailored the point of order provisions to the unique procedural needs of each of the two Houses.

And while the legislation aims primarily at future Federal mandates in its point of order and regulatory procedures provisions, it also acknowledges that existing mandates may need to be rethought. It does this by charging the Advisory Commission on Intergovernmental Relations with studying and reporting to us on effects of the current burdens imposed by such mandates. It asks ACIR to recommend how best to end mandates that are obsolete or duplicative. It also asks for recommendations on how we might grant State and local governments more flexibility in complying with those mandates that ought to be retained.

In doing all of this, the conferees have developed a final version of this much-needed reform that I can strongly commend to my colleagues. This is due in large measure, as I have already mentioned, to the diligent work of Senator KEMPTHORNE, who has long championed this reform. He and his staff are to be commended for bringing us this far.

I also want to acknowledge the active role of Senator GLENN in shaping this final product. Senator GLENN and his staff have worked very hard over the past year and a half, to ensure that this legislation was able to have solid bipartisan support.

I am pleased to have worked with my two colleagues, and with the other conferees, to get us to this point. I know that my own staff has spent many long hours over the past several months to help in this effort, working closely with the staffs of the other conferees.

The bill now before us represents a landmark reform in the relationship between the Federal Government, and State and local governments. I urge all Senators to give it their strong support.

Mr. KEMPTHORNE. Mr. President, I thank Senator ROTH again, as I mentioned earlier, for his leadership and for the assistance of his staff, Frank Polk and John Mercer.

TREATMENT OF DISABILITY LAWS UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995

Mr. HARKIN. Mr. President, I would like to enter into a colloquy with Senators EXON and GLENN, floor managers of the Unfunded Mandates Reform Act of 1995, regarding the impact of this legislation on the Americans With Disabilities Act [ADA], title V of the Rehabilitation Act of 1973, and the Individuals With Disabilities Education Act [IDEA].

Mr. EXON. I would be pleased to enter into a colloquy with my colleague, Mr. HARKIN, who served as the chairman of the Subcommittee on Disability Policy of the Committee on Labor and Human Resources from 1987–95 and is currently ranking member of the subcommittee.

Mr. GLENN. I too would be pleased to enter into a colloquy with Mr. HARKIN, who was also the chief sponsor of the ADA and the most recent bills reauthorizing the Rehabilitation Act of 1973 and the IDEA.

Mr. HARKIN. The ADA and sections 503 and 504 of the Rehabilitation Act of 1973 are civil rights statutes protecting individuals from discrimination on the basis of disability. It is my understanding that these statutes are explicitly excluded from coverage under the Unfunded Mandates Reform Act of 1995. Is my understanding correct?

Mr. GLENN. The Senator is correct. The ADA and sections 503 and 504 of the Rehabilitation Act of 1973 are explicitly excluded from coverage under the Unfunded Mandates Reform Act of 1995. Specifically, the bill provides that the provisions of this Act shall not apply to any provision in a bill or joint resolution before Congress and any provision in any proposed or final Federal regulation that establishes or enforces any statutory rights that prohibit discrimination on the basis of * * * handicapped or disability status.

Mr. HARKIN. I thank the Senator. It is also my understanding that the Unfunded Mandates Reform Act of 1995 includes a definition of the term Federal intergovernmental mandate and this definition explicitly excludes discretionary grant programs—except certain entitlement programs—that is, any provision in a bill or joint resolution that includes a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

IDEA is a voluntary discretionary Federal program. Therefore, it is my understanding that IDEA is not subject to the provisions of the Unfunded Mandates Reform Act of 1995 because it is not considered a Federal intergovernmental mandate. Is my understanding correct?

Mr. EXON. The Senator is correct. Because IDEA is a voluntary discretionary Federal program, it is not considered a Federal intergovernmental mandate. Therefore, none of the provisions applicable to Federal intergovernmental mandates included in the legislation apply to IDEA.

Mr. HARKIN. As the Senator knows, part B of IDEA—also known as Public Law 94–142—was enacted in 1975. Both the House and Senate reports that accompany the original legislation clearly attribute the impetus for the act to two Federal court decisions rendered in 1971 and 1972. As the Senate report states, passage of the act followed a series of landmark court cases establishing in law the right to education of all handicapped children. The U.S. Supreme Court in *Smith* v. *Robinson,* 468 U.S. 992, recognized that part B of IDEA is a comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children. The Court cited another portion of the Senate report, which stated, ''It is the intent of the Committee to establish and protect the right to education for all handicapped children and to provide assistance to the states in carrying out their responsibilities under State law and the Constitution of the United States to provide equal protection under the law.'' The Supreme Court then explained that ''The [IDEA] was an attempt to relieve the fiscal burden placed on States and localities by their responsibility to provide education of all handicapped children.''

It is my understanding that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to any provision in a bill or joint resolution before Congress that enforces constitutional rights of individuals. In light of the statements of congressional intent and the conclusions reached by the U.S. Supreme Court, would you agree with me that IDEA enforces constitutional rights of individuals and as such is excluded from coverage under the Unfunded Mandates Reform Act of 1995?

Mr. EXON. I agree with the Senator's conclusion in light of the statements of congressional intent he cited to and

the conclusions reached by the U.S. Supreme Court.

Mr. HARKIN. It is also my understanding that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to IDEA because, like the ADA and section 504 of the Rehabilitation Act of 1973, IDEA is a civil rights statute that establishes or enforces statutory rights that prohibit discrimination on the basis of handicapped or disability status.

Mr. EXON. I agree with that conclusion.

Mr. HARKIN. I thank the Senator for entering into this colloquy with me. I ask unanimous consent that a memorandum prepared by the American Law Division of the Congressional Research Service regarding the applicability of the Unfunded Mandates Reform Act of 1995 to the ADA, IDEA, and the Rehabilitation Act of 1973 be printed in the RECORD.

Mr. GLENN. I thank the Senator for raising these important issues.

Mr. EXON. I also wish to thank him for raising these issues.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, January 23, 1995.

To: Senator Harkin, Attention: Bob Silverstein.

From: American Law Division.

Subject: Unfunded Federal Mandates Bill and the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

This memorandum is furnished in response to your request for an analysis of the language of S. 1 and H.R. 5, 104th Cong., 1st Sess., to determine if the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 et seq., and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., would be covered under these bills. It should be emphasized that these bills are currently undergoing extensive debate and amendment. This memorandum is based on the language contained in the Senate bill as reported out of the Senate Governmental Affairs Committee on January 11, 1995 and the Senate Budget Committee on January 12, 1995, and on the language contained in the House bill as reported out of the House Committee on Rules on January 13, 1995.

These bills are both referred to as the "Unfunded Mandate Reform Act of 1995." Basically, both bills, with some variance in details, would establish new congressional procedures for identifying and controlling certain existing as well as new unfunded federal mandates. The bills set forth new congressional procedures that would prohibit the House and Senate from considering legislation that creates new mandates or changes existing mandates from direct costs over a statutory threshold unless it also includes a source of financing or a guarantee that any such mandates will be repealed if the financing is not provided. Other provisions in the bills relate to the establishment of a Commission on Unfunded Federal Mandates that is required to review existing federal mandates to state, local, and tribal governments and to the private sector, and to make recommendations regarding possible changes in these mandates. There are also provisions requiring federal agencies to assess the effect of federal regulations on state, local and tribal governments and on the private sector and to make public such assessments for federal mandates costing more than $100 million to implement.

Both bills contain a section entitled "Limitation on Application."[1] Section 4 of S. 1 provides that "this part shall not apply to any provision in a Federal statute or a proposed or final Federal regulation that—(1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, handicapped or disability status, (3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government; (4) provides for emergency assistance or relief at the request of any State, local government, or tribal government or any official of such a government; (5) is necessary for the national security or the ratification or implementation of international treaty obligations; or (6) the President designates as emergency legislative and that the Congress so designates in statute." It would appear that both the ADA and IDEA would be exempted from the requirements of the Unfunded Mandate Act based upon these exceptions, and IDEA would also come under the exception to the definition of Federal Intergovernmental Mandate for conditions of financial assistance.

The ADA would apparently be covered by the second exception, and possibly the first. The ADA provides, in part, that its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2] The legislative history of the statute is replete with discussions of discriminatory actions and comparisons with civil rights protections given to individuals on the basis of race.[3] An examination of statutes that are commonly referred to as civil rights statutes, for example, title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, indicates that the broadest common denominator is that these statutes prohibit discrimination against a particular class or particular classes of individuals. Using this criteria, it would appear that the ADA would be considered to be a civil rights statute as the term is used in the second exception to the unfunded mandates legislation. It is also possible that the first exception, regarding statutes that enforce constitutional rights, might also be applicable to the ADA. The ADA states, in part, that its purpose is "to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."[4] It could be argued that this language, coupled with findings concerning the constitutional rights of individuals with disabilities such as were made in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), would suffice to bring the ADA under the first exception in the unfunded mandates legislation.

IDEA would apparently be covered by the exception to the definition of federal intergovernmental mandate contained in Section 3 of S. 1 and Section 301 of H.R. 5 as well as by the first two exceptions regarding the enforcement of constitutional rights and the exception for civil rights statutes contained in the "Limitation on Application" provisions discussed above. The term "Federal Intergovernmental Mandate" is defined in both the Senate and House bills as meaning "any provision in legislation, statute, or regulation that—(i) would impose an enforceable duty upon States, local governments, or tribal governments, except—(I) a condition of Federal assistance; or (II) a duty arising from participation in a voluntary Federal program. . ."[5] IDEA provides funds to the states so that they may provide a free appropriate public education to all children with disabilities. As a condition for the receipt of these funds, the act contains detailed requirements for the provision of an education. Clearly, IDEA is a grants statute which imposes certain conditions upon the receipt of federal funds. As such it would be covered by the exception quoted above.

IDEA may also be exempted from coverage by virtue of the two exceptions regarding constitutional rights and civil rights statutes.[6] IDEA was originally enacted in 1975 in response to two judicial decisions[7] which found certain constitutional requirements for an education for children with disabilities. In addition, the Supreme Court in *Smith v. Robinson*, 468 U.S. 992 (1984), stated that "The EHA (now called IDEA) is a comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children." At 1009. It could be argued that IDEA is, then, a statute enacted to help enforce constitutional rights. Similarly, IDEA specifically states that part of its purpose is to assure that the rights of children with disabilities and their parents or guardians are protected.[8] These rights are further defined in the statute. An examination of the legislative history of the act indicates that it was in response to the exclusion of children with disabilities from a public school education.[9] Since exclusion would appear to fall within the parameters of the term discrimination, it would appear that IDEA could also be classified as a civil rights statute.

We hope this information is useful to you. If we can be of further assistance, please call us.

KATHY SWENDIMAN,
NANCY LEE JONES,
Legislative Attorneys.

FOOTNOTES

[1] Section 4 of H.R. 5 sets forth a "Limitation on Application" section which is identical to that contained in S. 1 except for the addition, in committee, of a new (7) which reads "pertains to Social Security".

[2] 42 U.S.C. §12101(b)(1).

[3] See generally, S. Rep. No. 116, 101st Cong., 1st Sess. (1989).

[4] 42 U.S.C. §12101(b)(4).

[5] Section 3 of S. 1 and Section 301 of H.R. 5.

[6] Section 4 (1) and (2) of S. 1 and H.R. 5 read as follows: "This Act shall not apply to any provision in a Federal statute or a proposed or final Federal regulation, that—(1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status. . ."

[7] *PARC v. State of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972), and *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

[8] 20 U.S.C. §1400(c).

[9] H. Rep. No. 332, 94th Cong., 1st Sess. 11 (1975); S. Rep. No. 168, 94th Cong., 1st Sess., *reprinted in 1975 U.S. Code Cong. & Ad. News 1425, 1432.*

Footnotes at the end of the memorandum.

Mr. KEMPTHORNE. Mr. President, I know that the majority leader wishes to make comments on this issue. Until his arrival, I suggest the absence of a quorum.

The PRESIDING OFFICER. Equally divided?

Mr. KEMPTHORNE. Equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

ANTIDERIVATIVE LEGISLATION

Mr. DORGAN. Mr. President, I will soon introduce a piece of legislation dealing with derivatives. The term ''derivative'' is not readily understood by most.

We read in the newspapers and hear on television reports these days about derivatives. The most recent news story, of course, was about a 28-year-old young fellow, an employee of the Barings Bank of England, a 230-year-old bank.

This young employee of the Barings Bank of England was stationed in Singapore. In Singapore as an employee of an English bank he was betting on the Nikkei index on the Japanese stock exchange. Turns out that he lost $1 billion, and a 230-year-old British bank went under.

This is not the first time we have heard about derivatives. We heard about derivatives with respect to Orange County, CA. We heard about derivative failures across this country in recent years and it has alarmed some people, and justifiably so. Some who thought their retirement earnings were safe found out that the mutual fund they thought they invested in was, in fact, leveraged with derivatives.

Schoolteachers, school districts, cities, elderly people who had saved for their retirement, all have discovered in recent years the risk and potential danger of derivative trading when they do not know what they are doing. There are worldwide some $30 to $35 trillion in derivative contracts.

Derivatives in another manner and another name can be simple hedging, and hedging is a very customary thing to have happened. Banks hedge, farmers hedge. Hedging is a customary transaction. I have no trouble with that. Derivatives have become an international financial game and, in fact, some countries call it wagering or betting.

In this country, we have some very large banks that have begun trading in derivatives on their own account. They are involved in proprietary trading and derivatives in their own account. Not for customers.

The difficulty I have with that is when a financial institution whose deposits are insured by the American taxpayers with Federal deposit insurance, starts putting up a keno pit in their lobby and gambling effectively on derivatives, believing if they lose their shirt, the American taxpayers will pay. That is wrong. I do not believe financial institutions whose deposits are insured by the Federal Government should be involved in any case or under any conditions in trading for their own proprietary accounts in derivatives. It is far too risky and far too fraught with potential failure.

In this case, the failure will be underwritten by the American taxpayers. We have seen a chapter of this in the past. It was called junk bonds in savings and loans. Let us not see that repeat itself in this country with banks and derivatives.

Now, most American banks are not involved in derivative trading. Ninety-nine percent of them are not. But we have several very large banks in the country, some of the largest, that are involved in derivatives, with risks up to 500 percent of their entire capital structure.

I will introduce legislation that I introduced in the previous Congress. It is very simple. It does not prohibit traditional hedging by financial institutions for the purposes of hedging risk. It does prevent and prohibit institutions whose deposits are insured by the Federal Government from trading on a proprietary basis in derivatives. That makes no sense, and we ought to stop it.

The fact is we have Federal regulators involved in looking over their shoulders on derivatives trading, but is like having traffic cops involved in looking at computer crime. It simply does not work.

