Americans to contribute to campaigns and to run for office,'' said a newspaper ad that ran in the Minnesota Democrat's district. ''The next time you see Rep. David Minge ask him this simple question: Why do you want more millionaires in Congress?''

NABPAC also is encouraging its members to cut off contributions to lawmakers who support the bill, and last month sent a memorandum to members of Congress enclosing copies of its ads. ''The plans are to aggressively market this in other appropriate areas of the country,'' NABPAC executive vice president Steven F. Stockmeyer said in the memo.

Three sponsors of the campaign finance bill in the House, Reps. Christopher Shays (R-Conn.), Martin T. Meehan (D-Mass.) and Linda A. Smith (R-Wash.), fired back at NABPAC in a letter to its members last week, calling the memorandum a ''thinly veiled threat to keep members from co-sponsoring'' the legislation.

''[I]ntimidating members into staying off of the bill by either subtly or blatantly threatening to withhold campaign contributions is disgraceful and justifies why our legislation is needed,'' they wrote. ''Frankly, these efforts simply inspire us further to try to end the system of checkbook lobbying in Washington.''

But Shays said yesterday that ''some members are [scared] because they don't want to be the enemy of these groups.'' A Common Cause study released last week found that NABPAC members gave $106 million to current members of Congress from 1985 to 1995.

In addition to abolishing PACs, the campaign finance bill, sponsored in the Senate by Sens. John McCain (R-Ariz.), Russell Feingold (D-Wis.) and Fred D. Thompson (R-Tenn.), would set voluntary state-by-state spending limits and, for those who agree to the limits, require television stations to offer 30 minutes of free time in evening hours and cut rates for other advertising before primary and general elections.

Critics contend that abolishing PACs would diminish the ability of average citizens to join together to have their voices head and would increase the influence of wealthy citizens.

Mr. FEINGOLD. Mr. President, what this article is about is a reaction to the effort that Senator MCCAIN and I and others have been preparing to try to change our Nation's campaign financing system. There are those who have indicated that the effort will go nowhere because it is already too late in the 104th Congress, and that it is just going to go the way of all other campaign finance reform efforts in the past.

Frankly, Mr. President, this article gives me heart. It is eloquent testimony to the reason why we have got to have campaign finance reform in this country and why we need it now. What happened yesterday was, according to the article, an unusual alliance of unions, businesses, and liberal-conservative groups trying to defeat campaign finance legislation that would abolish political action committees and other restrictions on election spending, got together, all together, to try to kill the McCain-Feingold bill. It included groups such as the AFL–CIO, the NEA, National Association of Letter Carriers, the National Association of Business Political Action Committees, Cato Institute, Conservative Caucus, Americans for Tax Reform, EMILY's List—you name it—National Association of Broadcasters, the American Dental Association. This was a gathering of all the special interests in Washington, even before we have had the bill come up, saying, ''Let's kill it before it has a chance to live.''

The reason it gives me heart, Mr. President, really, there are two reasons. First of all, if this bill is not going anywhere, what are they worried about? Why are they coming together, as they so infrequently do, to kill a piece of legislation that is the first bipartisan effort in 10 years in this body to try to do something about the outrageous amount of money that is spent on campaigns and the outrageous influence that this community, Washington, has on the entire political process in this country?

I recall when I ran for the U.S. Senate, I might talk to somebody from the labor community or to an independent banker, and they would say, ''Gee, we think you are a pretty good candidate, but first I have to check with Washington to see if I can support you.'' That is how the current system works. You have to check in with Washington first. I think that gives way too much power to this town and way too much power to these special interests that want to kill campaign finance reform in this Congress.

It gives me heart that there is concern. It also gives me heart that they are drawing attention to the fact. In fact, this article is eloquent testimony to what is really going on in this country. There is too much money in this town; there is too much money in these elections. What they are trying to do, Ann McBride of Common Cause pointed out, is to preserve the status quo, the meeting of labor and business coming together and agreeing on the one thing they can agree on, which is maintaining the status quo and their ability to use money to buy outcomes on Capitol Hill.

What our bipartisan effort is about is returning the power back to the people in their own home States, to let them have more influence over elections than the special interests that run this town. We will join this issue on the floor, and we will fight these special interests head on, regardless of their new coalitions.

Mr. President, I simply indicate we are prepared, as I did a couple of days ago along with other Senators, we are prepared to offer this as an amendment to a bill in the near future, or if the leadership sees it this way, to bring this up as separate legislation. The time is drawing near for campaign finance reform.

I thank the Chair. I yield the floor.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The Senate continued with consideration of the bill.

AMENDMENT NO. 3780 TO AMENDMENT NO. 3743

(Purpose: To provide minimum safeguards in expedited exclusion procedure to prevent returning bona fide refugees to their persecutors)

Mr. LEAHY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. DEWINE, Mr. HATFIELD, and Mr. KERRY, proposes an amendment numbered 3780 to amendment No. 3743.

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

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

The amendment is as follows:

Strike sections 131 and 132.

Strike section 141 and insert the following:

SEC. 141. SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by adding after section 236 (8 U.S.C. 1226) the following new section:

''SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS

''SEC. 236A. (a) IN GENERAL.—

''(1) Notwithstanding the provisions of sections 235(b) and 236, and subject to subsection (c), if the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the United States, by land, sea, or air, present an extraordinary migration situation, the Attorney General may, without referral to a special inquiry officer, order the exclusion and deportation of any alien who is found to be excludable under section 212(a) (6)(C) or (7).

''(2) As used in this section, the term 'extraordinary migration situation' means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity of the inspection and examination of such aliens.

''(3) Subject to paragraph (4), the determination whether there exists an extraordinary migration situation within the meaning of paragraphs (1) and (2) is committed to the sole and exclusive discretion of the Attorney General.

''(4) The provisions of this subsection may be invoked under paragraph (1) for a period not to exceed 90 days, unless within such 90-day period or extension thereof, the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in effect for an additional 90-day period.

''(5) No alien may be ordered specially excluded under paragraph (1) if—

''(A) such alien is eligible to seek asylum under section 208; and

''(B) the Attorney General determines, in the procedure described in subsection (b), that such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided.

''(6) A special exclusion order entered in accordance with the provisions of this section is not subject to administrative review other than as provided in this section, except that the Attorney General shall provide by

regulation for a prompt administrative review of such an order against an applicant who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been, and appears to have been, lawfully admitted for permanent residence.

''(7) A special exclusion order entered in accordance with the provisions of this section shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236.

''(8) Nothing in this subsection shall be construed as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

''(b) PROCEDURE FOR USING SPECIAL EXCLUSION.—(1) When the Attorney General has determined pursuant to this section that an extraordinary migration situation exists and an alien subject to special exclusion under such section has indicated a desire to apply for asylum or withholding of deportation under section 243(h) or has indicated a fear of persecution upon return, the immigration officer shall refer the matter to an asylum officer.

''(2) Such asylum officer shall interview the alien to determine whether the alien has a credible fear of persecution (or of return to persecution) in or from the country of such alien's nationality, or in the case of a person having no nationality, the country in which such alien last habitually resided.

''(3) The Attorney General shall provide information concerning the procedures described in this section to any alien who is subject to such provisions. The alien may consult with or be represented by a person or persons of the alien's choosing according to regulations prescribed by the Attorney General. Such consultation and representation shall be at no expense to the Government and shall not unreasonably delay the process.

''(4) The application for asylum or withholding of deportation of an alien who has been determined under the procedure described in paragraph (2) to have a credible fear of persecution shall be determined in due course by a special inquiry officer during a hearing on the exclusion of such alien.

''(5) If the officer determines that the alien does not have a credible fear of persecution in (or of return to persecution from) the country or countries referred to in paragraph (2), the alien may be specially excluded and deported in accordance with this section.

''(6) The Attorney General shall provide by regulation for a single level of administrative appellate review of a special exclusion order entered in accordance with the provisions of this section.

''(7) As used in this section, the term 'asylum officer' means an immigration officer who—

''(A) has had extensive professional training in country conditions, asylum law, and interview techniques;

''(B) has had at least one year of experience adjudicating affirmative asylum applications of aliens who are not in special exclusion proceedings; and

''(C) is supervised by an officer who meets the qualifications described in subparagraphs (A) and (B).

''(8) As used in this section, the term 'credible fear of persecution' means that, in light of statements and evidence produced by the alien in support of the alien's claim, and of such other facts as are known to the officer about country conditions, a claim by the alien that the alien is eligible for asylum under section 208 would not be manifestly unfounded.