We have a $30 to $35 trillion dollar worldwide derivative business, and we see what can happen. We see what happens when a 28-year-old, working for a British bank, living in Singapore, bets on Japanese stocks and loses $1 billion, and everyone stands around looking surprised.

We saw everyone scratching their heads looking surprised that Orange County went bankrupt. It is fine to stand up and decide that the regulators have to do their jobs, and we as legislators ought to do ours, and ours ought to be to say to all financial institutions in this country, if you have Federal deposit insurance, you have no business trading in derivatives.

The American taxpayers do not deserve to be stuck with your losses if you want to gamble with their money. I hope some of my colleagues would see merit in this legislation and help me pass it.

I recall the legislation that I offered that finally passed the Congress prohibiting savings and loans from buying junk bonds. There was a struggle to get that passed, but I finally did. The reason I got it passed was, unfortunately, we had already lost a bundle by having S&L's buy junk bonds. They are up to their neck in debt with junk bonds.

It should never have happened. The ultimate absurdity was the Federal Government ended up owning junk bonds in the Taj Mahal Casino because an S&L that went bankrupt owned Taj Mahal junk bonds that were nonperformers and the Federal Government ended up owning bank junk bonds in a casino.

That is the absurdity where we got with junk bonds, and we will head the same way with derivatives, mark my words, unless we decide that institutions whose deposits are insured ought not to bet on derivatives.

That is the purpose of my legislation. My hope is that several colleagues will see fit to pass this legislation in the near future. I thank may colleague from Ohio for indulging me with his statement.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

I ask that the time be charged to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. GLENN. Mr. President, in thanking people who were instrumental in putting together this kind of legislation, I think we probably were remiss in not thanking Tony Coe, who did so much in the legislative counsel's office in putting together draft after draft after draft of this.

I saw him walking through the Chamber a moment ago, and I want him to step outside just for a moment. I say to Tony, we thank him for all his efforts. I know he does long hours over in the legislative counsel's office putting together some of these legislative proposals which have to be written and rewritten, as this one was.

We were spelling out a while ago people instrumental in getting this legislation through, and Tony certainly deserves to be commended for his efforts on behalf of this legislation, too, and we are glad to recognize him for it.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I want to add my thanks also to Mr. Tony Coe and all that he has done. I think so often people do not realize the intricacies of this and the hours that are put in, and yet, time after time, we require staff to answer the call. Tony has done that in an exemplary fashion. We thank him for that. He has helped significantly, I think, in changing the mindset of how Congress will operate and he can be proud of it.

Mr. President, I suggest the absence of a quorum and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered

Mr. DOLE. Mr. President, was leader's time reserved?

The PRESIDING OFFICER. Yes, it was.

Mr. DOLE. Mr. President, one of the first decisions I had to make as majority leader was which bill should be designated S. 1. When I considered the message the American people sent us last November, the decision was easy. I chose Senator KEMPTHORNE's unfunded mandates bill, because it shows we are serious about reining in the power of the Federal Government.

The 10th amendment to the U.S. Constitution reads:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

When the 104th Congress convened, I pledged that we would dust off the 10th amendment, and restore it to its rightful place in the Constitution.

The unfunded mandates bill is the first step in the important process of returning power to the States and to the people. For far too long, Congress has operated under the false assumption that legislation that did not affect the Federal Government had no cost. But, ask any mayor, Governor, county commissioner, or school board official—or any State and local taxpayer—and they will tell you otherwise.

This law will change the way we do business in Washington. Under business-as-usual, Congress had the costly habit of giving State and local governments new responsibilities without supplying the money to pay for these new obligations. Those unfunded mandates have forced State and local officials to cut services or increase taxes in order to keep their budgets in balance.

The unfunded mandates law will be a reality check for advocates of new mandates: the Federal Government should know and pay for the costs of mandates before imposing them on State and local governments, and the Federal Government should know the costs and impacts before imposing them on the private sector.

This law will provide real relief to State and local governments, and to the people who ultimately pay the bills for unfunded mandates—individual American taxpayers.

I am pleased that this bill will pass with strong bipartisan support, and there are a lot of Senators who deserve credit for this initiative's success. Senator GLENN has led the effort on the Democratic side of the aisle, and Senators DOMENICI and ROTH are among those who have also worked hard for this bill.

But no Senator worked harder than our colleague from Idaho, Senator DIRK KEMPTHORNE. He came to the Senate as a mayor, with front-line experience coping with the Federal Government telling him how to run Boise, ID. When he ran for the Senate, he promised the people of Idaho he would fight to stop unfunded mandates. He kept his promise. The first bill he introduced was an unfunded mandates bill—and it attracted only three cosponsors. But that did not stop him. He kept pushing, and he helped mobilize the mayors, county commissioners, and Governors, who stepped up their efforts. After he got more than 51 cosponsors on his unfunded mandates bill, he worked across the aisle to write a bipartisan bill. After that effort was blocked late last year, he spent the recess writing a better, tougher bill. He then spent 11 days and nights tirelessly debating and managing the bill on the floor, and 40 days and nights—it seems there is something else about 40 days and nights—getting it through the conference, successfully resisting efforts to weaken it.

All that work has produced a strong bill that all of us can be proud of, and all of us should vote for.

A few weeks ago, I told mayors they should send Senator KEMPTHORNE and Senator GLENN keys to their cities to thank them for their efforts.

I do not know if they have received any keys yet, but if you can use some, maybe I can round them up. Maybe by now you both have a pocketful of keys, and I am certain there are more on the way.

After all, our Nation's mayors, Governors, county commissioners, and taxpayers would be hard pressed to find a better friend than Senator DIRK KEMPTHORNE.

Mr. President, I urge all of my colleagues to vote for S. 1, and I urge President Clinton to sign it into law at the earliest possible date.

Mr. KEMPTHORNE. Mr. President, I wish to echo what America's mayors, Governors, and county commissioners are saying, and that is their gratitude to Senator DOLE for designating this bill S. 1. That sort of stamp of priority by the majority leader of the Senate went a long way toward helping propel this legislation toward what we believe tomorrow will be its successful conclusion.

So again, on behalf of America's mayors, Governors, and myself, I thank the Senator for the honor of having this legislation designated S. 1.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. GLENN. I yield back my time.

The PRESIDING OFFICER. All time has expired. The vote is scheduled to be held tomorrow.

Mr. GLENN. Parliamentary inquiry, Mr. President. The vote, as I understand it, will be the second vote tomorrow. Is that correct?

The PRESIDING OFFICER. That is correct.

MORNING BUSINESS

(During the session of the Senate, the following morning business was transacted.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:44 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

> H.R. 956. An act to establish legal standards and procedures for product liability litigation, and for other purposes.

The message also announced that the House insists upon its amendment to (S. 244) An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. CLINGER, Mrs. MEYERS of Kansas, Mr. MCHUGH, Mr. MCINTOSH, Mr. FOX of Pennsylvania, Mrs. COLLINS of Illinois, Mr. PETERSON of Minnesota, and Mr. WISE as the managers of the conference on the part of the House.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

> H.R. 956. An act to establish legal standards and procedures for product liability litigation, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

> EC–512. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–12 adopted by the Council on

February 7, 1995; to the Committee on Governmental Affairs.

EC–513. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–16 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–514. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–17 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–515. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–18 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–516. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–19 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–517. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–21 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–518. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–22 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–519. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–23 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–520. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–24 adopted by the Council on February 7, 1995; to the Committee on Governmental Affairs.

EC–521. A communication from the District of Columbia Auditor, transmitting, pursuant to law, the report entitled ''Audit of the Operations of the Office of the Campaign Finance''; to the Committee on Governmental Affairs.

EC–522. A communication from Comptroller General of the United States, transmitting, pursuant to law, the report entitled ''Independence of Legal Services''; to the Committee on Governmental Affairs.

EC–523. A communication from Administrator of General Services Administration, transmitting, pursuant to law, the report on the disposal of surplus Federal real property; to the Committee on Governmental Affairs.

EC–524. A communication from Chairman of the Administrative Conference of the United States, transmitting, a draft of proposed legislation to amend the Administrative Conference Act; to the Committee on Governmental Affairs.

EC–525. A communication from the Inspector General Agency for International Development, transmitting, pursuant to law, the report of an audit; to the Committee on Governmental Affairs.

EC–526. A communication from Chairman of the Administrative Conference of the United States, transmitting, pursuant to law, the report entitled ''Toward Improved Agency Dispute Resolution: Implementing the ADR Act''; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND:

S. 546. A bill for the relief of Dan Aurel Suciu; to the Committee on the Judiciary.

By Mr. SIMON:

S. 547. A bill to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 548. A bill to provide quality standards for mammograms performed by the Department of Veterans Affairs; to the Committee on Veterans Affairs.

By Mr. BUMPERS:

S. 549. A bill to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas; to the Committee on Energy and Natural Resources.

By Mr. EXON:

S. 550. A bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes; to the Committee on Labor and Human Resources.

By Mr. CRAIG:

S. 551. A bill to revise the boundaries of the Hagerman Fossil Beds National Monument and the Craters of the Moon National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 552. A bill to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MOSELEY-BRAUN:

S. 553. A bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. FEINGOLD:

S. 554. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement officers, and for other purposes; to the Committee on the Judiciary.

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, and Mr. FRIST):

S. 555. A bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health education programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 556. A bill to amend the Trade Act of 1974 to improve the provision of trade readjustment allowances during breaks in training, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER:

S. 548. A bill to provide quality standards for mammograms performed by the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

THE WOMEN VETERANS' MAMMOGRAPHY QUALITY STANDARDS ACT

• Mr. ROCKEFELLER. Mr. President, for a number of years, I have been active—both through legislation and oversight activity—in seeking to improve VA's response to women veterans. While there has been some progress, much remains to be done. During the last Congress, we were poised to make some significant improvements, particularly in defining which services VA must furnish to women veterans. Unfortunately, that legislation, along with other vital measures, died in the closing hours of the Congress. While those issues may still be brought into play on legislation later on this year, one element of our prior effort can clearly be separated out at this time and dealt with on its own merits—and that's what the bill I am introducing today will do.

BACKGROUND

Mr. President, the bill I am introducing, which is cosponsored by Senators AKAKA, JEFFORDS, MIKULSKI, MOSELEY-BRAUN, and MURKOWSKI, would ensure that women veterans will receive safe and accurate mammograms. Under this measure, VA facilities that furnish mammography would be required to meet quality assurance and quality control standards that are no less stringent than those to which other mammography providers are subject under the Mammography Quality Standards Act. VA facilities that contract with non-VA facilities would be required to contract only with facilities that comply with that act. I will now highlight briefly the provisions contained in this legislation.

SUMMARY OF PROVISIONS

Mr. President, this legislation would establish quality standards for mammography services furnished by VA which would:

First, require that all VA facilities that furnish mammography be accredited by a private nonprofit organization designated by the Secretary of Veterans Affairs.

Second, require the Secretary to designate only an accrediting body that meets the standards for accrediting bodies issued by the Secretary of Health and Human Services for purposes of accrediting mammography facilities subject to the Mammography Quality Standards Act of 1992—Public Law 102–539.

Third, require the Secretary, in consultation with the Secretary of Health and Human Services, to issue quality assurance and quality control standards for mammography services furnished in VA facilities that would be no less stringent than the Department of Health and Human Services regulations to which other mammography providers are subject under the Mammography Quality Standards Act of 1992.

Fourth, require the Secretary to issue such regulations not later than

120 days after enactment of this legislation.

Fifth, require the Secretary to inspect mammography equipment operated by VA facilities on an annual basis in a manner consistent with requirements contained in the Mammography Quality Standards Act concerning annual inspections of mammography equipment by the Secretary of Health and Human Services, except that the Secretary of Veterans' Affairs would not have the authority to delegate inspection responsibilities to a State agency.

Sixth, require VA health care facilities that provide mammography through contracts with non-VA providers to contract only with mammography providers that comply with the Department of Health and Human Services' quality assurance and quality control regulations.

Seventh, require the Secretary, not later than 180 days after the Secretary prescribes the mammography quality assurance and quality control regulations, to submit a report to the House and Senate Committees on Veterans' Affairs on the implementation of those regulations.

CONCLUSION

Mr. President, in closing, I emphasize just how vital improving VA health services for women veterans is to VA's future. Regardless of the outcome of national health care reform efforts, progress on health care reform at the State level dictates that VA must compete directly with non-VA providers. In addition, the State plans probably will provide veterans entitled to VA care, many of whom are presently uninsured, a wider range of health care choices. Under this scenario, VA would have to furnish a full continuum of health services, including quality mammography, in order to compete successfully for women veteran patients.

This bill would hold VA to the mammography standards required of other providers. Anything less would deny the great debt we owe to the courageous women who have sacrificed themselves in service to our Nation.

Mr. President, I look forward to working with the chairman of the Committee on Veterans' Affairs, Senator SIMPSON, the cosponsors of this bill, and the other members of the committee to gain prompt action on it in our committee and the Senate. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 548

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Women Veterans' Mammography Quality Standards Act''.

SEC. 2. MAMMOGRAPHY QUALITY STANDARDS.

(a) PERFORMANCE OF MAMMOGRAMS.—Mammograms may not be performed at a Department of Veterans Affairs facility unless that facility is accredited for that purpose by a private nonprofit organization designated by the Secretary of Veterans Affairs. The organization designated by the Secretary under this subsection shall meet the standards for accrediting bodies establishing by the Secretary of Health and Human Services under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)).

(b) QUALITY STANDARDS.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe quality assurance and quality control standards relating to the performance and interpretation of mammograms and use of mammogram equipment and facilities by personnel of the Department of Veterans Affairs. Such standards shall be no less stringent than the standards prescribed by the Secretary of Health and Human Services under section 354(f) of the Public Health Service Act.

(2) The Secretary of Veterans Affairs shall prescribe standards under this subsection in consultation with the Secretary of Health and Human Services.

(c) INSPECTION OF DEPARTMENT EQUIPMENT.—(1) The Secretary of Veterans Affairs shall, on an annual basis, inspect the equipment and facilities utilized by and in Department of Veterans Affairs health-care facilities for the performance of mammograms in order to ensure the compliance of such equipment and facilities with the standards prescribed under subsection (b). Such inspection shall be carried out in a manner consistent with the inspection of certified facilities by the Secretary of Health and Human Services under section 354(g) of the Public Health Services Act.

(2) The Secretary of Veterans Affairs may not delegate the responsibility of such secretary under paragraph (1) to a State agency.

(d) APPLICATION OF STANDARDS TO CONTRACT PROVIDERS.—The Secretary of Veterans Affairs shall ensure that mammograms performed for the Department of Veterans Affairs under contract with any non-Department facility or provider conform to the quality standards prescribed by the Secretary of Health and Human Services under section 354 of the Public Health Service Act.

(e) REPORT.—(1) The Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the quality standards prescribed by the Secretary under subsection (b)(1).