''(c) ALIENS FLEEING ONGOING ARMED CONFLICT, TORTURE, SYSTEMATIC PERSECUTION, AND OTHER DEPRIVATIONS OF HUMAN RIGHTS.—Notwithstanding any other provision of this section, the Attorney General may, in the Attorney General's discretion, proceed in accordance with section 236 with regard to any alien fleeing from a country where—

''(1) the government (or a group within the country that the government is unable or unwilling to control) engages in—

''(A) torture or other cruel, inhuman, or degrading treatment or punishment;

''(B) prolonged arbitrary detention without charges or trial;

''(C) abduction, forced disappearance or clandestine detention; or

''(D) systematic persecution; or

''(2) an ongoing armed conflict or other extraordinary conditions would pose a serious threat to the alien's personal safety.''.

(b) CONFORMING AMENDMENTS.—(1)(A) Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225b) is amended to read as follows:

''(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer.''.

(B) Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227a) is amended—

(i) in the second sentence of paragraph (1), by striking ''Subject to section 235(b)(1), deportation'' and inserting ''Deportation''; and

(ii) in the first sentence of paragraph (2), by striking ''Subject to section (b)(1), if'' and inserting ''If''.

(2)(A) Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(i) by striking subsection (e); and

(ii) by amending the section heading to read as follows: ''JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION''.

(B) Section 235(d) (8 U.S.C. 1225d) is repealed.

(C) The item relating to section 106 in the table of contents of the Immigration and Nationality Act is amended to read as follows:

''106. Judicial review of orders of deportation and exclusion.''.

(3) Section 241(d) (8 U.S.C. 1251d) is repealed.

In section 142, strike the new section 106(f) of the Immigration and Nationality Act (8 U.S.C. 1105f).

Strike section 193.

On page 178, line 8, strike ''and subject to subsection (b),''.

Strike section 198(b).

Mr. LEAHY. Mr. President, this amendment is offered on behalf of myself, the distinguished Presiding Officer, the distinguished senior Senator from Oregon [Mr. HATFIELD], and the distinguished Senator from Massachusetts [Mr. KERRY].

I offer this amendment to the provisions in the bill that I believe gut our asylum law. This is not just my opinion but is the opinion of at editorial boards from newspapers that normally do not agree with each other.

Let me first refer to the editorial in The Washington Times yesterday. It says:

In their rush to pass an anti-terrorism bill, lawmakers perhaps unwillingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

Then the Washington Post, in another editorial today, speaks of the antiterrorism law being revisited and says, again, that this amendment should be supported.

I ask unanimous consent to have printed in the RECORD those two editorials.

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

[From the Washington Times, Apr. 30, 1996]

IMMIGRANTS AND OTHER ORDINARY PEOPLE

The story goes that Texas Sen. Phil Gramm was attending a National Republican Senatorial Committee meeting with political supporters a few years ago when a woman rose and asked an awkward question. ''Sen. Gramm,'' she said, ''why do all the people here talk funny?'' As it happened, about 80 percent of those supporters were first-generation Americans—immigrants—and Mr. Gramm says you could hear the collective gulp from the room about 100 miles away. His answer? ''Ma'am, 'cause this is America.''

He elaborated on that answer in memorable remarks to the Senate last week. ''If we ever get to the point where we do not have a few citizens who talk funny, if we ever get to the point where we do not have a new infusion of energy and a new spark to the American dream, then the American dream is going to start to die. It is not going to fade, and it is not going to die on my watch in the U.S. Senate.''

No doubt in part because of his emotional speech, the Senate last week defeated legislation that would have effectively limited immigration. But the chamber is not done with this issue. If you want to see just how far some lawmakers would go to restrict people who, as Mr. Gramm puts it, talk funny, then consider some of the immigration legislation up for a vote as early as this week.

Perhaps the most controversial issue involves so-called demonstration projects intended to test the use of verification systems for workers in this country. The idea is that if the government could just figure out how to keep illegal immigrants from working then fewer would come here in the first place. Presto, no more illegal immigration.

This editorial page has said from the beginning of this debate that it sees nothing wrong with a person's coming here to work. As the quotable Mr. Gramm put the matter the other day, ''We have room in America for people who come with their sleeves rolled up, ready to go to work. But we do not have room for people who come with their hand out.'' Exactly right.

Laying the groundwork for a national identification system, as the demonstration projects do, sets a terrible precedent. What has this country come to that it would require aspiring workers to get permission from the government before they can roll up their sleeves and get to work? Work is not an entitlement to be disbursed by the politically powerful for the benefit of the politically favored. Nor is it something to be trusted to some distant federal worker.

Even if one assumes the government can manage a national ID system, how is it going to match the ID with the worker? With fingerprints? With blood and tissue samples?

That's the sort of treatment ordinarily reserved for criminals, not mere workers.

There's one other thing to keep in mind when senators take up immigration reform. In their rush to pass an anti-terrorism bill, lawmakers perhaps unwittingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

There's room here for workers. There's room here for people who genuinely need asylum. ''America is not a great and powerful country because the most brilliant and talented people in the world came to live here,'' said Mr. Gramm. ''America is a great and powerful country because it was here that ordinary people like you and me have had more opportunity and more freedom than any other people who have ever lived on the face of the Earth. And with that opportunity and with that freedom, ordinary people like us have been able to do extraordinary things.''

[From the Washington Post, May 1, 1996]

THE TERRORISM LAW REVISITED

Think back about 10 days to the celebratory pictures of the president signing the terrorism bill. That measure, deeply flawed by provisions restricting habeas corpus, allowing the use of secret evidence at deportation proceedings and providing for summary exclusion of asylum-seekers, was hailed as a vital bulwark protecting Americans against international terrorists. In the rush to pass that legislation by April 19, the first anniversary of the Oklahoma City bombing, scant attention was paid to Sen. Patrick Leahy, who pointed out some of these flaws. But this week, when the Vermont Democrat seeks to use the pending immigration bill to repeal one of them, the administration is on his side.

Every year, thousands of individuals arrive in this country seeking asylum from persecution. Until recently, this process was subject to a lot of abuse. Claimants were admitted, given a work permit and released with the understanding that they would show up some time in the distant future (there were terrible backlogs then) for a hearing. Most of them simply disappeared into the general population and were never heard from again. But the Immigration and Naturalization Service (INS) instituted reforms early in 1994—streamlining procedures, withholding work permits and keeping many claimants in custody until their hearings—which have reduced the problem substantially. The system now in place works well, and both the Justice Department and the INS say there is no need for change.

But in the rush ''to combat terrorism'' Congress passed, and the president signed, new restrictions that create a presumption that anyone seeking asylum who enters with false documents, or has traveled through other countries to get here, does not have a valid claim. In these cases, the claimant would have to make his case to an immigration officer on site, without any guarantee that he can be represented by a lawyer or even have an interpreter. If he does not persuade this official, he can be returned to his own country summarily without further hearing before an immigration judge or review by the Board of Immigration Appeals.

It is fair to suspect anyone who enters the country with a false passport, or who has left a place of safety in Western Europe, for example, to ask for asylum here. But suspicions need to be proved. It should surprise no one that persecuted people might not be able to apply for passports in their own countries, or might have to use a false name to get out. And a two-hour layover in Germany or France on a long flight to freedom shouldn't disqualify an applicant for asylum. Sen. Leahy's effort, which has the backing of the people charged with enforcing the immigration laws, should be supported.

Mr. LEAHY. Now, we should be clear what the provisions of the bill do and what they and our amendment do not concern. These are not provisions that cover alien terrorists. It is safe to say that there is not a single Member of this body who wants to allow alien terrorists into our midst. That is not a partisan issue; every single Member of this body is against terrorists. We can accept that as a point of fact.

There are a number of other provisions in the antiterrorism law that the President signed last week that cover the exclusion of those affiliated with foreign terrorist organizations. They forbid the grant of asylum to alien terrorists.

We are not seeking to defend alien smuggling or false documentation used for that purpose. That is already a crime. Senators DEWINE, HATFIELD, KERRY, and I totally agree on that.

But we know that there are some circumstances and there are some oppressive regimes in the world from which escape may well entail the use of false papers. We want to make sure that we do not create barriers to true refugees and those deserving asylum, and prevent them from making an application for asylum.

Let me give an example, using first a hypothetical and then go to some real examples. You are in a country with an oppressive regime. You are in a country where you are being persecuted for your religious beliefs or your political beliefs. In fact, you may even face death for your religious beliefs or your belief in democracy. You know that the arm of that government is out to get you. These are not cases of just paranoia; they may already have gone and killed members of your family for similar beliefs. You look at the one great beacon of freedom: the United States of America. You figure, ''How do I get there?''

Now, you are facing the possibility of a death penalty for your religious beliefs. Do you think you could walk down to the government that is out to kill you for those religious beliefs and say, ''Could I please have a passport? Here is my name and address. And, by the way, I want to book passage, I want a visa and I want to go directly to the United States.''