(2) The Secretary shall submit the report not later than 180 days after the date on which the Secretary prescribes such regulations.

(f) DEFINITION.—In this section, the term ''mammogram'' shall have the meaning given such term in section 354(a)(5) of the Public Health Service Act (42 U.S.C. 263b(a)).●

By Mr. EXON:

S. 550. A bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes; to the Committee on Labor and Human Resources.

LABOR DISPUTE LEGISLATION

Mr. EXON. Mr. President, I rise today to introduce a bill which I hope—and I emphasize ''I hope''—will serve as a common ground for the two warring factions very prominent in our society today.

My bill amends the Federal labor law by providing a short-term ban on permanent replacement workers for the first 60 days of a strike. Then permanent replacements could be gradually phased in over a 12-month period so that an employer could hire 100 percent of their work force as permanent replacements by the end of a year.

I believe that those two warring factions—management and labor—need to focus more on what is in our Nation's long-term best interests and less on getting and keeping an upper hand. I caution either side from thinking that crushing blows or complete victories are within reach. They are not. I have proposed my idea before but neither side wanted to take the first step.

To management I say you have leveraged a rarely used practice into what is now the sledgehammer of negotiations. The right to strike hangs by the thread that separates the difference between being fired and being permanently replaced. To labor I say the global economy has remade the rules. International competitiveness may mean that labor will have to settle for less than the whole loaf sometimes.

I voted against NAFTA and against GATT for various reasons, but some of the most important involved my concern that our chase for cheap labor would erode the ground under our workers and the standard of living in America. But that is over and done with. We can shore up as best we can, but I fear the erosion may continue, not subside.

The two old bulls, labor and management, are still at it, with their horns locked, straining. The harmful effects of that intransigence can be seen in the festering sore of professional baseball. They often threaten to pull the Senate into the trenches and seem to have done so once again.

Mr. President, I make this appeal: Congress has the power to step in and set some ground rules instead of being pushed this way and pushed that. Let us take this opportunity to impose some order, set some rules, then hopefully set this issue aside and see if such a resolution works.

Under my bill, management is barred from simply replacing workers permanently the day after the strike. Certainly management can keep the plant open, if they choose, with temporary workers. Labor knows, however, that the meter is running under my bill and that the effect of the strike is diminished with time.

For example, after 60 days, the employer can hire 10 percent of the work force as replacements, permanent replacements; after 90 days, 20 percent; after 4 months, 30 percent; after 5 months, 40 percent; after 6 months, 50 percent; after 9 months, 75 percent; and after 1 year, 100 percent, if that is the desire of management.

Management will say that the 60-day ban is too long, while labor will say that a year before being completely replaced is too short. I say that sounds like the start of a good compromise.

Congress can break this logjam, and I think it should. I do not believe this is a matter to be resolved by Executive order but, rather, by law. I think this proposal can satisfy well-meaning and well-intentioned people on both sides of the issue and may help us to look forward in both the Senate and this country to something better.

Mr. President, I suggest that we look ahead to the 21st century. Let us quit sticking our heads in the sand with meaningless gestures. Anyone who is looking beyond next year or the next election, who truly believes in collective bargaining, should recognize that international competition in the 21st century demands labor/management cooperation and not war.

I submit it is not fair or reasonable to expect a union worker to strike for economic grievances when he or she could lose their job the very first day that they dare walk the picket line. Some collective bargaining. With just a little bit of backbone and a little bit of reason and a little bit of understanding, we could properly correct this situation that continues to tear American labor and management apart.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 550

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) by striking the period at the end of paragraph (5) and inserting ''; or''; and

(B) by adding at the end thereof the following new paragraph:

''(6) subject to subsection (h), to promise, threaten, or take other action—

''(A) to hire a permanent replacement for an employee who—

''(i) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative. or, on the basis of written authorizations by a majority of the employees, was seeking to be so certified or recognized; and

''(ii) in connection with the dispute has engaged in converted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

''(B) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of clauses (i) and (ii) of subparagraph (A) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed, or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute.''; and

(2) by adding at the end thereof the following new subsection:

''(h)(1) An employer may not hire a permanent replacement for an employee described in subsection (a)(6) unless the employer compiles with the requirements under paragraph (2).

''(2)(A) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 61 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 90 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 10 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(B) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 91 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 120 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 20 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(C) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 121 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 150 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 30 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(D) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 151 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 180 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 40 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(E) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 181 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 270 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 50 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(F) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) during the period beginning 271 days after the date of the commencement of a dispute described in subsection (a)(6) and ending 360 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 75 percent of the total number of employees who were in the bargaining unit described in subsection (a)(6)(A)(i) on the date of the commencement of the dispute.

''(G) An employer may hire a permanent replacement for an employee described in subsection (a)(6)(A) effective 361 days after the date of the commencement of a dispute described in subsection (a)(6).''.

SEC. . PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting ''(a)'' after ''Fourth.'';

(2) by adding at the end thereof the following new subsections:

''(b) Subject to subsection (c), no carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

''(1) to hire a permanent replacement for an employee who—

''(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

''(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

''(2) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.

''(c)(1) A carrier, or an officer or agent of the carrier, may not hire a permanent replacement for an employee under subsection (b) unless the carrier or officer or agent complies with the requirements under paragraph (2).

''(2)(A) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 61 days after the date of commencement of a dispute described in subsection (b) and ending 90 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 10 percent of the total number of employees who were in the craft or class described in subsection (b).

''(B) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 91 days after the date of commencement of a dispute described in subsection (b) and ending 120 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 20 percent of the total number of employees who were in the craft or class described in subsection (b).

''(C) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 121 days after the date of commencement of a dispute described in subsection (b) and ending 150 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 30 percent of the total number of employees who were in the craft or class described in subsection (b).

''(D) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 151 days after the date of commencement of a dispute described in subsection (b) and ending 180 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 40 percent of the total number of employees who were in the craft or class described in subsection (b).

''(E) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 181 days after the date of commencement of a dispute described in subsection (b) and ending 270 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 50 percent of the total number of employees who were in the craft or class described in subsection (b).

''(F) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) during the period beginning 271 days after the date of commencement of a dispute described in subsection (b) and ending 360 days after the date of such commencement. The total number of replacements made under this subsection during such period shall not exceed 75 percent of the total number of employees who were in the craft or class described in subsection (b).

''(G) A carrier, or an officer or agent of the carrier, may hire a permanent replacement for an employee described in subsection (b) effective 361 days after the date of commencement of a dispute described in subsection (b).''.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 552. A bill to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

FLINT CREEK HYDROELECTRIC FACILITY LEGISLATION

Mr. BURNS. Mr. President, I rise today to introduce legislation to allow for the orderly transfer of a license for the operation of a small hydroelectric facility in my State of Montana. This operation is no longer generating electricity. The utility that owns it, Montana Power, no longer finds it economical to continue to do so. Montana Power would like to turn the operation and ownership of the dam over to someone else. And there is a potential buyer, the county of Granite. The county would like to buy the facility, refurbish it, and continue to generate low-cost electricity for itself and its neighbors.

However, FERC, the agency that must approve the license request is demanding that the buyer pay for the rent of Forest Service land that lies under the lake that was created by the dam. The Forest Service gets no benefit from the land. It's under several feet of water. And the Federal Government already owns one-third of my State of Montana.

I believe that this bill, which will defer the rental costs for 5 years which will allow the county to get its repair work done and get the generation online, is an equitable solution to the problem posed by FERC. I hope that they will support the bill.

By Ms. MOSELEY-BRAUN:

S. 553. A bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes; to the Committee on Labor and Human Resources.

THE AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1995

• Ms. MOSELEY-BRAUN. Mr. President, I introduce the Age Discrimination in Employment Amendments of 1995, legislation designed to give State and local governments the same right to set mandatory retirement ages and maximum hiring ages for their police and firefighters that the Federal Government currently enjoys.

Throughout the 104th Congress, there has been a great deal of discussion about the need for those of us in this body to hold ourselves accountable to the same standards other Americans have to meet.

We have debated and passed congressional coverage legislation, which will apply to Congress a number of laws that have already been applied to the private sector. We have also debated and passed unfunded mandates legislation in order to ensure that the Federal Government does not impose mandates on State and local governments without the funding necessary to cover the cost of those mandates.

The legislation I am introducing today is based on this same basic theme. Currently, the Federal Government enjoys a permanent exemption from the Age Discrimination in Employment Act that allows it to set mandatory retirement ages and maximum hiring ages for its public safety officers. In effect, this exemption authorizes Federal public safety agencies to use mandatory retirement ages and maximum hiring ages for their police officers and firefighters including:

The U.S. Park Police; the Federal Bureau of Investigation; Department of Justice Law Enforcement personnel; District of Columbia firefighters; U.S. Forest Service firefighters; the Central Intelligence Agency; the Capitol Police; and Federal firefighters.

However, this same exemption from the Age Discrimination in Employment Act is not available to State and local governments.

My legislation corrects this disparity by allowing State and local governments the right to set mandatory retirement and maximum hiring ages if they so choose.

Mr. President, I want to emphasize that last point. This legislation merely allows State and local governments to set mandatory retirement and maximum hiring ages if they so choose.

The bill does not set national, mandatory retirement and maximum hiring ages for police and firefighters. It does not require State local governments to create their own mandatory retirement and maximum hiring ages. It does not even encourage them to do so. It merely grants State and local governments the same rights in this area which are currently being enjoyed by the Federal Government.

As a general rule, the Age Discrimination in Employment Act prohibits employers from discriminating against workers solely on the basis of age, and generally prohibits the use of mandatory retirement and maximum hiring ages.

Prior to Congress enacting an exemption in 1986, the Age Discrimination in Employment Act allowed State and local governments to use mandatory retirement and maximum hiring ages for their public safety officers only if they could prove in court that these rules were bona fide occupational qualifications [BFOQ's] reasonably necessary for the normal operation of the business.

Although this approach sounds reasonable, courts in some jurisdictions ruled limits permissible while identical limits were held impermissible in other jurisdictions. For example, the Missouri Highway Patrol's maximum hiring age of 32 was upheld while Los Angeles County Sheriff's maximum hiring age of 35 was not. East Providence's mandatory retirement age of 60 for police officers was upheld while Pennsylvania's mandatory retirement age of 60 was struck down.

As a result, no State or local government could be sure of the legality of its hiring or retirement policies. They could, however, be sure of having to spend scarce financial resources to defend their policies in court.

The 1986 amendment to the Age Discrimination in Employment Act authorized State and local governments to set maximum hiring ages and mandatory retirement ages until January 1, 1994. It also ordered the EEOC and the Department of Labor to conduct a study to determine:

Whether physical and mental fitness tests can accurately assess the ability of police and firefighters to perform the requirements of their jobs; which particular types of tests are most effective; and what specific standards such tests should satisfy.

Finally, the 1986 amendment directed the EEOC to promulgate guidelines on the administration and use of physical and mental fitness tests for police and firefighters.

Despite the very clear mandate in the 1986 amendment, neither the EEOC nor its researchers complied with that mandate.

While the Penn State researchers who conducted the study concluded that age was a poor predictor of job performance, they failed to evaluate which particular physical and mental fitness tests are most effective to evaluate public safety officers and which specific standards such tests should satisfy.

Nor did the EEOC promulgate guidelines to assist State and local governments in the administration and use of such tests, as Congress directed. As a result, State and local governments find themselves without a public safety exemption from the Age Discrimination in Employment Act, and also

without any guidance as how to test their employees.

I firmly believe that, as a rule, Congress should avoid exempting whole classes of employees from the protection of civil rights laws. We should not carve out exemptions merely because an employer finds civil rights compliance to be too costly or inconvenient. Exemptions must be made only when there is a strong compelling need to do so and there is no other reasonable alternative.

That is the situation here. State and local fire and police agencies must be exempt from ADEA in order to protect and promote the safety of the public. This is literally a life or death matter; if police officers and firefighters cannot adequately perform their duties, people die and people get hurt.

Numerous medical studies have found that age directly affects an individual's ability to perform the duties of a public safety officer. This is not a stereotype. This is not ageism. This is a medical fact.

Consider the facts the American Heart Association found that clearly demonstrate the increased risk of heart attack and death in older individuals. One in six men and one in seven women between the ages of 45–64 has some form of heart disease. The ratio soars to one in three at age 65 and beyond. For people over age 55, incident of stroke more than doubles in each successive decade.

The diminishing of physical capabilities can also be seen in statistics in the field of public safety. For example, although firefighters over 50 comprise only one-seventh of the total number of firefighters, they account for one-third of all firefighter deaths

Now, you may ask why State and local governments cannot just develop tests to screen out those individuals who may still retain their strength at the age of 60 or 70. However, there is no adequate test that can simulate the conditions that firefighters and police officers face in the line of duty.

The fact that an individual passes a fitness test one day does not, in and of itself, mean that the individual is capable of performing the sustained, strenuous, constant, physical activity required of a public safety officer. If a 75-year-old walks in and takes a test, and happens to be healthy on that particular day, a State or local government would have to hire that individual, even though that individual may not, day in and day out, be capable of physically performing his or her job.

Mr. President, as many of you in this body know, I come from a law enforcement background. My father was a police officer. My uncle was a police officer. My brother still is a police officer. I feel very strongly that we in Congress need to do everything we can to ensure that our rank and file officers have everything they need to do their jobs.

The legislation I offer here today is widely supported by rank and file public safety officers. In fact, my office has been besieged by calls and letters and visits from police officers and firefighters who want to see a permanent exemption enacted into law. I would like to read a list of organizations that support this legislation:

The Fire Department Safety Officers Association; the Fraternal Order of Police; the International Association of Firefighters; the International Association of Chiefs of Police; the International Brotherhood of Police Officers; the International Society of Fire Service Instructors; the International Union of Police Associations, AFL–CIO; the National Association of Police Organizations; The National Sheriffs Association; the National Troopers Coalition; the American Federation of State, County and Municipal Employees; the National Public Employer Labor Relations Association; the New York State Association of Chiefs of Police; and the City of Chicago Department of Police.

This legislation is also supported by the following State and local governmental organizations:

The National League of Cities; the National Association of Counties; the National Conference of State Legislatures; and the U.S. Conference of Mayors.

Mr. President, I strongly urge my colleagues to support and quickly enact this carefully drawn, greatly needed legislation.

Mr. President, I ask unanimous consent that the full text of this bill be printed in the RECORD.

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

S. 553

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Age Discrimination in Employment Amendments of 1995''.

SEC. 2. AGE DISCRIMINATION AMENDMENT.

(a) REPEAL OF REPEALER.—Section 3(b) of the Age Discrimination in Employment Amendments of 1986 (29 U.S.C. 623 note) is repealed.