We all know what would happen in a case like that. The realty of the situation is that people in those circumstances are probably going to get a forged or a false passport. They are not going to go on a flight that will go directly to the United States because that is something the government may be watching. They are going to go to another country—maybe a neighboring country, maybe two or three countries—and then make it to the United States.

Under the immigration law that is before us, once they got here, because they used false passports and went through other countries, they are probably going to be summarily sent back. Summarily being sent back is in an equal amount of time to the summary execution or imprisonment that they face when they arrive back in their home country.

Now, let us be realistic. The Justice Department does not want these provisions and has not requested them. They were not recommended by the Jordan Commission. The Department has told us that they want a type of standby authority in case of immigration emergency, similar to what I have proposed in this amendment.

Think of some of the history of this country. Fidel Castro's daughter came to this country and was granted asylum, for appropriate reasons, and, of course, with great political fanfare. But Fidel Castro's daughter did not fly directly to the United States with a passport bearing her name. She took a false passport, she went to Spain, and then came here. Under this new law, we would likely have said, ''Sorry, you are out.''

The most recent and famous example of why we must not adopt the summary exclusion provisions of this bill is, of course, the case of Fauziya Kasinga and her flight from Togo to avoid female genital mutilation. We first talked about that case here in the Senate a couple of weeks ago.

There have been two extremely positive developments since then. First, the INS filed a brief with the Board of Immigration Appeals, arguing—I believe for the first time—that the fear of female genital mutilation should present a sufficient cause to seek asylum in the United States.

I do not think there should have been any question about this. If there is any doubt, we should amend this bill or law without hesitation to ensure that flight from such practices are covered by our asylum policies, as the Senator from Nevada [Mr. REID] has already suggested.

Second, last Thursday, April 25, after more than a year in detention under conditions that subjected her to unnecessary hardship, Ms. Kasinga was finally released by INS to await determination by the Board on her asylum application.

Her case was first reported on the front page of the April 15 New York Times by Celia Dugger. Both she and her newspaper deserve a great deal of credit for bringing this to our attention.

Ms. Kasinga has sought for 2 years to find sanctuary in this country, only to be detained, tear-gassed, beaten, isolated and abused.

Well, now we all realize how bad this is. It is something that should outrage men and women alike. I believe it does

outrage men and women in this country.

Unfortunately, one thing has not changed yet, that is the provision I am seeking to amend in this bill. The provisions in the bill would still summarily exclude Ms. Kasinga, and others like her, from ever making an asylum claim. She traveled through Germany on a false British passport in order to escape mutilation in Togo. Under the bill before us, she would be subjected to summary exclusion at the border without judicial review.

In fact, does anybody in this body believe that an immigration officer at her point of entry would, as a matter of first impression, have agreed with her claim that fear of female genital mutilation was a proper ground to seek asylum?

We should, instead, restore protections in our laws to protect her ability to get a fair opportunity to be heard.

On April 19, Anthony Lewis wrote a column for the New York Times that captured the essence of this issue. In his column, he notes, ''The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee.'' As Mr. Lewis puts it, ''Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept?'' Indeed.

This is what has always distinguished the United States in our 200 years of constitutional history—200 years as a Nation protecting democracy and individual freedoms and rights more than any other country in existence. No wonder people seek asylum in the United States. No wonder people facing religious persecution, or political persecution, or physical persecution, look to the United States, knowing that we are the symbol of freedom. But that symbol would be tarnished if we were to close our doors.

Mr. President, in Mr. Lewis' column, he wrote: ''The Senate will in fact have another chance to consider the issue when it takes up the immigration bill.''

I ask unanimous consent that a copy of Mr. Lewis' column 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, Apr. 19, 1996]

SLAMMING THE DOOR

(By Anthony Lewis)

BOSTON.—The case of 19–year–old Fauzlya Kasinga, who says she fled her native Togo to avoid the rite of female genital mutilation, has aroused much sympathy. She arrived at Newark Airport in 1994, told officials she was using someone else's passport, sought asylum, was turned down and has been held in prison ever since. The Board of Immigration Appeals will hear her appeal on May 2.

But in future we are not likely to know about desperate people like Ms. Kasinga. If their pleas for asylum are turned down by a low-level U.S. immigration officer, they will not be allowed to appeal—and review by the courts will be barred. They will be sent back at once to the land where they face persecution.

This extraordinary change in our law is part of the counter-terrorism bill awaiting President Clinton's signature. It is not directed at terrorists. It applies to anyone seeking asylum who arrives here with false documents or none—the situation of many people fleeing persecution.

The issue raised in Fauzlya Kasinga's case, female genital mutilation, is an important one: Does that cruel practice come within the grounds for asylum? But the new summary process of exclusion will affect many more people seeking asylum for traditional reasons: the man fleeing a Nigerian Government that executed his political colleagues, for example, or the Vietnamese who escaped from a re-education camp.

The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee. By that test Fidel Castro's daughter was not a true refugee because she fled Cuba with a false passport. Nor were Jews who fled the Nazis without papers.

Political refugees are not the only losers. The bill trashes the American tradition of courts as the arbiters of law and guarantors of freedom. I have seen a good deal of nastiness in the work of Congress over the years, but I do not remember such detailed and gratuitous cruelty.

The bill gives virtually final authority to immigration officers at 300 ports of entry to this country. Each is directed to interview people seeking asylum and exclude them if he finds that they do not have ''a credible fear of persection.'' That phrase is unknown to international law.

The officer's summary decision is subject only to ''Immediate review by a supervisory office at the port.'' The bill prohibits further administrative review, and it says, ''no court shall have jurisdiction'' to review summary denials of asylum or to hear any challenge to the new process. (Our present system for handling asylum applications works efficiently, so there is no administrative need for change.)

Stripping away the protection of the courts may be the most alarming feature of the legislation. It is reminiscent of the period after the Civil War, when a Congress bent on punishing the South took away the jurisdiction of the Supreme Court to consider cases that radical Republicans thought the Court would decide against their desires.

Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept? And why should a bill supposedly aimed at terrorists be used as a vehicle to keep the victims of official terrorism from finding refuge?

Why should senators as decent as Orrin Hatch, chairman of the Judiciary Committee, stand still for such harshness? The asylum restrictions originated in the House and were kept in the bill by conferees, so the Senate was presented with a fait accompli. A motion by Senator Patrick Leahy to send the terrorism bill back to conference on that issue failed, 61 to 38.

President Clinton has been so eager for an anti-terrorism bill that he is not likely to veto this one, over the asylum sections any more than over the gutting of habeas corpus. But he could call on Congress to reconsider the attack on political asylum.

The Senate will in fact have another chance to consider the issue when it takes up the immigration bill, which has in it a similar provision for summary exclusion of asylum-seekers. On reflection, Senator Hatch and other's should see the threat to victims of persecution and to our tradition of law.

Mr. LEAHY. Mr. President, I have an editorial by the New York Times, entitled, ''Not So Harsh on Refugees.'' I ask unanimous consent that it 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, Apr. 22, 1996]

NOT SO HARSH ON REFUGEES

The ordeal of a young woman from Togo who came to America to avoid the practice of female genital mutilation should give members of Congress pause before they approve any further limitations on the rights of refugees seeking sanctuary in the United States. As detailed last week by Celia Dugger of The Times, Fauziya Kasinga was detained for months before she obtained a hearing, and she was strip-searched and held with convicted criminals. Shamefully, the anti-terrorism bill just passed by Congress and immigration bills still pending could subject many more refugees to similar treatment.

Ms. Kasinga's case involves female genital mutilation, a common practice in some two dozen African nations that involves cutting off portions of a young woman's genitals, often without anesthesia.

Ms. Kasinga fled Togo in 1994 to avoid mutilation after losing her status as a member of a privileged family. Her determination to avoid the practice could have subjected her to harsh treatment had she stayed, or if she is forced to return home. She may have a reasonable claim for asylum on the basis of membership in a social group vulnerable to persecution in her homeland.

But when Ms. Kasinga landed at Newark Airport in December 1994, seeking asylum with a phony passport, she was immediately detained. Under the law, people who have credible claims for asylum and family members already living in the United States can be released, pending a hearing. Ms. Kasinga has a cousin in the Washington area, but she was kept in custody anyway. After being held for months at a New Jersey detention center, Ms. Kasinga was transferred to a Pennsylvania prison and housed with convicted criminals.

Ms. Kasinga fared no better in court, where an immigration judge denied her claim. The Board of Immigration Appeals will hear her case in May.

If some members of Congress had their way, Ms. Kasinga would have been returned to Togo long ago. Under an immigration bill passed by the House, but now held up in the Senate, anyone attempting to enter the country without proper documents would only be entitled to a one-hour interview with an asylum officer. Denial of an asylum claim would be subject to review by a supervisor, but not by any other administrative or judicial body. These provisions, similar to ones in the anti-terrorism bill, would deny a fair hearing to many asylum seekers.

The House immigration bill also calls for detention of any asylum seeker who is awaiting a hearing, even when a credible claim has been presented. That could subject more would-be refugees to the harsh treatment suffered by Ms. Kasinga.

Senator Patrick Leahy of Vermont plans to offer an amendment that would not only override the harsh exclusion provisions in the immigration bill but also supersede the same provisions in the anti-terrorism bill. Congress should follow his lead.

Mr. LEAHY. It is hard to think of a time when you find the New York Times, the Washington Post, and the Washington Times all agreeing on an

issue. But this is, as I said before, not an issue of political ideology, it is an issue of simple justice. It is an issue that reflect what is best in this country, what is the best in us as Americans.

In fact, it would be hard to think of a better example of how unworkable this provision is—the one in the bill that we seek to correct—than a woman who joined me at a press conference yesterday. Two years ago, she fled Peru. She had been horribly treated and threatened by rebel guerrillas there. She came to this country without proper documents. She was able to convince an immigration judge after an opportunity for a fair hearing that she would suffer persecution if she returned home.

Yesterday, I asked her to tell about her experience. Less than two sentences into her story, as the memories of what she had put up with 2 years ago played back, she broke down crying. Her case has been very well-documented. She was able to establish a basis for asylum. But now, 2 years later, the memories are so strong that, emotionally, she was unable to talk with us about it.

Can you imagine if the provisions in this bill had been the law and she got to the border, and an INS officer said, ''Quick, tell me why you should stay here. What is going on? Why should you stay here?'' This woman, who was unable to talk about it 2 years later after having been granted asylum, what would she have done, how would she have established her case? The answer would have been, ''Well, obviously, you are not establishing the necessary criteria. You did not come here with a proper passport, so you are going back. Come back when you get a proper passport.'' What would she have gone back to?

Fortunately, instead of being sent back summarily to the hands of her abusers, she had a chance to be heard before a judge.

Mr. President, I am sure there are others who wish to speak. I will have more to say about this.

Mr. President, I withhold my time.

Mr. SIMPSON. Mr. President, there is no one I enjoy and regard more highly than my friend from Vermont. He and I have, fortunately, been on the same side of more issues than ever on opposite sides. I find him a fast and true friend whom I enjoy very, very much. When he speaks, he speaks with genuine clarity and authenticity about something in which he deeply believes.

Let me be so very clear here. We are, as the Senator from Vermont said, not talking about an antiterrorism bill. There was an amendment on the antiterrorism bill which passed the Senate by a vote of 61 to 38 which is, in many cases, quite similar to this measure. It had to do with exclusion and summary proceedings. We are not speaking of that. What we are talking about is the bill itself, and Senator LEAHY is intending to strike—we are not talking about female genital mutilation, we are not talking about terrorism; we are talking about the immigration laws of the United States. The bill as it stands before you has section 131, which is a new ground for exclusion of aliens, for aliens using documents fraudulently. That would be stricken by the Senator's amendment. There is a section 132 which is a limitation on withholding of deportation relief for aliens excludable for using documents fraudulently. There is a provision for summary exclusion. That would substitute a similar procedure for only situations which would be described as an extraordinary migration situation and not for other circumstances of the bill.

So, I speak against the amendment for these reasons. The committee's bill provision, which is in the version we are addressing now on the new ground of exclusion relating to document fraud, on summary exclusion, and on asylum applications, three things there—new ground, summary exclusion, and asylum application by those who have attempted to enter the U.S. with fraudulent documents—will greatly reduce the ability of aliens to unlawfully enter this country and then remain here for years through use, or misuse, of various administrative and judicial proceedings and appeals. It is almost what we would refer to as an overuse of due process.

These people in the past—this is what we are trying to correct—often receive more due process than a U.S. citizen receives. For example, the provisions relating to asylum and withholding of deportation will help the United States deal promptly and fairly with a very common scenario. Here is the scenario. For every example that touches our hearts—and this floor is filled with stories that touch our hearts; we will hear many of them today—for each one I get to tell another one. Here is a story that will not touch your heart.

A young person with no obligation to family, or anything else, who has decided to take off from his country to seek the promised land, and that is us—here is the common scenario used by those who would abuse the compassion of the American people. This is why the American people suffer compassion fatique. This is what gives rise to proposition 187's. This is what gives rise to the continual polls saying 70 to 80 percent of these people should be excluded and so on—not excluded, but indeed that we should do something with both illegal and legal immigration.

The scenario is this: The young person with no family, no spouse over there in the country they are leaving, no children, no parents perhaps, maybe an orphan, whatever—they board the plane with documents. Then they give them back to the smuggler on the plane who is with them, or else flush them down the toilet of the aircraft. Some have eaten them. Then they come to the United States, and at the U.S. port of entry they claim asylum.

Many of us saw this so dramatically in the ''60 Minutes'' presentation. We are going to talk about dramatic things, where the alien without the document said the magic words. The magic words in any language, or their own, is, ''I want asylum. I want to claim asylum,'' just as the smuggler instructed him or her to say. You need to know only one word when you are there, ''asylum.'' The program of ''60 Minutes'' ended with the alien going forward out of the door of JFK, suitcase in hand with a rolling cart to disappear into America probably never to be heard from again because he is certainly going to tear up any notice to appear at some future time.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. SIMPSON. If I could finish my remarks, I would—I yield for a question. Yes.

Mr. LEAHY. One question: Is it not under the new procedures, when they ask for asylum, would they not be held in detention until a preliminary determination has been made about false documents?

Mr. SIMPSON. Mr. President, much of this is being relieved by the simple procedure of detention facilities. When those detention facilities are available—and we have provided significantly more money for detention facilities—we find that these things are going to be glimmering in more cases. But I wanted to cite it indeed.

Mr. President, I want to emphasize that the bill provides very clearly an opportunity for every single person, every single person without documents, or with fraudulent documents—please hear this—fraudulent documents or proper documents allow every person to seek asylum. A specially trained asylum officer will hear his or her case. This is the key. I want my friend from Vermont to share with me in the debate as we do this, which he will in fairness. A specially trained asylum officer will hear his or her case, and if the alien is found to have a ''credible fear of persecution,'' he or she will be provided a full—full—asylum hearing. However, if he or she does not have such a credible claim, he or she will be subject to the summary exclusion procedures as will all persons who enter without documents or with fraudulent documents.

There is discussion about persons not being permitted to apply for asylum if they do not travel directly from the country in which they allegedly have a fear of persecution. This is always a difficult situation because we find people who will leave the country where they are being persecuted legitimately, or, if they are just simply using an inappropriate way to get here, they will go to one, or two, or three other countries all of which might be democracies, all of which would be free countries, all of which would be giving the precious refuge of a refugee or an aslyee. The only difference between a refugee and an aslyee is a refugee is

over in the home country and an aslyee is here. They are absolutely the same. But the term is used ''aslyee'' when they are here, and ''refugee'' when they are there.

So the United States cannot be expected to provide asylum. I am not talking about asylum. I am talking about people who are fleeing persecution or have a well-founded fear of persecution based on race, religion, national origin, or membership in a social or political organization. That is an aslyee. That is a refugee. That is the definition under the law of the United States of America and the United Nations. We will always provide asylum.

There are some great asylee-receiving countries in the world. Two of them have completely revised their asylum laws because of the absolute gimmickry that is taking place. One is my native land, my original native land, Holland, the most open country in the world, a country that gave solace and comfort to fleeing Jews 500 years ago and to those fleeing Nazi Germany. They have now changed their asylum laws the same as we are doing in order to avoid gimmickry. The other country is Germany. After the war, the horror of the war, and the imprint of the Nazis upon the German people, who were appalled—I believe this because I lived among them for 2 years—appalled at the Nazi regime, real Germans are appalled by that.

They realized that, because of what they had done during the war, they made the broadest, most extensive asylum laws in the world because they had to; people were watching them after the war. And being the most generous country, they have had now to simply shut down the process because of gimmickry.

So it is important to know that those who come from a safe country where they could have obtained asylum—normally someone who is fleeing, I mean fleeing in terror of their lives, with the dogs and the soldiers and the arms coming at them—they stop where it is safe to do so, not select or choose leaving one or more safe countries in order to enter the United States or another country for which he or she has a personal preference. And the ultimate personal preference is always the United States of America.

Mr. President, I do want to point out, however, that the Attorney General will have the discretion to waive, under my proposal, under extraordinary circumstances this requirement of direct travel to the United States.