(b) EXEMPTION.—Section 4(j) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(j)), as in effect immediately before December 31, 1993—

(1) is reenacted as such section; and

(2) as so reenacted, is amended in paragraph (1) by striking ''attained the age'' and all that follows through ''1983, and'' and inserting the following: ''attained—

''(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

''(B) if an age of retirement was not in effect under applicable State or local law on March 3, 1983, 55 years of age; and''.

SEC. 3. STUDY AND GUIDELINES FOR PERFORMANCE TESTS.

(a) STUDY.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Equal Employment Opportunity Commission (referred to in this section as ''the Chairman'') shall conduct, directly or by contract, a study, and shall submit to the appropriate committees of Congress a report based on the results of the study that shall include—

(1) a list and description of all tests available for the assessment of abilities important for the completion of public safety tasks performed by law enforcement officers and firefighters;

(2) a list of the public safety tasks for which adequate tests described in paragraph (1) do not exist;

(3) a description of the technical characteristics that the tests shall meet to be in compliance with applicable Federal civil rights law and policies;

(4) a description of the alternative methods that are available for determining minimally acceptable performance standards on the tests;

(5) a description of the administrative standards that should be met in the administration, scoring, and score interpretation of the tests; and

(6) an examination of the extent to which the tests are cost effective, safe, and comply with the Federal civil rights law and regulations.

(b) ADVISORY GUIDELINES.—Not later than 4 years after the date of enactment of this Act, the Chairman shall develop and issue, based on the results of the study required by subsection (a), advisory guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of law enforcement officers and firefighters to perform the requirements of the jobs of the officers and firefighters.

(c) CONSULTATION REQUIREMENT; OPPORTUNITY FOR PUBLIC COMMENT.—

(1) CONSULTATION.—The Chairman shall, during the conduct of the study required by subsection (a), consult with—

(A) the Deputy Administrator of the United States Fire Administration;

(B) the Director of the Federal Emergency Management Agency;

(C) organizations that represent law enforcement officers, firefighters, and employers of the officers and firefighters; and

(D) organizations that represent older individuals.

(2) PUBLIC COMMENT.—Prior to issuing the advisory guidelines required in subsection (b), the Chairman shall provide an opportunity for public comment on the proposed advisory guidelines.

(d) DEVELOPMENT OF STANDARDS FOR WELLNESS PROGRAMS.—Not later than 2 years after the date of enactment of this Act, the Chairman shall propose advisory standards for wellness programs for law enforcement officers and firefighters.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 to carry out this section.

SEC. 4. EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATE.—The repeal made by section 2(a) and the reenactment made by section 2(b)(1) shall take effect on December 31, 1993.●

By Mr. FEINGOLD:

S. 554. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes, to the Committee on the Judiciary.

THE EQUAL ACCESS TO JUSTICE REFORM AMENDMENTS ON 1995

● Mr. FEINGOLD. Mr. President, I introduce a bill to amend the Equal Access to Justice Act.

This legislation makes some needed improvements to the act to speed up the process of awarding attorney's fees to private parties who prevail in certain suits against the United States.

Mr. President, there has been considerable attention paid in the past few weeks to legislation such as regulatory reform, tort reform, and various pieces of the Republican contract which claim to address the concerns of many Americans that substantial change needs to take place in many areas.

My bill deals with some aspects of these concerns by assisting ordinary citizens who face legal conflicts with their Federal Government and prevail. The basic premise of EAJA is about giving individuals and small businesses the ability to confront the Government on a more equal footing. It is another step toward getting Government off the backs of the average citizen and small business owner.

I am convinced the improvements I have proposed will make the Equal Access to Justice Act work better and reduce the overall costs to taxpayers.

Mr. President, this is an area in which I have worked for several years before coming to this body.

My interest in this issue arises from my experience both as a private attorney and a member of the Wisconsin Senate.

When I was in private practice, I was aware of how attorneys' fees and the other costs associated with litigation could be a burden to a plaintiff with limited resources, even if the claim was just.

Once I entered the State senate, I authored legislation modeled on the Federal law. The State law, found in section 814.246 of the Wisconsin statutes, was enacted in 1985.

It seemed to me then, and does now, that we should do what we can to remove this burden to plaintiffs who need their claims reviewed and decided by an impartial decisionmaker.

When I joined the U.S. Senate, I began looking at how these two Federal statutes operate and whether change was needed. I was particularly interested in how we could make the system work better.

I am convinced change is necessary and that we can bring the system up to date to reflect 14 years worth of experience.

Mr. President, the Equal Access to Justice Act was enacted in 1980 and made permanent in 1985. The original intent of the act was to make the task of suing the Federal Government less daunting for small business owners. It was perceived that these owners suffered onerous Government regulation and other indignities rather than sue for relief because of the prohibitive costs of litigation.

Much of the work of this original Federal legislation was done by then-Representative Robert Kastenmeier of Wisconsin, who represented my home town of Middleton with distinction and served on the House Judiciary Committee for many years.

By giving prevailing parties in certain kinds of cases the right to seek attorney's fees and other costs from the United States, the act sought to prevent business owners from having to risk their companies in order to seek justice. It was, in effect, a way to give David another rock for his sling.

And it is the Davids, not the Goliaths, who benefit from this act.

Although I have reservations about the general concept of loser-pays rules, when a citizen faces the overpowering resources of the Federal Government, it is only fair that, when that citizen wins in court, the Government ought to reimburse the costs.

An individual with a net worth greater than $2 million may not request fees under EAJA, nor may a business or other organization with a net worth greater than $7 million and which employs more than 500 people, unless it qualifies either as a nonprofit under certain Federal tax laws or as an agricultural cooperative.

Collaterally, the act sought to provide a deterrence to excessive Government regulation, a subject in which we all share an interest.

Some would certainly argue that latter goal has not been achieved. But the Equal Access to Justice Act has been successful in other areas, although perhaps not quite as planned, Mr. President.

For one thing, the cost has been much smaller than originally anticipated. The Equal Access to Justice Act was originally estimated to cost at least $68 million per year, but according to the Administrative Office of the U.S. Courts, annual EAJA awards from 1988 to 1992 generally hovered around $5 to $7 million.

This is despite the fact that litigants are winning more cases than anticipated.

A study conducted by Prof. Susan Gluck Mezey of Loyola University at Chicago and Prof. Susan M. Olson of the University of Utah found that plaintiffs have been more successful than original estimates believed.

Professors Mezey and Olson examined 629 Federal district and appellate court decisions involving EAJA claims during the 1980's.

The Mezey-Olson study, published in the July-August 1993 edition of Judicature magazine, pointed out that the Congressional Budget Office originally assumed plaintiffs would receive fees under the act in about 25 percent of the claims filed against the Government.

However, the professors found in their sample that about 36 percent of litigants other than those suing the Department of Health and Human Services have won fees. Plaintiffs suing HHS, many of them seeking Social Security disability benefits, have a success rate most lawyers would envy, about 69 percent.

The Mezey-Olson study shows that most successful plaintiffs who seek fees have been these Social Security disability benefits applicants.

Another study, prepared in 1993 by Prof. Harold Krent of the University of Chicago law school for the Administrative Conference of the United States, found that, while the original intent of the Equal Access to Justice Act was supposed to make things a little easier on the applicants for fees, as currently written, it ''probably creates a perverse incentive to litigate'' on the part of Government attorneys.

This is because the act gives the government a chance to avoid paying fees, even when it loses its case, to the small business owner or individual who would otherwise see their costs paid. The Government can do this by showing it had substantial justification for its actions, despite the fact that those actions proved onerous to that small business owner or individual.

Professor Krent argues that the issues of whether fees should be awarded or whether the Government had substantial justification to act as it did can be nearly as exhaustive to litigate as the original complaint. This despite the fact that the substantial justification argument is successful in a relatively small number of cases.

We can fix that. We can bring the administrative costs of the Equal Access to Justice Act down.

My bill amends the act in several ways, and it is intended to make use of the act's provisions more acceptable to its original beneficiaries, the small business owners.

First, my bill raises the current $75-per-hour fee award cap to $125 per hour. It keeps the cost-of-living increase as a possible factor in setting the award, but it eliminates language which permits further increasing the award due to some special factor, defined by example in the existing statute as ''the limited availability of qualified attorneys or agents for the proceedings involved.''

This brings the fee cap more closely into line with current hourly rates charged by attorneys. It also makes these suits more attractive to attorneys, which in turn means prospective plaintiffs will have a larger pool of attorneys from which to choose. This, I think, obviates the need for the special factor language. I also believe eliminating that provision simplifies the process.

Second, my bill makes more specific the method of computing cost-of-living increases to fee awards. Under existing law, courts have been forced to make these determinations without adequate statutory guidance. Professor Krent notes in his study that ''courts have split as to when the cost-of-living increase is applicable—for instance, whether it should be calculated as of the date of the work performed, or as of some later date.''

My bill states that a cost-of-living adjustment should be calculated from the date of final disposition. In other words, if the work was performed in

1988 but the final disposition occurred in 1994, we should base the fee calculation on 1994.

Third, my bill eliminates language in the act that allows the Government to escape paying attorney's fees even if it loses a suit if it can show substantial justification for its actions.

I believe that if an individual or small business owner go up against the Federal Government and win, they win. If you are successful in your suit against the Government or in your defense against Government enforcement, and the law provides for Government payment of your fees, the government should pay the fees.

Further, Professor Krent's study indicates that fee awards were denied in only a small percentage of EAJA cases because of the substantial justification defense.

It may sound as though we're actually increasing the cost of this act, but these steps may well have the opposite effect. Even though fee awards may go up somewhat, the time and cost of litigation to the government will be reduced, and we should have a more cost-effective system.

Let me refer again to Professor Krent's study for guidance as to possible increased efficiency and cost-effectiveness.

Professor Krent noted that it is probably impossible to make an exact determination of the expense of litigating the substantial justification issue.

It is his opinion, based on a study of cases between June 1989 and June 1990, that the substantial justification defense may save some money in awards, but not enough to justify the cost of litigating the issue.

In short, this has not proven cost effective, except in a few Social Security cases involving large awards, unless you count some deterrent effect, which Professor Krent believes is impossible to quantify.

Fourth, the bill would set up a process to encourage settlement of the fee issue without litigation.

The legislation will provide the government the opportunity, similar to the process described in rule 68 of the Federal Rules of Civil Procedure, to make an offer of settlement up to 10 days prior to a hearing on the fee claim. If that offer is rejected and the party applying for reimbursement later wins a smaller award, that party shall not be entitled to receive attorney's fees or other expenses incurred after the date of the offer.

This, I think, will speed up the process, thereby reducing the time and expense of litigation.

Finally, Mr. President, my bill also requires review of the act and looks ahead to possible future expansion.

Expanding the coverage of the Equal Access to Justice Act to additional areas of litigation is not directly addressed, but it is an issue on which I hope there can be future discussion.

My bill requires the Justice Department to submit a report to Congress within 180 days that provides an analysis of the variations in the frequency of fee awards paid by specific Federal districts under EAJA and include recommendations for extending the application of the act to other Federal judicial proceedings.

According to the Administrative Conference of the United States, it remains unclear ''whether EAJA covers all litigation against the United States in article I courts, even though such proceedings are often directly analogous to those covered by the act in article III courts.''

Congress has taken some steps. In 1985, for example, EAJA was amended to cover the U.S. Claims Court. The Court of Veterans Appeals, which had decided in 1992 it was not covered by EAJA, is now covered by legislation.

Likewise, my bill requires the Administrative Office of the U.S. Courts to submit a report to Congress within 180 days that provides an analysis of the variations in the frequency of fee awards paid by applicable Federal agencies under EAJA and include recommendations for extending the application of the act to other Federal agencies and administrative proceedings.

The United States Supreme Court, in a 1991 decision, Ardestani versus INS, held that EAJA fees are available only in cases where hearings are required by law to conform to the procedural provisions of section 554 of the Administrative Procedure Act.

However, Congress had already created a statutory exception. In 1986, Congress extended EAJA's coverage to include the Program Fraud Civil Remedies Act.

It is reasonable, I believe, to investigate whether certain agency proceedings, such as deportation cases, that are nearly identical to proceedings covered by section 554 should be likewise covered by EAJA.

It may be appropriate to expand EAJA to cover certain cases subject to proceedings which are substantially the same as, but not specifically covered by, the Administrative Procedure Act.

The study provision is also meant to be responsive to recommendations made by members of a business advisory group with whom I meet on a regular basis. It was suggested that there was a need to examine why some agencies have had fee judgments awarded against them at a higher rate than others.

Let me here acknowledge the work of the Administrative Conference of the United States, which has been very helpful by conducting research into this issue, making recommendations that helped form the basis of this bill and providing valuable assistance to me in preparing this legislation.

We all know the small business owner has a rough row to hoe and that unnecessary or overburdening Government regulation is sometimes an obstacle to doing business. The Equal Access to Justice Act was conceived to help overcome that obstacle, and my amending bill is submitted to make the act work better.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 554

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This Act may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(e) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out '', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(f) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(g) EFFECTIVE DATE.—The provisions of this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.●

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, and Mr. FRIST):

S. 555. A bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health education programs, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH PROFESSIONALS CONSOLIDATION AND REAUTHORIZATION ACT

Mrs. KASSEBAUM. Mr. President, on behalf of Senator KENNEDY, Senator FRIST, and myself, I rise today to introduce legislation aimed at improving the supply and distribution of health professionals for our Nation's underserved communities.

The Health Professions Consolidation and Reauthorization Act of 1995 would consolidate over 44 different health professions programs administered by the U.S. Public Health Service. Furthermore, this legislation would target Federal health professions funding to support training initiatives designed to improve the health of citizens in our Nation's underserved areas.

For three decades, through the Public Health Service and Medicare, the Federal Government has funded the training of health professionals. Once perceived to be in undersupply, physicians are now in oversupply as a result of this Federal intervention. However, the uneven distribution of physicians still leaves many areas underserved. Furthermore, many believe the Nation now has too many subspecialist physicians and too few primary care providers. To correct these problems, a better targeted Federal health professions strategy is needed.

Currently, through titles III, VII, and VIII of the Public Health Service Act, the Federal Government provides over $400 million for 44 separate initiatives. When the title VII and VIII programs were last reauthorized in 1992, the General Accounting Office [GAO] was requested to review their effectiveness in: First, increasing the supply of primary care providers and other health professionals; second, improving their representation in rural and medically underserved areas; and third, improving minority representation in the health professions.

GAO recommended that Congress or the Secretary of Health and Human Services should establish:

First, national goals for the title VII and VIII programs.

Second, common outcome measures and reporting requirements for each goal;

Third, restrictions limiting the use of funds to activities whose results can be measured and reported against these goals; and

Fourth, criteria for allocating funding among professions based on relative need in meeting national goals.

The Health Professions Consolidation and Reauthorization Act of 1995 builds on GAO's recommendations and is based on defined goals for these programs. In addition, all programs would include a strong evaluation component to ensure that they are really improving national, regional, and State work force goals.