I wish to conclude by saying a few words about the summary exclusion procedure in general. The present system is vulnerable to mass migration and other extraordinary situations and to persons who exploit the numerous levels of administrative and judicial review to stay in this country for years even though they have surreptitiously entered or sought to enter this country or have presented themselves for inspection with fraudulent documents or no documents and such individuals have no grounds for being in the United States of America except the possibility of asylum.

The bill's summary exclusion procedures provide a method for the Attorney General to significantly reduce this problem while still giving aliens a reasonable opportunity to seek asylum or withholding of deportation because of a fear of persecution for race, religion or one of the statutory or treaty grounds. And subject to the credible fear asylum procedure I have already described, an immigration officer can order an alien who has entered without documents or with fraudulent documents to be removed from the United States without bringing the alien before the immigration judge or the Board of Immigration Appeals. Only limited judicial review would be available. It would be limited to a habeas corpus proceeding devoted to no more than three issues:

First, Whether the individual is an alien or if he or she claims to be a U.S. citizen;

Second, Whether the individual was in fact specially excluded;

Third, Whether the individual has proven that he or she is a lawful permanent resident.

The court could order no relief other than the full exclusion hearings.

Finally, let me conclude, at least for this moment, and I hope we will continue toward a result here. We are talking here of immigration, and certainly there has been a reference to female genital mutilation. That is a very serious issue. I certainly concur totally as to the horror of that, and who could not? Certainly any compassionate person could not.

My colleague from Nevada, Senator HARRY REID, noted that Canada had made female genital mutilation a ground of asylum 3 years ago and had only two persons apply since that time. My information from the Canadian Embassy is a bit different, and I hope my colleagues will hear this. All of us admit that this is a hideous, barbaric thing. I understand, first, that this mutilation is not by itself grounds for a grant of asylum. This is our Canadian neighbors. But it is merely one of several factors to be considered in determining whether the applicant qualifies under the definition of a refugee.

Second—I think we must hear this—I understand that as victims of mutilation have come to Canada, they have brought their relatives along with them, or the relatives at least followed later. In any case, the result now has been that the practice of female genital mutilation has become a growing legal and criminal problem in Canada. It has now been imported into Canada, and one or more Provinces plan to make it a criminal offense. Police currently have to prosecute it under the assault statute, I say to my friend from Vermont, who has been a prosecutor, as I have, on the lower levels.

In other words, we have a situation where Canada has found that the victims end up being joined by the perpetrators. That fact suggests as well that we may be dealing here with a cultural practice—and that is exactly what we are dealing with, ladies and gentlemen, a cultural practice—and perhaps not a practice of official government-sanctioned persecution. This is going to be a real debate in the coming times because we in this body talk continually about respect of other cultures—cultures of the native American in my State, cultures of other ethnic groups, cultures of Hispanic-Americans, cultures of African-Americans.

The best practice is not to create some per se ground of asylum but do just as we do in all asylum and refugee determinations, and that is consider each one of them on a case-by-case basis. That is what we must do.

So, again, we get into these situations by our remarkable strength and our remarkable weakness, which is our compassion, and then we get the blend of emotion, fear, guilt, and racism and blend that in, and we do erratic things in immigration reform, or we would not be doing what we are doing in these last days. The reason this is so difficult, you will be on one side or the other and you say: ''How can we do this? Why can't we do this? How can this be? How did I vote this way? How can I get out of this thicket?''

The reason is, you are going to stay right in it because this is about America. It is about America, and America is a very complex place, thank God. We still have one thing that binds us, or several—a common flag, a common language, and a public culture. When we break it all down into individual cultures, Balkanize these great States that were fought so hard for in this Chamber to unite and to unite in the great melting pot, we do a disservice.

We are about to pass what many in this body will describe as a tough illegal immigration bill, and it will be, and it will pass, whatever form it is. Win or lose your amendments, forget it. It is an accomplishment that we will proudly reflect to our constituents. But remember this: We take in more asylees than all the rest of the countries on Earth, total. We take in more refugees than all the rest of the countries on Earth, total. We take in more immigrants than all the rest of the countries on Earth, total, period.

Finally—you have all heard that a thousand times—and it is very important to someone listening, wherever these words fall, this bill explicitly provides that this special exclusion procedure does not apply if the alien has a credible fear of persecution on one of the required grounds—race, religion, membership in national organization, and so on. Therefore, nearly the entire argument of the Senator from Vermont, my friend, vests on the inadequacy of the procedure provided in the bill to determine whether an alien has a credible fear of persecution—that is

the intent of the Senator from Vermont, saying it is inadequate.

Let me read the standard that would be used by the specially trained asylum officers to determine whether an applicant for asylum has a credible fear of persecution and therefore should receive a full—full—asylum hearing and not be subject to the special exclusion. I cite the language in section 193 on page 173 of the bill, lines 6 through 14, saying:

As used in this section, the term ''credible fear of persecution'' means that (A) there is a substantial likelihood—

''Substantial likelihood'' that is,

that the statements made by the alien in support of the alien's claim are true, and (B) there is a significant possibility in light of such statements and of country conditions—

Which will be determined by the State Department,

that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).

That is what this bill provides. It is not some swift or harsh provision. And this bill does not gut our asylum laws. The bill's provisions bring some sense and effectiveness to our asylum laws. These are laws that have been effectively gimmicked over the years because 400,000 backlogged asylum cases can well attest to that.

As my friend from Vermont says, if a person is fleeing for his life because of religious beliefs and must use forged papers and travel through several countries to get here under the bill that person will be summarily sent back—it is not so. If such a person arrives under the provisions of the bill he or she would get a hearing before a specially trained asylum officer. And if he or she had a credible fear of persecution, and there was a substantial likelihood the facts are true, as I have just cited, he or she will be permitted to remain in the United States and have a full asylum hearing when he or she is prepared and ready, with counsel.

So, I yield at this time.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Vermont.

Mr. LEAHY. Mr. President, I just want to make sure my colleagues understand the Senator from Wyoming and I have a longstanding friendship and affection and respect for each other, but we do look at this somewhat differently.

To begin with, regarding the vote on the anti-terrorism bill, while the issue may appear similar, the procedural situation was much different. There my motion would have required a recommitting of the whole conference report, a great burden to overcome.

As a matter of fact, I had a number of Senators come up to me and say, ''Why do you not do this on the immigration bill? We will have a lot easier time voting for you on the immigration bill.'' Well, God bless you all, you will now have a chance to vote with me on the immigration bill.

In addition, that motion did not include the creation of authority for the Attorney General to declare a special migration situation of immigration emergency. The amendment I offer today includes such provisions.

Further, when we talk about the people coming in with false passports fleeing persecution, they do not get a hearing under the bill. They get an interview. They get an interview by whoever is there at the border, and they can get kicked out right then and there. It is cruel, it is fundamentally unfair to a traumatized and fatigued refugee, who would be allowed no assistance and no interpreter, to treat them so summarily.

The kind of screening process provided in the bill will mean an investment of enormous resources for a special screening that we do not need. We would be requiring extra resources to do an ineffectual job.

In 1995, for example, after our asylum processes were reformed, we had only 3,287 asylum seekers who arrived without valid documents. They could be handled through the normal process. They do not have to be bounced out following some truncated and confusing interview. As we have heard, these people have faced such traumatic experiences. They are not likely to be prepared to respond when hit with that first, all important interview.

We reformed, in 1994 and 1995, our asylum processes. The Justice Department can handle it very well under my amendment.

Do not confuse illegal immigrants with refugees.

This bill would establish summary exclusion procedures for refugees seeking to claim asylum. It would give low-level immigration officers unprecedented authority to deport refugees without allowing them a fair opportunity to establish valid claims. These provisions should not even be in this bill, if it is intended to focus on the problems of illegal immigration. Refugees who seek asylum in the United States are not causing problems for America and Americans. They come to us for refuge. They come to us for protection. They come to us for what America promises in constitutional freedoms and protections. We should not turn them back, and turn our back on them or destroy our country's reputation for protecting human rights.

Look at the Washington Times editorial, look at the Washington Post editorial, look at the New York Times editorial. They express the feelings of so many in this country.

Think about a person who talked before a press conference here on Capitol Hill yesterday, Alan Baban, who was held 16 months in detention.

He is a Kurdish national who had been in prison for over a year in Iraq. He was tortured, both because of his Kurdish nationality and his political involvement with an organization committed to securing political freedom for Kurds. His body has the scars of that ordeal. At one point in his captivity he bribed a guard and he escaped. His family's possessions were seized by the Iraqis.

Finally, in November 1994, he and his mother, who had been hiding for close to 3 years, used false documents to get out and arrived in the United States.