The act targets Federal funding based on the following goals:

First, Federal health professions education programs and distribution programs should assure health through: improvements in the distribution of and quality of health professionals needed to provide health services in underserved areas; and enhancement of the production and distribution of public health personnel to improve the State and local public health infrastructure.

Second, the bureaucracy required to administer the current 44 independent programs should be simplified and reduced.

Under this proposal, future Federal support for health professionals programs would be targeted to: primary and preventive care; minorities and the disadvantaged; community-based training in underserved areas; advanced degree nursing; and the National Health Service Corps. In recognition of the need for fiscal restraint, funding for these programs would be decreased by 10 percent at the end of 4 years.

Mr. President, the Health Professions Consolidation and Reauthorization Act of 1995 maintains the traditional goal of Federal health professions programs, which is to improve the supply and distribution of health professionals in underserved areas. I believe, however, that it offers a more effective and targeted approach by moving away from small, narrowly defined categorical programs toward broad areas of focus. In addition, my proposal places an emphasis on outcomes measurement—a feature sadly lacking in our current efforts.

As discussion of these issues develops, I would welcome any suggestions my colleagues or others may have for improving this legislation.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE HEALTH PROFESSIONS EDUCATION CONSOLIDATION AND REAUTHORIZATION ACT OF 1995

BACKGROUND

Titles III, VII, and VIII of the Public Health Service Act authorize 45 different programs. The goal of these programs is to improve the supply and distribution of a variety of types of health professionals and to improve the representation of minorities and

disadvantaged individuals in the health professions.

The focus of Title VII programs is on the training of physicians, general dentists, physician assistants, allied health personnel, public health professionals, and veterinarians. Title VIII provides for nurse training. Title III deals with the National Health Service Corps, which helps to place providers in underserved areas. These Titles include programs for direct student assistance, such as loans and scholarships, loan repayments programs, and expansion and maintenance of training programs.

SUMMARY

I. Primary care and preventive medicine training

Under this provision, funds for family physician, general pediatrician, general internists, preventive medicine physician, and physician assistant training would be authorized. These providers are generally needed to fill both rural and underserved health professional shortage areas and to help improve staffing in public health departments. Generally, priority would be given to programs which have a history of training health professionals who eventually enter practice in rural and urban underserved areas.

II. Minority and disadvantaged training

Under this provision, the Secretary would have broad discretion to fund projects which improve the number and quality of minority and disadvantaged health professionals. Many believe that an increased number of minority and disadvantaged providers would result in improvements of services in underserved areas, because such individuals are more likely to practice in those areas than are others. Generally, most minorities are currently under-represented in the health professions relative to their representation within the entire U.S. population.

III. Community-based training in underserved areas

This authority would be similar to the current Area Health Education Center program. These centers are located in underserved areas. They train medical students and other health professionals to provide services in rural and underserved areas. Exposure to these settings is generally recognized as a determinant in whether a health professional would return to practice in such settings. In addition, these centers help support practicing providers in such areas through continuing medical education support.

IV. Consolidated student assistance

This section would have a few authorities, but only one appropriation. This proposal would combine most of the current scholarship and loan programs into the current National Health Service Corps Scholarship and Loan Repayment program. As such, individuals would receive financial support only in return for service provided in primary care underserved areas. This would help to eliminate the 4,000 positions currently available in underserved areas. In addition, transfer of the current funding for scholarship programs to the Corps would help it fund more applications. Currently the National Health Service Corps is only able to provide scholarships in return for service to one out of every 10 applicants.

In addition, the current scholarship programs for minority and disadvantaged individuals would be consolidated into a single scholarship program for disadvantaged students.

The authorities which would be left in place from current law are those which do not require appropriations, but rather are revolving loan funds which currently exist at schools.

V. Nursing

The provisions of this proposal would be similar to those included in the Nursing Education Act reauthorization which was approved by the Senate last year. Under it, six current nursing programs would be consolidated into three to emphasize primary care nursing and the production of minority and disadvantaged nurses.

VI. Other priority areas

The Secretary could fund any number of other projects for health professionals training which meet national workforce needs to improve health services in underserved areas. For instance, under this provision, the Secretary could fund projects to train allied health professionals.

VII. Other provisions from last year's Minority Health Improvement Act Conference Report

Office of Minority Health

The authority for the office would be extended through FY 1999. Furthermore, the provision assures that the office is only coordinating services—not conducting its own services and research program. The authorization would be $19 million for each fiscal year through FY 1999. This would be a 10% reduction from the current appropriation of $20.668 million. (This is consistent with the general reductions in authorizations throughout the health professions bill).

State Offices of Rural Health

There would be ''such sums as necessary'' authorized through FY 1997. The cumulative appropriations would be capped at $20 million. In FY 1998, after these offices have been established in every state, the program would be repealed. The current appropriation for this program is $3.875 million.

Birth Defects

An enhanced program for an intramural program on birth defects at the Centers for Disease Control and Prevention (CDC) would be authorized. Through this program, research centers would be established, epidemiologic review of data would occur, and a national information clearing house would be established. This program is consistent with current CDC plans in this area. No funds would be authorized specifically for this program, but funding would occur under the general CDC program authority.

Traumatic Brain Injury

This provision is identical to that in the conference report. It would provide for the National Institutes of Health (NIH) to conduct research on traumatic brain injury without an authorization for a separate appropriation. It would also authorize $5 million a year for a demonstration program to be administered through the Health Resources and Services Administration, subject to the availability of funding, for the development of state systems of care for persons with traumatic brain injury. Finally, the provision would authorize a consensus conference at NIH regarding the treatment of individuals with this illness.

Health Services for Pacific Islanders

This would extend the Pacific Islanders initiative, with technical changes only. The program would be authorized at $3 million in FY 1996 and in each year through FY 1999. Finally, a study would be authorized to determine the usefulness of this initiative.

Demonstration Projects Regarding Alzheimer's Disease

There would be $5 million authorized in each of the fiscal years from FY 1996 through FY 1999. There are many technical revisions.

Miscellaneous Centers for Disease Control and Prevention Provisions

Epidemiologic Intelligence Service officers, funded through state and local governments, would not count in FTE determinations of CDC. Current fellowship programs at CDC would be authorized.

MINORITY AND DISADVANTAGED TRAINING

Purposes: (1) Provide for the training of minority and disadvantaged health professionals to improve health care access in underserved areas and to improve representation in the health professions; and (2) Provide administrative flexibility and simplification.

General Description: Under this provision, the Secretary would have broad discretion to fund projects which improve the number and quality of minority and disadvantaged health professionals. Many believe that an increased number of minority and disadvantaged providers would result in improvements of services in underserved areas because such individuals tend to practice in those areas more than others. Generally, most minority groups are currently underrepresented in the health professions relative to their representation within the entire U.S. population.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.''

9. Centers of Excellence in Minority Health
10. Health Careers Opportunity Program
11. Minority Faculty Fellowships
12. Faculty Loan Repayment

Summary of Provisions:

Eligible entities

Schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, allied health professions schools; schools offering graduate programs in clinical psychology; state or local governments; a consortia of health professions schools; or other public or private nonprofit entities could apply.

Activities

Grants and contracts would be made, as appropriate, to plan, develop, or operate:

1. Demonstrative programs.
2. Minority faculty development and loan repayment programs.
3. Programs to develop the pipeline for individuals from disadvantaged backgrounds to enter and remain in health professions schools.
4. Programs of excellence in the health professions education for minority individuals, including centers of excellence at certain historically black colleges and universities.
5. For the provision of technical assistance, work force analysis, and information dissemination.

Any grant which is funded could incorporate one or all of these activities. In addition, a preference would be given to projects which involve more than one health profession discipline or training institution and, beginning in fiscal year 1999, for centers of excellence at certain historically black colleges and universities.

The Secretary would fund grant applications which have the greatest chance of improving minority representation in the health professions and which have an above average record of retention and graduation of individuals from disadvantaged backgrounds.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $51 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $50.806 million. For fiscal years 1996 through 1998, there would be a 4.25% setaside for the centers of excellence at certain historically black colleges and universities.

PRIMARY CARE AND PREVENTIVE MEDICINE TRAINING

Purposes: (1) Provide for the training of primary care providers and preventive medicine public health personnel to improve access to and quality of health care in underserved areas and to enhance state and local public health infrastructure; (2) Provide administrative flexibility and simplification.

General Description: Under this provision, funding for family physician, general pediatrician, general internist, preventive medicine physician, and physician assistant training would be authorized. These providers are generally needed to fill both rural and underserved health professional shortage areas and to help improve staffing in public health departments. Generally, priority would be given to programs which have a history of training health professionals who eventually enter practice in rural and urban underserved areas.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

1. Family Medicine Training
2. General Internal Medicine and General Pediatrics Training
3. Physician Assistant Training
5. Preventive Medicine and Dental Public Health
12. Geriatric Medicine and Dentistry Faculty Development

Summary of Provisions:

Eligible entities

Health professions schools, academic health centers, or other public or private nonprofit entities could apply.

Activities

Grants and contracts would be made as appropriate to develop, operate, expand, or improve:

1. Departments (or academic administrative units) of family medicine.
2. Residency training programs in family medicine, general internal medicine, general pediatrics, or preventive medicine.
3. Physician assistant training programs.
4. Faculty development initiatives in primary care, including geriatrics.
5. Medical school primary care training initiatives.

Departments of Family Medicine

Departments of family medicine would be funded. Such units lead to a greater number of medical students choosing careers in primary care.

Residency Training Programs

Family medicine, general internal medicine, and general pediatrics residency programs would compete with one another for funding. Two outcome standards would be established to determine a funding preference. First, those programs with the highest percentage of providers who enter primary care practice upon the completion of training would receive a priority. In addition, programs which successfully produce professionals who go on to provide service in underserved areas would receive a preference.

Preventive medicine residencies would not compete for funding with family medicine, general internal medicine, or general pediatrics. Rather, they would receive an appropriate amount of funding, as determined by the Secretary. A preference would be given to those programs which train a high percentage of individuals who enter practice in state and local public health departments.

Physician Assistant Training Programs

Physician assistant training programs would receive an appropriate amount of funding, as determined by the Secretary, from the appropriation for this section. Those programs which have a higher output of providers who eventually enter practice in underserved areas would receive a preference for funding.

Faculty Development

The Secretary would determine which type of faculty development projects to fund based on national and state work force goals. Geriatric fellowships and faculty development could be funded.

Medical School Primary Care Training

Primary care training activities at medical schools would be funded through departments (or administrative units) of family medicine, general internal medicine, or general pediatrics. Applications from general internal medicine and general pediatrics administrative units would be required to demonstrate their institution's commitment to primary care education by: (1) A mission statement which has a primary care medical education objective; (2) faculty role models and administrative units in primary care, and general pediatrics; and (3) required undergraduate community-based medical student clerkships in family medicine, internal medicine, and pediatrics.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $76 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $75.285 million. Family medicine departments would receive no less than 12 percent of the overall funding. This is consistent with the current set-aside that such departments receive.

COMMUNITY-BASED TRAINING IN UNDERSERVED AREAS

Purposes: (1) Provide support for training centers remote from health professions schools to improve and maintain the distribution of health providers in rural and urban underserved areas; (2) Provide the Secretary the option of funding geriatric training centers; (3) Provide administrative flexibility and simplification.

General Description: This authority, most similar to the current Area Health Education Center (AHEC) program, would enhance the community-based training in underserved areas of various health professionals. This goal would be achieved through greater flexibility in the design of such programs and through the leveraging of state and local resources. AHECs are generally located in underserved areas remote from academic health centers. They train health professionals to provide services in rural and underserved areas. Exposure to these settings is generally recognized as a determinant in whether a health professional returns to practice in such settings. In addition, these centers help support practicing providers in such areas through continuing medical education programs. Finally, the current program for funding geriatric training centers could continue at the discretion of the Secretary.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Senate Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

40. Area Health Education Centers
41. Health Education and Training Centers
42. Geriatric Education Centers
43. Rural Health Interdisciplinary Training

Summary of Provision:

Eligible entities

Health professions schools, academic health centers, state or local governments, or other appropriate public or private nonprofit entities.

Activities

Grants and contracts would be made as appropriate to plan, develop, operate, expand, conduct demonstration projects, and to provide trainee support, for projects which:

1. Improve the distribution, supply, quality, utilization, and efficiency of personnel providing health services in urban and rural underserved populations.
2. Encourage the regionalization of educational responsibilities of the health professions schools into urban and rural underserved areas.
3. Are designed to prepare individuals effectively to provide health services in underserved areas through: preceptorships, the conduct or affiliation with community-based primary care residency programs, agreements with community-based organizations for the delivery of education and training in the health professions, and other programs.
4. Conduct interdisciplinary training of the various health professions.
5. Provide continuing medical and health professional education to professionals practicing in the underserved areas served by the grantee.

A preference would be given to projects which involve one or more health professions discipline or training institution, train individuals who actually enter practice in underserved areas, and have a high output of graduates who enter primary care practice.

In addition, the Secretary may fund geriatric training centers if the Secretary determines such entities are needed to improve the geriatric skills of health providers.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $39 million authorized for fiscal year 1996 which would be reduced to $25 million by fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $39.159 million. The $14 billion in funding reductions over the three-year period is equivalent to the current combined appropriations for the Health Education and Training Centers, Rural Health Interdisciplinary Training Programs, and the geriatric training centers. Funding will be phased down to allow for the completion of current project funding periods.

HEALTH PROFESSIONS WORK FORCE DEVELOPMENT

Purpose: Provide support to strengthen capacity for the education of individuals in certain health professions which the Secretary determines to have a severe shortage of personnel and for improving the care of underserved populations and other high-risk groups.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

4. Public Health Special Projects
6. Health Administration Traineeships and Special Projects
13. Geriatric Optometry Training
14. General Dentistry Training
15. Allied Health Advanced Training and Special Projects
16. Podiatric Primary Care Residency Training
17. Chiropractic Demonstration Projects
45. AIDS Dental Services

Summary of Provisions:

Eligible Entities

Schools of medicine, osteopathic medicine, public health, dentistry, allied health, optometry, podiatric medicine, chiropractic medicine, veterinary medicine, pharmacy, or graduate programs in mental health practice.

Activities

Grants and contracts would be made as appropriate to plan, develop, or operate programs to strengthen the capacity for health professions education and practice. The Secretary shall have broad discretion to fund projects, but shall give priority to projects which would improve care for underserved populations and other high-risk groups and which would increase the number of practitioners in any health professions field for which the Secretary determines there is a severe shortage of professionals.

In general, funds under this section could be used to provide for faculty development, model demonstrations, trainee support, technical assistance, or work force analysis.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $20 million authorized for fiscal year 1996 which would be reduced to $5 million by fiscal year 1999. Combined funding for these authorities in fiscal year 1995 is $20.264 million. The three-year period to phase down this funding would allow for the completion of current project award periods.

NURSING WORK FORCE DEVELOPMENT

Purposes: (1) Provide for the training of advanced degree nurses and other nurses to improve access to and quality of health care in underserved medical and public health areas; and (2) Provide administrative flexibility and simplification.

General Description: This proposal would provide for the training of advanced degree nurses, including nurse practitioners, nurse midwives, nurse anesthetists, and public health nurses. In addition, projects to improve nursing work force personnel diversity and to expand the training of nurses in certain priority settings would occur. The Secretary would have broad discretion to determine which projects to fund. Generally, projects which would ultimately lead to a greater number of nursing providers for rural and underserved areas, including local and state public health departments, would receive a funding preference.

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.'')

18. Nursing Special Projects
19. Advanced Nurse Education
20. Nurse Practitioner/Nurse Midwife Education
21. Nurse Anesthetist Training
22. Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds
32. Professional Nurse Traineeships

Summary of Provisions:

Eligible entities

Schools of nursing (collegiate, associate degree, diploma), nursing centers, state or local governments, and other public or nonprofit private entities.

Activities

Grants and contracts would be made, as appropriate, to plan, develop, or operate:

1. Advanced practice nurses training programs including programs for nurse practitioners, nurse midwives, nurse anesthetists, and public health nurses.
2. Programs to increase nursing work force diversity.
3. Projects to strengthen the capacity for basis nurse education in certain priority areas.

Amounts provided under any one of these areas could be used for faculty development, demonstrations, trainee support, work force analysis, technical assistance, and dissemination of information.

In determining which projects to fund under each of these areas, the Secretary would give priority to those projects which would substantially benefit rural or underserved populations, including public health departments. Generally, those programs which tend to produce nurses for these areas, including primary care nurses, would receive funding priority. In addition, the Secretary would have broad discretion to distribute the appropriation among these different activity areas. Funds would be allocated among these activities to meet the priority for underserved areas and to meet relevant national and state nursing work force goals.

The National Advisory Council on Nurse Education and Practice would continue to advise the Secretary regarding nursing issues. Funding for this council would be provided through the appropriations under this section.

Advance Practice Nurses Training

Projects that support the enhancement of advanced practice nursing education and practice would be funded. In addition, a grantee could use a portion of the funds to provide for traineeships. Such traineeships would provide stipends to students to help cover the costs of tuition, books, fees, and reasonable living expenses. Programs which could receive support under this authority are those which train nurse practitioners, nurse midwives, nurse anesthetists, public health nurses, and other advanced degree nurses.

Programs To Increase Nursing Work Force Diversity

Projects to increase nursing education opportunities for individuals who are from disadvantaged racial and ethnic backgrounds under-represented among registered nurses would be funded. Such projects could provide student stipends or scholarships, pre-entry preparation, or retention activities.

Projects To Strengthen Basic Nurse Education

Funding priority would be given to basic nurse education programs designed to: (1) improve nursing services in schools and other community settings; (2) provide care for underserved populations and other high-risk groups such as elderly, individuals with HIV-AIDS, substance abusers, homeless, and battered women; (3) provide skills needed under new health care systems; (4) develop cultural competencies among nurses; (5) and serve other priority areas.

Outcomes evaluation

Each program would be required to set performance outcomes and would be held accountable for meeting such outcomes. The performance outcome standards would be consistent with state, local, and national work force development priorities.

Non-Federal matching

The Secretary would have discretion to require institutional or state and local government matching grants to ensure the continuation of the project once federal aid ends.

Transition

Current grantees would continue to operate under existing authorities through the remainder of their funding cycles. The new provisions would apply only to new grants.

Authorization

There would be $62 million authorized for fiscal year 1996, which would be reduced to $59 million for fiscal year 1999.

CONSOLIDATED FINANCIAL ASSISTANCE AND OTHER LOAN PROGRAMS

Purposes: (1) Provide consolidation of current loan repayment, scholarship, and scholarship payback programs into a flexible National Health Service Corps program requiring service payback in underserved areas in return for federal financial assistance; (2) Continue certain loan programs which do not require federal appropriations or that guarantee the availability of loan sources in the market for health professions students; (3) Consolidate scholarship programs for the disadvantaged; and (4) Provide administrative flexibility and simplification.

General Description: This proposal would combine most of the current targeted scholarship and loan repayment programs into the existing National Health Service Corps Scholarship and Loan Repayment program. As such, individuals would only receive ''free'' financial support in return for service provided in underserved areas. This would help to eliminate the shortage of over 4,000

positions in primary care underserved areas and in underserved public health positions in state and local health departments.

The three scholarship programs for minorities and disadvantaged students would also be consolidated into a single scholarship program for disadvantaged students.

The authorities which would not be consolidated are those which do not require appropriations but, rather, are revolving loan funds which currently exist at schools. In addition, the current Health Education Assistance Loan Guarantee program would also be left in place.

(This consolidated program is meant to complement and other federal financial assistance programs for which health professional and public health professional students qualify. Generally, the funds provided under the Perkins and Stafford Loan programs, administered through the Department of Education, provide sufficient resources to allow anyone the opportunity to pursue a career in any health professions training program. For instance, medical students may qualify for $23,500 annually in loans under these two programs—more than enough to finance the average medical school education.)

Current Law Authorities Consolidated: (The numbers before each program are keyed to the Labor Committee document: ''Health Professions Education: Summary of Federal Training Programs.''

23. Scholarships for Disadvantaged Students
25. Exceptional Financial Need Scholarships
26. Financial Assistance to Disadvantaged Health Professions Students
28. State Loan Repayment Program
29. Community Based Scholarship Program
30. Nursing Loan Repayment Program
36. National Health Service Corps Scholarship Program
37. National Health Service Corps Loan Repayment Program
39. Public Health Traineeships

Current Law Authorities Continued Without Consolidation: (These are revolving loan funds administered by schools which do not require appropriations.)

33. Nursing Student Loan
34. Primary Care Loan Program
35. Health Professional Student Loans
36. Loans for Disadvantaged Students

Current Law Authority Requiring a Separate Appropriation:

38. Health Education Assistance Loans

Summary of Provisions:

Part I. Consolidated Scholarships and Loans

A. National Health Service Corps Scholarship and Loan Payback

Eligible entities

Health professionals and public health professionals (for loan payback only).

Activities

The Secretary would have broad authority to offer the following scholarship or loan repayment options to persons who agree to provide services through the National Health Service Corps in underserved areas. This consolidated authority would be patterned after the existing National Health Service Corps Scholarship and Loan Repayment programs.

1. Provide scholarships to health professional students in return for a commitment for such students to practice in the National Health Service Corps in underserved areas once their education is completed.

2. Provide loan repayment to:

a. Health professionals and public health personnel in return for a commitment from such persons to practice in the National Health Service Corps designated underserved sites or, in the case of public health personnel, state and local health departments with public health professional shortages.

b. Nurses for an amount no greater than 85 percent of their debt for persons who agree to practice in National Health Service Corps designated underserved areas.

3. Provide funding to states to operate their own loan repayment or scholarship programs. States could designate their own underserved areas utilizing their own criteria if such criteria are approved by the Secretary.

The Secretary would determine how much to provide for each activity to meet the goals of providing service to underserved areas and retaining providers in underserved areas. States applying for grant funding to run their own programs would receive priority.

Authorization

There would be $90 million authorized for fiscal year 1996 and such sums as necessary through fiscal year 1999. This amount of funding is consistent with the combined current appropriations for these programs.

B. Scholarships for Disadvantaged Students

Eligible entities

Health professions schools.

Activities

The Secretary would award grants to health professions schools for the awarding of scholarships to disadvantaged students. Eligible entities would receive a preference based on the proportion of graduating students going into primary care, the proportion of minority students, and the proportion of graduates working in medically underserved areas.

Authorization

There would be $32 million authorized for fiscal year 1996 through 1999. This amount of funding is consistent with the combined current appropriation for these programs.

Part II. Current Loan Authorities Continued Without Appropriations

Activities

The current Nursing Student Loan (NSL) program, Primary Care Loan (PCL) program, Health Professions Student Loan (HPSL) program, and the Loans for Disadvantaged Students (LDS) programs would continue. These programs would continue using the revolving funds which remain at health professions schools.

Authorization

There would be $8 million authorized in each of fiscal years 1996 through 1998 for the LDS program. For fiscal year 1999, the authority for appropriations would be repealed after the revolving funds begin to be paid back by current loan recipients.

The NSL, PCL, and HPSL programs, which do not currently receive appropriations, would not be authorized to receive appropriations.

Part III. HEAL Loans

Activities

The HEAL loan program would continue in its current form.

Authorization

This program would continue to be authorized at such sums as necessary to guarantee sufficient funds for the insurance pool for loan defaulters. The current premiums provided by borrowers are insufficient to meet the needs of this fund. As a result of reforms made in this program in fiscal year 1992, HHS is improving its loan collection and the insurance fund is growing. Over time, this program may not require appropriations. The current appropriation is $24.972 million.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 556. A bill to amend the Trade Act of 1974 to improve the provisions of trade readjustment allowances during breaks in training, and for other purposes; to the Committee on Finance.

TRADE ADJUSTMENT ASSISTANCE IMPROVEMENT ACT

Mr. KERRY. Mr. President, last October I received a letter from a Mrs. Myra Hoey of Blandford, MA. Mrs. Hoey detailed a problem that her husband, David, was having with the Trade Adjustment Assistance program which oversees the benefits provided to workers displaced by the North American Free-Trade Agreement. David Hoey was an employee at the Westfield River Paper Co. in Massachusetts. Along with over 100 other employees, David lost his job when the paper company moved to Canada after Congress approved NAFTA.

When we passed NAFTA in 1993, we recognized the importance of assisting those working families, like the Hoeys, who might be displaced by this agreement in obtaining gainful employment in another field through the Trade Adjustment Assistance Program. For many years the Trade Adjustment Assistance Program has been very helpful to the citizens of this Nation by helping them to seize an opportunity for a second chance—for another career or further education. However, Mr. President, occasionally some Federal guidelines fall behind the times and need to be adjusted in order to continue to be effective. Mrs. Hoey and the other workers in Westfield, MA, discovered—the hard way—that the Trade Adjustment Assistance Program has problems that need to be fixed.

Workers displaced because of import-related movement of companies are eligible for trade adjustment assistance [TAA]. Workers displaced specifically because of NAFTA related movement are eligible for trade readjustment allowances [TRA]. TAA and TRA provide 52 weeks of unemployment insurance-like payments to these workers and pay for approved training programs to train these workers.

Because their employer moved to Canada, the Westfield River Paper Co. employees were eligible for TRA, and a number of them began a retraining program at Springfield Technical Community College during the fall of last year. These workers dedicated themselves to the task of learning new skills so that they could support their families. However, during Christmas break from their training, these hard-working former employees found out that their benefits were cut off for a full month.

This is because the law that created TAA includes a provision that limits TAA and TRA payments during scheduled breaks in training to the first 14 days of these breaks.

Consequently, those workers who are out of work and are training for new jobs and who are enrolled in programs with 6-week winter breaks lose a month of benefits, even though they

are willingly participating in good faith in a training program and have no other source of income. The missed weeks of benefits are tacked on to the end of the displaced workers' benefit year so that a total of 52 weeks of TRA is still provided.

The motivation behind this provision is to encourage workers to chose training programs with shorter breaks so that the workers will be moved into the workforce with greater speed. In addition, workers are implicitly encouraged to select programs that train them quickly because benefits only last 1 year.

However, not all workers have a plethora of programs from which to choose. Some are limited to only those programs offered by their local community college. Most colleges and universities have winter breaks longer than what is allowed by TRA, and as a result, benefits are temporarily suspended to those people enrolled in this program at those colleges.

Extending to 45 calendar days the period of a break in training through which TAA and TRA benefits can be paid would be helpful to displaced workers. It would be very nearly cost-neutral, because no additional weeks of benefits would be provided, and it would eliminate inequities in the existing system. And at the risk of redundancy, workers would still be encouraged to choose programs with smaller breaks, because the total amount of time that they will receive benefits will still be only a year. Finally, a 45 calendar day training break limitation would encourage workers to engage in summer programs if their period of retraining overlaps summer recess.

The bill I am introducing today, the Trade Adjustment Assistance Program Improvement Act, provides this increase in the training break during which benefits may continue to be paid. It also would clear up another problem as well, one that touches only on TRA's. I welcome my distinguished senior colleague from Massachusetts, Senator KENNEDY, as an original cosponsor.

In order to qualify for a TRA, the law currently requires a displaced worker to enroll in training by the end of the 16th week after his or her initial unemployment compensation benefit period. the rationale for the time limit is that adjustment assistance is generally more effective if adjustment decisions are made relatively early in the unemployment period. However, the current language creates some inequities because the initial benefit period is triggered by initial lay offs and continues to run even if a worker is recalled.

For example, if a worker is recalled 4 weeks after an initial layoff, then is laid off a second time after 12 weeks of employment, that worker would not qualify for TRA even if the worker immediately enrolled in training because the 16 weeks of his initial benefit period would have expired.

It makes a lot more sense to allow the worker 16 weeks from his or her most recent separation in order to determine whether retraining is needed. This would provide the worker an opportunity to conduct a job search and to explore other options before making an enrollment decision, while at the same time encouraging the person to make a decision at a point early enough to promote effective adjustment.

Therefore, this bill takes into account situations involving recalls and would require that in order to qualify for TRA, a worker must enroll in training by the end of the 16th week after his or her most recent separation from the impacted firm.

These two changes, one to both TAA and TRA, and one only to TRA, would improve the entire TAA system in small but tangible ways, and at slight additional cost enable these programs more effectively to help the people they were designed to aid. People like David and Myra Hoey, and other workers in Michigan, Tennessee, Washington, Pennsylvania, and around the Nation will get the assistance they need to get back on their feet and into the work force.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Trade Adjustment Assistance program Improvement act of 1995''.

SEC. 2. PROVISION OF TRADE READJUSTMENT ALLOWANCES DURING BREAKS IN TRAINING.

Section 233(f) of the Trade Act of 1974 (19 U.S.C. 2293(f)) is amended by striking ''14 days'' and inserting ''45 days''.

SEC. 3. TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 250(d)(3)(B)(i) of the Trade Act of 1974 (19 U.S.C. 2331(d)(3)(B)(i)) is amended by striking ''of such worker's initial unemployment compensation benefit period'' and inserting ''after such worker's most recent qualifying separation''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to workers covered under a certification issued on or after the date of enactment of this Act.

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 14

At the request of Mr. DOMENICI, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 14, a bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

S. 141

At the request of Mrs. KASSEBAUM, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 141, a bill to repeal the Davis-Bacon Act of 1931 to provide new job opportunities, effect significant cost savings on Federal construction contracts, promote small business participation in Federal contracting, reduce unnecessary paperwork and reporting requirements, and for other purposes.