Most of us know what terrible treatment the Kurds have had at the hands of the Iraqis. But somehow the immigration inspector at the airport did not believe Alan and did not think that he had established a credible claim of persecution. So Alan was placed in detention, in prison, in the United States. A year later, without a translator to help him, he was denied political asylum.

After 16 months in detention, when his true story came out, an immigration judge finally granted him asylum. Yesterday, he thanked the United States for finally listening to him and letting him out.

This is one of a number of examples of refugees who were initially ruled not to have satisfied a credible fear standard but who after a hearing were able to prove a claim for asylum.

I know the Senator from Massachusetts is seeking time.

Before I yield the floor, Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I just might ask the distinguished manager, am I correct in my understanding, as we offer these various amendments they will then be set aside for others so there will be a series of votes? Is that correct?

Mr. SIMPSON. Mr. President, at least this amendment and the next amendment of Senator ABRAHAM and Senator FEINGOLD will come up at a time around the hour of 2 o'clock. We will stack votes on these two, or others we might have problems on, including, perhaps, that of Senator BRADLEY, who is here.

Mr. LEAHY. Mr. President, just before that vote will we follow the usual thing where each side has a minute or so?

Mr. SIMPSON. We will put that in the unanimous-consent request, that there be 2 minutes equally divided.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a moment because the Senator from Vermont has made the presentation and made it exceedingly well, which he did in our judiciary markup as well.

What I want to do is just take a moment of the Senate's time to describe the conditions that we were facing a number of years ago, and where we are on the issues of asylum today, because I think it reaches the core of the Leahy amendment. There is no question that, as he outlined, there are people who come here with a well-founded fear of persecution. They come here, few of

them with papers, many of them without any papers, for the obvious reasons they are in terror and have been persecuted by the existing regime. That is an important group, but I will come back to the numbers in just a moment.

But there is no question that large numbers of people came here requesting asylum for one reason: they wanted jobs. As Senator SIMPSON has correctly stated, the process and procedure was that people would come in and declare they wanted asylum. The first thing that happened was they got a green card, went out and got lost in society. There was very, very significant abuse of that whole process. But that has changed dramatically in the last year.

By and large, we ought to be looking at what the current condition is, not what the conditions were 1 year ago, 2 years ago, 3 years ago when we had all the significant abuses in the asylum system. The principal abuses for the asylum system, as in the whole issue of illegal immigration, were jobs. People saw this as an opportunity to come to the United States, say ''asylum,'' get that green card and then go to work. Instead of running across the Rio Grande or trying to come on in across another border, that was one of the ways that they came in here.

That whole spigot, in terms of the jobs, has been closed down by the INS because they no longer provide the green card so that these people can go out to work, and second, they are held in detention.

We have to ask ourselves whether we are going to be satisfied with a counselor, as well trained as they are, making the final judgment about a well-founded fear of persecution. I can remember it was not long ago when we had a number of Soviet Jews who came through Rome and were being evaluated as to whether they were real or refugees coming into the United States. There were a series of counselors out there. All had been trained, all seeing these various refugees, refuseniks, people who had been persecuted in the Soviet Union. At the end of the day, one group let in 60 percent and another group let in 20 percent. We had hearings on that. So you find diversity.

What we are talking about are the limited numbers which we are faced with now. In 1994, we had 122,000 asylum claims and we completed 60,000. In 1995, we had 126,000 claims and we completed 53,000. We have seen this dramatic change that has taken place with asylum claims—dramatic, dramatic change. Out of the 53,000, there are approximately 6,000 that actually receive asylum. Mr. President, 6,000 in this country, 6,000 that are actually granted asylum.

These are individuals who have gone through not just the airplane ride across and flushed their ID cards down the toilet or ate their ID cards, these are 6,000 people who have a well-founded fear and have gone through the process. It seems to me that those individuals whose lives have been a struggle, as we define them, to try to develop democratic institutions, democratic ideals, democratic values, democratic priorities in their countries so that their countries will move toward the kind of value system in the broad terms of respect for democracy and individual rights and freedoms are real heroes in many, many instances. We have recognized that over the long history of this country.

So I think the amendment of the Senator from Vermont makes a great deal of sense. I think the opposition, quite frankly, is directed toward a condition which no longer exists because of the excellent work of the INS in addressing it. Asylum claims declined 57 percent as productivity doubled in 1995. That is in this last year. They are continuing to make progress.

We ought to be sensitive to this issue of individuals who have gone through the harshness and the brutality of these foreign regimes. We cannot pick up the newspaper without being reminded of them. In so many instances, these individuals, who really do deserve asylum, deserve to be able to receive that in our country, approximately 6,000. I have very serious fears that that kind of sensitivity to the real needs of individuals who have been struggling for democratic ideals will not be as respected as it has been if we adopt the proposed recommendations.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I also rise in support of the Leahy amendment. Senator SIMPSON is correct that for a period, we went through this where people just memorized three or four words in the English language, ''I seek asylum.''

When his bill was first introduced, I was inclined to believe some additional strengthening language was needed. But I was visited by the INS people. I have to say Commissioner Doris Meissner just has made a terrific impression on all of us. She really knows her stuff, is very conscientious, and is very able.

This morning's Washington Post has a story, ''Russia Bars Jewish Agency,'' and the Russian Ambassador to Israel said he thinks it was just a bureaucratic slipup. But then you get to the inside pages and read the story that out in the boondocks in Russia there are some anti-Jewish activities taking place. I hope it is just temporary and isolated.

We do not know what is going to happen. I think that the Leahy amendment is one that moves us in the right direction. I think the graph that Senator KENNEDY has shown us shows fairly dramatic improvement in the situation. I hope the Leahy amendment will be accepted.

Mr. President, I ask unanimous consent to have printed in the RECORD the Washington Post article to which I referred.

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

[From the Washington Post, May 1, 1996]

RUSSIA BARS JEWISH AGENCY—BAN COULD HAMPER IMMIGRATION TO ISRAEL

(By Barton Gellman)

JERUSALEM, April 30.—The Jewish Agency, a quasi-governmental body that has brought 630,000 Jewish immigrants to Israel from the former Soviet Union since 1989, announced tonight that Russian authorities have revoked its accreditation and notified local jurisdictions that the agency no longer is authorized to function in Russia.

There was no clear indication of Russia's intentions and no explanation from Moscow. But the potential stakes were seen in Israel as high.

Russian immigration has changed the face of Israel, adding nearly one-fifth to its Jewish population and infusing the state with one of the world's most productive flows of human capital. Before the thaw that accompanied the Soviet Union's final days, the Moscow government's sharp restrictions on emigration—and ill-treatment of Jewish ''refuseniks'' who could not leave—were a major source of friction with the West.

An estimated 1.4 million Jews remain in the former Soviet Union, 600,000 of them in Russia, and Israel had projected until now that they would continue to make new homes in Israel at last year's rate of 65,000 for several years to come. Officials here have observed no slowdown in Russia's distribution of exit visas, and they do not foresee a return to Russia's old bans on emigration itself, but they said most Russian Jews could not readily leave without the practical and financial assistance of the Jewish Agency.

Israeli officials said they were uncertain of the origins of the present impasse, and the Russian ambassador here qualified it as a bureaucratic slipup. But Israelis voiced two theories about what is happening.

One focused on the growing nationalist cast of a Russian election campaign that is threatening to unseat President Boris Yeltsin. The second looked to bilateral tensions and the bitterness of the new foreign minister, Yevgeny Primakov, at Israeli moves to keep Russia far from its desired role at the center of Middle East diplomacy.

A third explanation—mere misunderstanding—prevailed at first when the Jewish Agency lost its legal accreditation on April 4, which effectively terminated its right to operate offices, hold meetings and stage other activities in Russia. Agency officials treated it as a slipped formality and discouraged Israeli reporters from writing about the change.

Other signs—including closure of the agency's Birobidjan and Makhachkale offices in the Russian hinterland, a Justice Ministry notice to local authorities about the loss of accreditation and an increase in vandalism directed at agency properties—began to convince them otherwise as the month wore on.

Avraham Burg, the agency's chairman, decided to make public his protests after police and local government officials descended on a Jewish Agency gathering today in Pyatigorsk, an important regional emigration center in the northern Caucasus, and ordered the meeting to break up. Three Israeli representatives of the agency were asked to leave town.

''If this is just a bureaucratic stupidity, I will be happy,'' Burg said in an interview, ''and if it is something else, we shall be ready in the international arena with the Jewish voice, Jewish pressure.''

''We are working in the former Soviet Union under two assumptions,'' he added.

''The first one is that the right of the ancient Jewish people to repatriation is a given, and the second one is that the constitutional, basic, elementary right of family reunification is [Russia's] passport to the free world. Without this you are not a Western modern country.''