S. 234

At the request of Mr. CAMPBELL, the name of the Senator from Maine [Ms. SNOWE) was added as a cosponsor of S. 234, a bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes.

S. 256

At the request of Mr. DOLE, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Washington [Mrs. MURRAY], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 258

At the request of Mr. PRYOR, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 277

At the request of Mr. D'AMATO, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 277, a bill to impose comprehensive economic sanctions against Iran.

S. 293

At the request of Mr. CONRAD, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 293, a bill to amend title 38, United States Code, to authorize the payment to States of per diem for veterans receiving adult day health care, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S.

327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 351

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 375

At the request of Mr. ABRAHAM, the names of the Senator from Oklahoma [Mr. INHOFE], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 375, a bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas and with respect to enhanced vehicle inspection and maintenance programs, and for other purposes.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Kansas [Mr. DOLE] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 395

At the request of Mr. MURKOWSKI, the names of the Senator from California [Mrs. FEINSTEIN] and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 395, a bill to authorize and direct the Secretary of Energy to sell the Alaska Power Marketing Administration, and for other purposes.

S. 428

At the request of Mr. ROTH, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 428, a bill to improve the management of land and water for fish and wildlife purposes, and for other purposes.

S. 440

At the request of Mr. WARNER, the names of the Senator from Louisiana [Mr. BREAUX] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 445

At the request of Mr. D'AMATO, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 445, a bill to expand credit availability by lifting the growth cap on limited service financial institutions, and for other purposes.

S. 511

At the request of Mr. DOMENICI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 469

At the request of Mr. GREGG, the names of the Senator from Wyoming [Mr. THOMAS], the Senator from Minnesota [Mr. GRAMS], and the Senator from Georgia [Mr. COVERDELL] were added as cosponsors of S. 469, a bill to eliminate the National Education Standards and Improvement Council and opportunity-to-learn standards.

S. 476

At the request of Mr. NICKLES, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

S. 520

At the request of Mr. SHELBY, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 520, a bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for adoption expenses.

S. 530

At the request of Mr. GREGG, the names of the Senator from New Mexico [Mr. DOMENICI], the Senator from North Carolina [Mr. HELMS], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 531

At the request of Mr. HATCH, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 531, a bill to authorize a circuit judge who has taken part in an en banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes.

SENATE JOINT RESOLUTION 21

At the request of Mr. THOMPSON, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 21, a joint resolution proposing a constitutional amendment to limit congressional terms.

SENATE CONCURRENT RESOLUTION 9

At the request of Mr. MURKOWSKI, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Vermont [Mr. JEFFORDS], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Maine [Ms. SNOWE], the Senator from Montana [Mr. BURNS], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Maine [Mr. COHEN], the Senator from Georgia [Mr. COVERDELL], the Senator from Arizona [Mr. KYL], the Senator from Tennessee [Mr. THOMPSON], the Senator from Texas [Mrs. HUTCHISON], and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of Senate Concurrent Resolution 9, a concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China of Taiwan to the United States.

SENATE RESOLUTION 79

At the request of Mr. SPECTER, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from California [Mrs. BOXER], the Senator from Mississippi [Mr. COCHRAN], the Senator from New Hampshire [Mr. GREGG], the Senator from Maryland [Mr. SARBANES], the Senator from Massachusetts [Mr. KENNEDY], the Senator from California [Mrs. FEINSTEIN], the Senator from Texas [Mrs. HUTCHISON], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Nevada [Mr. REID], the Senator from Maryland [Ms. MIKULSKI], the Senator from Iowa [Mr. GRASSLEY], the Senator from Virginia [Mr. ROBB], the Senator from New Mexico [Mr. DOMENICI], the Senator from Wyoming [Mr. SIMPSON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Delaware [Mr. BIDEN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from New York [Mr. MOYNIHAN], the Senator from Delaware [Mr. ROTH], the Senator from Massachusetts [Mr. KERRY], the Senator from Washington [Mrs. MURRAY], the Senator from Connecticut [Mr. DODD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Alabama [Mr. HEFLIN], the Senator from Georgia [Mr. COVERDELL], the Senator from Maine [Mr. COHEN], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Maine [Ms. SNOWE], the Senator from Virginia [Mr. WARNER], the Senator from Wisconsin [Mr. KOHL], the Senator from Kansas [Mr. DOLE], the Senator from Georgia [Mr. NUNN], the Senator from South Carolina [Mr. THURMOND], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Resolution 79, a resolution designating March 25, 1995, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.''

SENATE RESOLUTION 80

At the request of Mr. DORGAN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of Senate Resolution 80, a resolution expressing the sense of the Senate on the impact on the housing industry of interest rate increases by the Federal Open Market Committee of the Federal Reserve System.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Florida [Mr. MACK] were added as cosponsors of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists

should be included in Federal laws relating to the provision of health care.

AMENDMENT NO. 331

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of ammendment No. 331 proposed to H.R. 889, a bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding a hearing on Wednesday, March 15, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on S. 349, a bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Tuesday, March 21, 1995, at 9:30 a.m., in room 216 of the Hart Senate Office Building. The subject of the hearing is health care fraud.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Tuesday, March 14, at 9:30 a.m., in SR–332, to discuss conservation, wetlands and farm policy.

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

COMMITTEE ON FINANCE

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Tuesday, March 14, 1995, in room 215 of the Dirksen Senate Office Building, beginning at 9:30 a.m., to conduct a hearing on welfare reform.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 14, 1995, at 10 to hold a nominations hearing.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, March 14, for a hearing at 10 a.m. on nuclear nonproliferation.

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

COMMITTEE ON THE JUDICIARY

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, March 14, 1995, at 9 a.m. to hold a hearing on proposals to reduce illegal immigration and reduce costs to taxpayers.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on effective health care reform in a changing marketplace, during the session of the Senate on Tuesday, March 14, 1995 at 10 a.m.

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

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Subcommittee on Acquisition and Technology of the Committee on Armed Services be authorized to meet at 2:30 p.m. on Tuesday, March 14, 1995, in open session, to receive testimony on the technology base programs in the Department of Defense.

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

SUBCOMMITTEE ON HOUSING OPPORTUNITY AND COMMUNITY DEVELOPMENT

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that Subcommittees on Housing Opportunity and Community Development and HUD Oversight and Structure, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, March 14, 1995, to conduct a hearing on HUD reorganization.

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

SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to meet Tuesday, March 14, at 10 a.m. to consider S. 503, a bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat.

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

ADDITIONAL STATEMENTS

PASADENA ADOPTS AMMUNITION CONTROL

• Mr. MOYNIHAN. Mr. President, for more than a decade now, I have argued here on the Senate floor, and often in print, that in order to make any real progress in reducing gun violence, we must seek to control ammunition. I have put it that ''Guns don't kill people, bullets do.''

This is not to say that I do not support gun control; I certainly do. I was an original cosponsor of the Brady bill when it was first introduced in 1989, and was proud to vote for it when it finally passed the Senate in 1993. We are all pleased at the very real difference the Brady law has made. Just 1 year after it became effective, background checks under the Brady law have already prevented 45,000 felons and other prohibited persons from purchasing handguns. No doubt a significant number of lives were saved as a result.

Yet the fact remains that there are already some 200 million firearms in circulation in the United States. These weapons are not going away. With a minimum of care they will last indefinitely. I recall that as an officer of the deck in the Navy of the 1940's, I was issued a Colt model 1911 .45 caliber sidearm. That particular handgun was first sold to the U.S. military in 1912, and continued to be used in the Navy until very recently. Use of weapons 35 or even 50 years old has been common in our Armed Forces—and these guns still work perfectly.

We probably have a two-century supply of guns in circulation today. On the other hand we have something like a 4-year supply of bullets. This has led me to conclude that a different approach is needed.

Gun violence is a public health epidemic and therefore demands an epidemiological response. An epidemiologist will tell you that in order to cope with any epidemic, you must eliminate the pathogen, or the agent causing the disease. In 1992, Dr. Lester Adelson made precisely this argument in an article entitled ''The Gun and the Sanctity of Human Life: the Bullet as Pathogen'' in the ''Archives of Surgery.'' In the case of gun violence, the pathogen is the bullet. I say again, guns don't kill people, bullets do.

I have been making this point for many years now, but with only the slightest success in getting it across. We have had two small but significant achievements: in 1986 and again in 1994, I was able to secure enactment of provisions to ban the manufacture or importation of armor-piercing ammunition: the so-called cop-killer ballets. This was done with considerable difficulty in the first instance because, although the police groups, led by Phil Caruso and the New York Patrolmen's Benevolent Association, were strongly supportive, the National Rifle Association was not, and in the end only grudgingly supported the bill. That bill, the Law Enforcement Officers Protection Act of 1986, was the first law to outlaw a round of ammunition. In 1994 in the crime bill, we updated the 1986 act to cover a new round of armor-

piercing ammunition being made in Sweden.

These were important but really only incremental steps. The slaughter in the streets goes on. But Mr. President, we may have some good news. An editorial in the March 1, 1995, edition of the Los Angeles Times describes a bold new initiative in Pasadena, CA, where the city council has adopted one of the first ordinances in the Nation restricting the sale of ammunition. I ask that this article be printed in the RECORD.

Gun dealers in Pasadena must now record not only their sales of guns, but also of ammunition. And why? Pasadena Chief of Police Jerry Oliver summed it up nicely when he said

In Pasadena tonight, at this very moment, it is easier to buy a box of 9-millimeter rounds than it is to buy a can of spray paint.

Last September, I noted on this floor that the city of Chicago had become the first municipality in the Nation to ban the sale of all handgun ammunition. Now Pasadena has taken steps to regulate the sale of bullets. This won't prevent buyers from going to neighboring Los Angeles to buy ammunition, but similar steps are now being considered in Los Angeles, and in nearby Azusa as well.

Mr. President, I hope the actions of Chicago and Pasadena represent a turning point in our thinking about this problem. I hope other cities and towns recognize the potential of ammunition control to bring about real progress in the fight against gun violence. I hope the States and the Federal Government will come around to this idea as well. We need a new approach, we need bold action, and we need it soon. Pasadena has the right idea. Let us hope the rest of the Nation is paying attention.

The article follows:

[From the Los Angeles Times, Mar. 1, 1995]

HOW DESPERATION BECOMES A TOOL

PRODDED BY EVER-RISING MAYHEM, PASADENA PASSES A LAW REGULATING BULLET SALES

Bravo to the members of the Pasadena City Council. By a vote of 5 to 2, the council adopted what is believed to be the nation's first municipal law restricting bullet sales.

Approval did not come easily, however. Emotions ran high: Ordinance supporters, outraged by street violence, verbally battled with gun enthusiasts who reject even the most reasonable restrictions. The vote did not occur until shortly before midnight, after five hours of debate. Dozens of backers and opponents of the ordinance offered impassioned testimony before a standing-room-only crowd. Tempers flared; one council member temporarily left the proceedings in angrily reacting to pro-ordinance comments by the police chief. Cheers and catcalls broke out often.

And what was all the fuss over? The new ordinance requires anyone buying bullets in Pasadena to provide identification showing proof of age and to complete a registration form listing the amount, brand and type of ammunition purchased.

The measure is intended to curtail sales of bullets to juveniles—such sales are already illegal but nonetheless widespread—and to provide police with information that may help link bullets found at a crime scene with suspects.

Pasadena has taken but the tiniest of steps with this ordinance. But it is a measure of the headlock in which the gun lobby has held federal, state and local lawmakers that even these tepid, sensible restrictions on bullet sales can be so strongly resisted as an infringement on the right of self-defense. After all, as Pasadena Police Chief Jerry Oliver noted at the start of the council meeting, "Tonight, it is easier to buy 9-millimeter ammunition than it is to buy a can of spray paint." That discrepancy is nuts.

The most powerful criticism of the new ordinance is that it may not be very effective. Pasadena kids and adults bent on violence may simply seek their bullets in nearby Glendale, Los Angeles or La Canada. Alone, Pasadena can realistically do little to reduce gun violence.

But the true worth of Pasadena's ordinance—its value as an example—was apparent even before its passage. Monday afternoon the Los Angeles City Council took the first steps to follow Pasadena's lead. The council's Public Safety Committee asked the city attorney to draft an ordinance patterned on Pasadena's. Then, on Tuesday, Azusa's police chief vowed to seek such an ordinance there.

If Los Angeles and Azusa—as we hope—pass bullet laws, more cities are sure to follow. Then, what began as, in part, a symbolic gesture reflecting the desperation of Pasadena's leaders to "do something" about gun crime will become a tough tool against criminals throughout this violence-weary region.●

DISCOVERY OF THE TOP QUARK

● Mr. D'AMATO. Mr. President, I rise today to congratulate Dr. Paul D. Grannis and the New York State D–Zero collaboration members on the discovery of the Top Quark.

Dr. Grannis is a physicist at the State University of New York at Stony Brook and is a leader of an international collaboration of scientists working at Fermi National Accelerator Lab in Batavia, IL.

The D–Zero collaboration includes scientists from Brookhaven National Laboratory, Columbia University, New York University, and the University of Rochester as well as those from the State University of New York at Stony Brook. Scientists from Rockefeller University also participated in the discovery.

The discovery of the Top Quark is one of the most important achievements in high energy physics this decade. The Top is the last of six Quarks to be discovered and is an integral part of the Standard Model of modern physics. This Standard Model not only serves as the basis for our understanding of physics but defines the fundamental building blocks of the Universe.

Dr. Grannis has headed the D–Zero collaboration at Fermilab for over a decade. During this tenure he has commuted to Illinois nearly every week while never failing to meet his commitment to academics and teaching in New York.

I commend him on his extraordinary commitment—which I believe exemplifies the high standard of dedication to both research and education in New York. It is a great credit to New York State institutions that their leadership has culminated in this exciting discovery.

Again, I congratulate Dr. Grannis on this tremendous achievement and wish him continued success. Dr. Grannis lives in Stony Brook, NY with his wife Barbara and has four children: Jennifer, Eliza, Helena, and David.

Mr. President, I ask that the March 3, 1995, New York Times article by Malcolm W. Browne describing this discovery be included in the RECORD following the text of these remarks.

[From the New York Times, Mar. 2, 1995]

ELUSIVE ATOMIC PARTICLE FOUND BY PHYSICISTS

(By Malcolm W. Browne)

BATAVIA, IL., March 2—Culminating nearly a decade of intense effort, two rival groups of physicists announced today that they had found the elusive top quark—an ephemeral building block of matter that probably holds clues to some of the ultimate riddles of existence.

The announcements brought sustained applause and a barrage of questions from an overflow audience of physicists at the Fermi National Accelerator Laboratory, where the work was done. Fermilab has the world's most powerful particle accelerator.