Burg said he had summoned the Russian ambassador to Israel, Alexander Bovin, for what became a sharp meeting last week. Burg said the ambassador assured him that the difficulty was merely technical.

Neither Bovin nor any other Russian diplomats here, nor officials in Moscow, could be reached for comment tonight.

Burg and Prime Minister Shimon Peres agreed to take the position that there can be no link between the agency's travails in Russia and any bilateral disputes between the Moscow and Jerusalem governments on the grounds that it affects the human rights of individual Jews and the broader interests of the world Jewish community. Foreign Ministry officials said tonight that they would play no role in protesting the change in Russian policy, and Burg planned to fly to New York Wednesday to confer with American Jewish leaders on possibly bringing pressure to bear in Moscow.

Alla Levy, chief of the Jewish Agency's efforts in the former Soviet Union and a 1970 immigrant, said today's crackdown in Pyatigorsk was especially sensitive because that city is one of 10 from which Russian Jews fly directly to Israel.

Several irritants trouble Israeli-Russian relations, and Primakov rebuffed a meeting request last month from Foreign Minister Ehud Barak. A specialist in the Arab world, Primakov is seen as resenting the combined efforts of Israel and the United States to squeeze Moscow out of its place as co-sponsor of regional peace talks.

Israel acknowledges, in addition, that it has been slow to transfer legal rights to Russia from the former Soviet Union's valuable land holdings in Jerusalem. Additional frictions arose at Israel's treatment of Russian visitors at passport control points after police found evidence that Russian organized crime had made inroads here.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, thank you very much. I rise today in strong support of this amendment. Our amendment would, in our view, greatly improve this section of the bill dealing with asylum. Frankly, this section does need improvement. It really creates a summary exclusion, a summary exclusion that would keep out of America some of the worthiest of all asylum seekers.

Further, it sets a legal standard that is both unprecedented and excessive for people who are the most in need, for people who are truly fleeing persecution, and it puts what for some people is a life-or-death decision in the hands of the INS bureaucrats.

As has been pointed out by my colleagues from Illinois and Massachusetts, there really is not the problem today that we may have seen 2, 3, 4 years ago. Today, the asylum system works pretty well, and we do not need this change, we do not need this summary exclusion. It is not worth the price that we are going to pay.

It is clear that several years ago, the asylum system was, in fact, broken. Under the old system, people could get a work authorization simply by applying for asylum, and this, obviously, became a magnet, even for those who had absolutely no realistic claim for asylum.

But the INS changed its rules in 1994, and it stopped automatically awarding work permits to those filing for asylum. Instead, it began to require an adjudication of the asylum claim before it awarded work authorization.

It also began resolving asylum claims within 180 days. The results are very, very significant.

According to the INS, in 1994, before the new rules were put in place, 123,000 people claimed asylum.

In 1995 however, after the new rules were established, only 53,000 people even applied for asylum. That is a 57-percent decline in those people who even apply for asylum, a 57-percent decrease in 1 year.

Also, the INS reports that it is now completing 84 percent of the new cases within 60 days of filing, and 98 percent—virtually all new cases—within 180 days of filing. That is why the administration, the INS, say that they did not need this provision.

Second point, Mr. President. The most worthy cases for asylum would be excluded if we impose this new summary exclusion procedure. Among those excluded would be cases of victims of politically motivated torture and rape, the very people who are most likely—most likely—to use false documents to flee from the country of their torture. These are the people who would be hurt the most, frankly, by this summary exclusion.

Let us talk about these individuals. We have already heard about the young woman who was seen in the press the last few days from Togo. But let me use two other examples. These are real world cases. These are cases where, if the law, as it is currently written in this bill, if this change does in fact go into effect, these people never would have gotten into this country. They would have been excluded by an INS bureaucrat and sent back to their country in that 1-hour determination that we have talked about.

A real example. First, a student in Sudan was beaten and given electric shocks by Government torturers for the crime of engaging in a peaceful protest against the Government. He escaped to the United States without a passport. He was placed in detention because an INS bureaucrat concluded he did not have the credible fear of persecution standard that we have heard about. However, on judicial review, this individual was granted asylum.

So under the procedure that is contained in the bill, under that procedure, the new procedure that we are trying to take out, under the new procedure, it never would have gone beyond the INS bureaucrat. This student from Sudan would have been sent back to Sudan. There would have been no opportunity for this person to have a hearing on the matter beyond an initial 1-hour hearing from the bureaucrat where the bureaucrat made the decision, ''Send him home.''

Second example. A man from India—this is a true case—was imprisoned and tortured by the Government because of his religious beliefs. His family's home was bombed. Fearing for his life, he fled to the United States, where INS bureaucrats verbally abused him, and denied him food and water until the next day. They said his fear was not credible. This case on judicial review was changed. He was granted asylum. Again, under the provisions of this bill, without our amendment, this person never would have gotten to the judicial review, would have been sent back by the determination made by the bureaucrat.

Mr. President, I think that is too heavy a price to pay. I think it is very clear that we do not need to change the law in this area.

I think America, Mr. President, stands for something better than that. We have historically held out the lamp of freedom to the world. We are different than other countries. We have held out a lamp that is lit by the flames of justice, not by bureaucracy.

Mr. President, I ask the Members of the Senate, whether watching on TV or sitting in the Chamber, think back to stories you have heard—we have all heard stories—about people who have fled persecution, and whether that was in Nazi Germany, or more recent examples. How often did that person who fled persecution have to have a forged document? How often did that person go to great pains to obtain a forged document to flee the country? How often did that person have to have another country of immediate destination before they ended up in the country that they wanted to end up in? How many by necessity had to have that third country there?

Each one of us can remember these stories. I remember, as a very young boy, listening to a story told by a friend of my father, who fled Nazi Germany. Although some of the details have left me over the 40-some years since I heard this story, I can still remember parts of it, and how difficult it was and what great risks he took to get out of Nazi Germany, to get out of Nazi Germany with documents that clearly were fake. I think we need to keep this in mind, Mr. President, when we decide what to do in regard to this amendment.

My friend from Wyoming talks about compassion fatigue. I understand that. I get it. That is why, quite frankly, we have made changes. There are major changes in this bill. That is why the INS has made very, very significant changes in the last several years to speed up the process, to make sure that they weed out these cases that do not have merit. That system is working.

But I would just say that as we look at this amendment, I would ask my colleagues to keep this in mind, that in

an immigration bill, more than in any other bill that we pass on the floor, more than any other bill that we debate, we do define who we are as a country. I think we should be different.

I understand the argument that Holland does it one way or Germany does it another way. That is fine. I understand the argument. But I think, quite frankly, we have to do it our way. We have to do it in a way that is consistent with our tradition. One of the great traditions of this country is that we have been a beacon of hope, and of light, as Ronald Reagan would say. We have been the country where people could come to when they were persecuted.

If you look at our history and our immigration policy, our best days—our best days—have been when we reached out and said, ''Yes. We are this country that is different.'' The few times in our history when we have turned our back on people who are persecuted—and there are examples of this; the Nazi Germany situation, the few times we have done that—we have lived to regret it. And we have been sorry for it.

So, yes, I understand compassion fatigue. But we are, in a sense, in this bill defining who we are as a people and redefining that. I think the amendment that has been offered by my friend from Vermont is entirely consistent with that great tradition of this country. Thank you, Mr. President. I yield the floor.

Mr. JEFFORDS. Mr. President, I would like to express my strong support for the Leahy-DeWine amendment, which preserves critical due process rights for refugees arriving in the United States after fleeing persecution in their countries of origin. While the United States must control its borders and ensure that its hospitality is never abused, it must also live up to its finest traditions as a land of freedom and refuge for the oppressed.

Our country is built on the rule of law, and must preserve and protect that legacy for all. This amendment would ensure that those fleeing oppression have a fair opportunity to present their cases and have them studied and reviewed by appropriate officials. Many genuine refugees are forced to come to the United States with false documents and then apply for asylum. In fact, an argument could be made that the more dangerous their situation, the more urgent it is that they come to apply for asylum, and the more likely that they will not have access to government travel documents from the government which is persecuting them. It is just these most needy people who will suffer most directly from the summary exclusion measures which this amendment seeks to modify.

With adoption of this amendment, the United States will remain able to ensure that those with valid, deserving cases for asylum will continue to be able to apply for asylum in the United States.

I urge my colleagues to support this important amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that this amendment be set aside for a few moments so Senator BRADLEY can go forward with an amendment. I do not think it will take a great deal of time. So if Senator BRADLEY will go forward, and then Senator HATCH could speak on this bill, and then I have a few more remarks on the pending amendment. I ask unanimous consent that it be set aside at this time.

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

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I thank the distinguished chairman.