The two competing scientific teams, each with about 450 scientists and each using a separate detection system, reported that after a long chase in which there had been several false sightings of the top quark, this monstrously heavy but elusive particle has finally been cornered and measured. The results of the two groups' independent measurements differed somewhat, but when margins of error were taken into account, the scientists agreed that the results were consistent.

One of the teams, the CDF Collaboration (standing for Collider Detector at Fermilab) reported last April that it had found evidence of the quark's existence. But at the time, the group lacked enough statistical evidence to claim discovery, and the competing group, the D0 (for D–Zero) Collaboration, which had even less evidence of its own, branded the CDF announcement as premature.

The achievement claimed today by both teams leaves virtually no room for doubt, however, and the discovery was hailed as a landmark in science. Hazel O'Leary, who as Secretary of Energy heads the Federal agency providing most of the money for research at Fermilab, called the discovery a "major contribution to human understanding of the fundamentals of the universe."

The finding confirms a prediction based on a theory known as the Standard Model that nature has provided the universe with six types of quarks; the other five, the up, down, strange, charm and bottom quarks had all been known or discovered by 1977. Since the infancy of the universe shortly after the Big Bang—estimated at 10 billion to 20 billion years ago—only the up and down quarks have survived in nature, and the protons and neutrons that make up the nuclei of all atoms are built from combinations of these two quarks; the other quarks disappeared from the observed universe, but have been recreated by modern particle accelerators.

Dr. Leon M. Lederman, a winner of the Nobel Prize in Physics and the former director of Fermilab, said at today's meeting that he doubted there could be any more quark types but that "we know there's a lot of dark matter out in the universe that we can't identify."

''We're still in for a lot of surprises,'' he added.

But more important than merely completing the table of quarks predicted by theory, the top quark may now begin to shed light on a deep philosophical question: everything in the universe, from the most distant galaxy to a rose petal, is made of quarks. Were the masses and other properties of these particles determined by random chance, or by some fundamental unifying plan? If so, what is that plan, and how might gravity, the least understood of the four forces of nature, be related to it?

''This monster, compared with all the other quarks, is like a big cowbird's egg in a nest of little sparrow eggs,'' said Dr. Paul D. Grannis, a leader of the DO group. ''It's so peculiar it must hold clues to some important new physics.''

''The top quark has turned out to be so heavy,'' added Dr. John Peoples, director of Fermilab, ''that it's kind of a laboratory in itself, from which many new experiments will certainly yield important insights.''

It may be, scientists believe, that quarks (and the higher forms of matter they make up) are endowed with mass by interacting with an all-pervading universal ''field,'' with which they communicate through a hypothetical particle called the Higgs boson. To find and measure the Higgs boson would be as exciting for a physicist as the creation of life in a test tube would be for a biologist.

One of the questions high-energy physicists regard as fundamental is whether there is a single type of Higgs boson, or several types. Theory predicts that if it is possible to accurately measure the masses of two known particles—the top quarks and the W particles that transmit the weak nuclear force—it will be possible to determine whether there are one or more than one Higgs bosons.

''We're so elated by the discovery of the top quark that we haven't yet begun to sift all the data,'' said Dr. Boaz Klima of Fermilab, one of the leaders of the successful search. ''But this particle is so astonishingly heavy that its decay may give us hints of a lot of other things, perhaps even of supersymmetric particles.''

The quest for supersymmetric particles by the world's most powerful accelerators during the last decade has failed to turn up any evidence that they exist, but according to some theories, they may be so heavy they are beyond reach of present-day accelerators. If supersymmetric particles could be shown to exist, they might offer scientists a tool for learning how gravity is related to the other forces of nature: the electromagnetic force and the strong and weak nuclear forces.

Even when trillions of protons and antiprotons are made to collide in Fermilab's huge accelerator at combined energies of two trillion electron-volts, the creation of top quarks by the miniature fireballs remains a rare event.

Dr. Grannis of the D0 collaboration said today that his group, which has been running its detector on and off since 1992, has found 17 collisions resulting in evidence of the creation of a top quark. The team was able to calculate the mass of the particle as 199 billion electron-volts, give or take about 30 billion electron-volts. (Particle physicists measure mass in terms of its energy equivalent, because the units are more practical. Einstein's famous equation $E=mc^2$ defines the equivalency of mass and energy.)

For their part, according to Dr. William Carithers Jr., a leader of the rival CDF Collaboration, two separate counting techniques using the CDF detector have turned up a total of about 21 top quark events. The group calculates the mass of the top quark as about 176 billion electron-volts, give or take about 13 billion.

These results, the competing teams say, are in reasonably close agreement. At any rate, they agree that they have found the quark, and that there is only one chance in about one million that the results could have been caused by anything besides the decays of pairs of top and antitop quarks.

One of the main difficulties in identifying the top quark is that it cannot be seen directly. When one is created from the immense pool of energy formed in the collisions of protons and antiprotons accelerated by Fermilab's Tevatron, its lifetime is so brief that no detector could sense it. But the top quark disintegrates into hundreds of daughter particles, which in turn decay into cascades of other particles.

From the patterns of ''jets,'' particle types and other characteristics of these decays, theorists have learned to identify the parent particles like the top quark which cannot be detected directly. A jet is a spray of particles moving in the same general direction away from a collision.

High-energy physics is expensive. The Fermilab Tevatron accelerator, a ring of superconducting magnets four miles in circumference, cost about $250 million to build, and each of the two detectors built into the accelerator cost about $60 million. An upgrade of the Tevatron called a main injector, costing $228 million, is scheduled for completion by 1999.

The Superconducting Supercollider, a project that would have been Fermilab's successor, would have cost more than $8 billion if Congress had not canceled it last year. For the foreseeable future, Fermilab will remain America's most powerful particle accelerator, and scientists say that the machine has at least 15 more years of useful life.

The stakes for the high-energy physics community are enormous, in terms of job security, the risks of failure and the promise of great prestige for leaders of successful experiments. Competition between physicists is often intense and sometimes bitter.

The CDF and D0 detector collaborations have gone to great lengths to avoid even looking at each others' experiments—a policy that persisted even today minutes before their joint seminar began.

''We know that some of the younger physicists on both sides have been exchanging pirated copies of our reports, but we've tried to suppress such exchanges,'' one physicist said. ''Of course there is friction, but that's a healthy aspect of science. This way, we know that our results are in no way influenced by those of our competitors, and when both our versions of the top quark are published side by side, scientists will be able to judge for themselves.''

Despite a joking undertone of bickering between the two collaborations, which include scientists from a dozen nations, a holiday mood today eclipsed old rivalries and the collective anxiety about future financing of high-energy physics.

''We're ecstatic about this discovery,'' Dr. Peoples said. ''Non-scientists often ask me what the point of all this may be. I say it's important because it makes the universe knowable, in the same sense that our discovery of DNA has made the nature of life knowable. We have a long, long way to go, but it's one of the most intellectually satisfying pursuits there is.''●

HOMICIDES BY GUNSHOT IN NEW YORK CITY

● Mr. MOYNIHAN. Mr. President, I rise today, as I have done each week of the 104th Congress, to announce to the Senate that during the past week, 13 people were murdered by gunshot in New York City, bringing this year's total to 120.●

MEASURE READ FOR THE FIRST TIME—H.R. 956

Mr. DOLE. Mr. President, I inquire of the Chair if H.R. 956 has arrived from the House of Representatives.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Therefore, I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

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

Mr. GLENN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

ORDERS FOR WEDNESDAY, MARCH 15, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Wednesday, March 15, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders reserved for their use later in the day. I further ask that the Senate then immediately resume consideration of H.R. 889, the supplemental appropriations bill, and at that point there be 1 hour for debate on the Kassebaum amendment, to be divided equally between Senators KASSEBAUM and KENNEDY.

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

PROGRAM

Mr. DOLE. For the information of all Senators, at 10:30 a.m. on tomorrow, Wednesday, two back-to-back votes will occur, the first being the cloture vote on the Kassebaum amendment, to be followed immediately by a vote on adoption of the unfunded mandates conference report, and following those two votes the Senate will resume consideration of the supplemental appropriations bill. Therefore, additional votes will occur and a late session can be anticipated.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. If there is no further business to come before the Senate, I now

ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:19 p.m., adjourned until Wednesday, March 15, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 14, 1995:

THE JUDICIARY

MARY BECK BRISCOE, OF KANSAS, TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT, VICE JAMES K. LOGAN, RETIRED.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS TO TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

JAMES A. FAIN, JR., 000–00–0000
JOHN M. NOWAK, 000–00–0000

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

GEORGE T. BABBITT, JR., 000–00–0000
JOHN C. GRIFFITH, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

DANIEL R. SCHROEDER, 000–00–0000

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT AS COMMANDANT OF THE MARINE CORPS, HEADQUARTERS, U.S. MARINE CORPS, AND APPOINTMENT TO THE GRADE OF GENERAL WHILE SERVING IN THAT POSITION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5043:

To be commandant of the marine corps

CHARLES C. KRULAK, 000–00–0000

IN THE NAVY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

DAVID M. BENNETT, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE.

To be lieutenant colonel

JOSEPH L. WALDEN, 000–00–0000

To be major

GRAEME R. BOYETT, 000–00–0000
RICHARD A. LOGAN, 000–00–0000

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

MEDICAL CORPS

To be colonel

ANDERSON, DOUGLAS M., 000–00–0000
*ATKINSON, SIDNEY W., 000–00–0000
*BALLOU, WILLIAM R., 000–00–0000
BENTON, FRANK R., 000–00–0000
*BERKENBAUGH, JAMES, 000–00–0000
BRADSHAW, DONALD M., 000–00–0000
BYRNE, MICHAEL P., 000–00–0000
*CAWTHON, MICHAEL A., 000–00–0000
CLAYTON, WILLIAM L., 000–00–0000
COQUILLA, BEATRIZ H., 000–00–0000
*DAI, JOSEPH M., 000–00–0000
DAIGH, JOHN D., 000–00–0000
*DECKER, LAWRENCE A., 000–00–0000
*DONESKY, DWIGHT L., 000–00–0000
DRAKE, GREGORY L., 000–00–0000
*EGAN, JAMES E., 000–00–0000
FALBEY, ROBERT J., 000–00–0000
GAFFNEY, CHERRY L., 000–00–0000
*GATES, ROBERT H., 000–00–0000
*GIFFIN, JAMES M., 000–00–0000
*GOMEZ, EDWARD R., 000–00–0000
*GORE, NEY M., 000–00–0000
*GRAVES, WALTER G., 000–00–0000
HALBACH, DAVID P., 000–00–0000
*HAWLEYBOWLAND, CARL, 000–00–0000
*HEFFESS, CLARA S., 000–00–0000
*HEIB, LOUIS A., 000–00–0000
*HWANG, MOO O., 000–00–0000
*JAQUES, DAVID P., 000–00–0000
*JARRETT, ROBERT V., 000–00–0000
*JOHNSON, BRIAN R., 000–00–0000
*JONES, MYRON B., 000–00–0000
*KUMAR, SHASHI, 000–00–0000
*LANDE, RAYMOND G., 000–00–0000
*LOVETT, ETHRIDGE J., 000–00–0000
MADIGAN, WILLIAM P., 000–00–0000
MARTIN, JAMES W., 000–00–0000
MASON, KEVIN T., 000–00–0000
MATTESON, GARY N., 000–00–0000
*MC QUEEN, CHARLES E., 000–00–0000
*MELENDEZ, JOSE E., 000–00–0000
MORTON, DAVID A., 000–00–0000
MURDOCK, EDWIN A., 000–00–0000
NAGORSKI, LEONARD E., 000–00–0000
NOCE, MICHAEL A., 000–00–0000
OLIVERSON, FORREST, 000–00–0000
*PEARSON, CLARENCE E., 000–00–0000
*RAJAGOPAL, KRISHNAN, 000–00–0000
RIPPLE, GARY R., 000–00–0000
*RIVERA, DAVID E., 000–00–0000
*RUEDAPEDRAZA, M E., 000–00–0000
*SADO, ANTHONY S., 000–00–0000
SCHULTE, JEFFREY J., 000–00–0000
SERWATKA, LINDA M., 000–00–0000
*SODHI, PARMINDER, 000–00–0000
*SOUTHPAUL, NEANNETT, 000–00–0000
STECKEL, FREDERICK, 000–00–0000
THOMPSON, IAN M., 000–00–0000
*THONG, AILEEN, 000–00–0000
*TILLMAN, JOHNIE S., 000–00–0000
TOLLEFSON, DAVID F., 000–00–0000
* WATTERS, MICHAEL R., 000–00–0000
WEBBER, PAUL M., 000–00–0000
WHATMORE, DOUGLAS N., 000–00–0000
WILCOXRIGGS, SANDRA, 000–00–0000
* WILDER, DAVID M., 000–00–0000
WINECOFF, WILLIAM F., 000–00–0000

DENTAL CORPS

To be colonel

*AKIYAMA, DENNIS P., 000–00–0000
ASHER, MARSHALL L., 000–00–0000
BEATTY, GERALD W., 000–00–0000
BERWICK, JAMES E., 000–00–0000
BRADFORD, BRANT A., 000–00–0000
BROWN, CHARLES R., 000–00–0000
BUTEL, EUGENE M., 000–00–0000
CASO, PETER A., 000–00–0000
CAVATAIO, RONALD E., 000–00–0000
CIBOROWSKI, PHILIP, 000–00–0000
CONCILIO, MARY C., 000–00–0000
COOK, LAWRENCE J., 000–00–0000
DAVIDSON, MICHAEL J., 000–00–0000
FONDAK, JEFFREY T., 000–00–0000
GRABOW, WAYNE E., 000–00–0000
HALEY, WILLIAM B., 000–00–0000
HARPER, DENNIS L., 000–00–0000
JENNINGS, DENNIS E., 000–00–0000
JONES, JACKIE L., 000–00–0000
KLAGER, PETER, 000–00–0000
MC CANN, JOHN T., 000–00–0000
MUNDY, GARY D., 000–00–0000
MURRAY, DANIEL J., 000–00–0000
NICKEL, WILLIAM L., 000–00–0000
NIXON, LARRY L., 000–00–0000
OAKES, MARTIN J., 000–00–0000
PHILLIPS, JOHN L., 000–00–0000
PITCHFORD, JOHN H., 000–00–0000
POLLARD, BRYAN K., 000–00–0000
RAGNO, JAMES R., 000–00–0000
RESIDE, GLENN J., 000–00–0000
SCHACH, RAPHAEL T., 000–00–0000
STRITTMATTER, EDWAR, 000–00–0000
THRONDSON, ROGER R., 000–00–0000
VANCE, BRADLEY J., 000–00–0000
WAWROUSEK, HANS W., 000–00–0000
WOLFF, GERALD K., 000–00–0000
WONDERLICH, STEVEN, 000–00–0000