AMENDMENT NO. 3790 TO AMENDMENT NO. 3743

(Purpose: To establish an Office for the Enforcement of Employer Sanctions)

Mr. BRADLEY. Mr. President, I call up amendment No. 3790.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 3790 to amendment No. 3743.

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

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

The amendment is as follows:

On page 47 of the amendment, strike line 1 and all that follows through line 21 and insert the following:

SEC. . ENFORCEMENT OF EMPLOYER SANCTIONS.

(a) ESTABLISHMENT OF NEW OFFICE.—There shall be in the Immigration and Naturalization Service of the Department of Justice an Office for the Enforcement of Employer Sanctions (in this section referred to as the ''Office'').

(b) FUNCTIONS.—The functions of the Office established under subsection (a) shall be—

(1) to investigate and prosecute violations of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)); and

(2) to educate employers on the requirements of the law and in other ways as necessary to prevent employment discrimination.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $100,000,000 to carry out the functions of the Office established under subsection (a).

Mr. BRADLEY. Mr. President, this amendment is a second-degree amendment to the one proposed by the distinguished Senator from Wyoming. The amendment will improve the Federal Government's ability to deter illegal immigration by enhancing the enforcement of our existing laws. In particular, this amendment would create a separate office within the INS to ensure that our employer sanction laws are effectively and fairly enforced. The fact is that employment is the single most important enticement that brings illegal immigrants to our shores.

If we want to address seriously the illegal immigration problem in this country, we must address ourselves to the root of that problem, which is the jobs.

In 1986 we started down the right track with the Immigration Reform Control Act, better known as the Simpson-Mazzoli Act. In that bill we enacted, after considerable debate, employer sanctions which imposed civil penalties on employers of illegal aliens and criminal penalties for pattern or practice violations.

We put very tough teeth in the law—up to a $10,000 fine, up to 3 years in jail. Those provisions are strong and, if enforced adequately, would deter the hiring of illegal aliens.

This bill makes important headway in improving these laws. However, one critical element is missing: These laws, those that we passed in 1986, are not being adequately enforced.

I have heard many in the Chamber complain that employer sanction laws are not working and perhaps should be eliminated. I agree that they are not working as well as they could be working, but the problem is not with the law. The problem is with the implementation of the law. The INS' ineffective implementation of these laws has been noticed time and again by independent observers, including the Jordan Commission and the Office of the Inspector General.

For example, the Jordan Commission found that employer sanctions are accorded a low priority by the INS. The INS' own data bear that out. Between 1989 and 1995, the number of INS investigations of employer sanction violations dropped by more than 50 percent.

Let me repeat that: From 1989 to 1995, the number of investigations by the INS of employer sanctions dropped by more than 50 percent. The GAO found that the number of agents assigned to the workplace enforcement dropped more than half between 1989 and 1994.

Overall, financial resources allocated to the enforcement of employer sanctions also has declined significantly. While the INS is now increasing the number of workplace agents and resources directed toward the enforcement of employer sanctions, projections indicate that the INS will only employ, after these improvements are made, only employ about 708 workplace agents in 1996. Mr. President, 708 agents to cover a nation with 6.5 million employers—this contrasts sharply with the over 5,000 Border Patrol agents that the INS projects in 1996.

This disparity is notable given that according to the INS' own estimates, their own estimates, about half of all illegal immigrants do not cross the border illegally but overstay their visas.

Let me repeat that: Half of all illegal immigrants in this country are not sneaking across the border in the middle of the night but they are people that come into this country on a visitor's visa and overstay. They are people who come in on a visitor's visa,

then get a job illegally. They are here in the workplace taking jobs away from Americans.

The law says an employer who hires an illegal immigrant who overstays on his visitor's visa, for example, is subject to fine and possible imprisonment. Yet, nobody is going after these employers. There is not enough enforcement.

Furthermore, the INS is failing to conduct investigations effectively. Like the Jordan Commission's report a year earlier, a September 1995 inspector general audit found numerous problems with the INS conduct of its employer sanctions investigations. The inspector general specifically found that ''the INS is sending a signal to the business community that it does not take seriously its enforcement responsibilities in the area of employer sanctions.'' Those are the words of the inspector general that the INS is not seriously pursuing employer sanctions.

The problem is more, however, than numbers and authorizations. This bill provides much needed authorization for additional investigators available for the INS to use for employer sanctions. That is good. It does not go far enough because those investigators are not necessarily going to be directed toward employer sanction enforcement.

Moreover, these investigators are likely to continue to be wasted on less important and less effective enforcement efforts. That certainly is the case if past practice is any indication.

New investigators could deal with the part of the INS problems in this area, but only if they are used appropriately. As the critique of the Jordan Commission, the inspector general, and others have indicated, the problem is more than resources; it is more than simply a few more agents. Consequently, our solution must provide more than resources.

Mr. President, what is needed is a separate office for the enforcement of employer sanctions that will focus its activities on the most serious problem, which is employers hiring illegals, not having anyone go after them, as well as address the problems of employers discriminating on the basis of national origin. It is clear that a fundamental change is needed in the INS bureaucracy to make these laws work.

The amendment I am suggesting specifically addresses this problem by changing the task force provided by section 120(b) of the bill to an office for enforcement of employer sanctions and authorizing it for $100 million, the figure contained in the 1986 Immigration Act. The office will have two primary functions: to investigate and prosecute employer sanction violations, and to educate employers on the requirement of the law in order to prevent unlawful employment discrimination.

I think this amendment corrects the weaknesses in the existing bureaucracy. It will separate and dedicate necessary resources to the enforcement of employer sanctions so that it will be accorded the priority that it deserves. Of equal importance, the creation of a separate office within the INS will tell employers that the INS is now serious about enforcing the employer sanctions provision, that it has the budget and the manpower to investigate and follow up leads on the worst violations of these laws. As well, it will send a strong message to the INS that it needs to improve its enforcement activities.

I think it is also important to point out that this amendment does not add new sanctions or increase the burden on employers. It does not add one single form to the mountain of paperwork they must already fill out when they hire a new legal worker. It just asks that existing law be adequately enforced.

Finally, and of equal importance, it will require better education of employers to prevent discrimination.

In short, this amendment goes to the source of the illegal immigration problem in this country—the job magnet—by improving our mechanism for seriously working to eliminate that employment magnet, with adequate enforcement directed toward the problem, with no excuses, and with results required.

Mr. SIMPSON. Mr. President, I think my old friend, Senator BRADLEY from New Jersey, has put his finger right down on one of the most critical issues in dealing with the problem of illegal immigration, which is the magnet of jobs, employment, which draws illegals to this country.

This amendment would establish an office within the INS, as I understand it, specifically staffed and mandated to perform both of the functions that are essential to the success of any employer sanction provisions.

That is, the office would both educate employers about the law and their responsibilities to prevent unlawful discrimination, and would investigate and prosecute those employers who knowingly hire illegal aliens. I think that we cannot claim to be serious about dealing with the problems of illegal immigration unless we are serious about dealing with those who knowingly hire illegals. So long as they can get the jobs they seek, illegal aliens will continue to regard this country as the land of opportunity, and some will refer to it almost as the land of slave labor as they come here as illegals and remain in that status. That is why it is important that we remove illegal persons from our society or else make them legal.

So we already have a special counsel for the prevention of discrimination against aliens. That is already on the books. I did not like that when it went in, but it is on the books. Surely, it would be appropriate to have an office of employer sanctions to deal with the single-most important element. As Barbara Jordan's Commission put it, ''Shifting priorities and reduced funding have hamstrung some of those provisions.''

As I understand it, this does not create a new Justice Department agency to enforce employer sanctions. It creates a new office within the INS. But there is a funding level increase. That is correct. Originally, that was not so, but it is so now, is that correct?

Mr. BRADLEY. Yes.

Mr. SIMPSON. This provision would not disrupt the balance between employer sanctions and antidiscrimination. I will have to, if I may, set the amendment aside because several wish to speak on that amendment. I personally do not have grave reservations about it, but others do.

AMENDMENT NO. 3780

Mr. SIMPSON. I ask that the amendment be set aside and that we go back to the Leahy amendment, and then we go to Senator ABRAHAM to lay down his amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, let me just come to a little review of the amendment of Senator LEAHY. The Senator from Vermont spoke of the alien who was so traumatized that he or she cannot speak about it at entry, and so they would not be in a position to immediately show a credible fear and, thereby, attain a full asylum hearing.

The Senator certainly goes to the hardest case. If the Senator's amendment was precisely directed only to that possibility, it would be appropriate. But the Senator's amendment goes far beyond that. It would simply gut the reforms proposed in the bill to deal with the large number of aliens. What we are trying to get at is aliens who enter without inspection, or with fraudulent documents, and those who board a plane with documents, then dispose of them, and upon entry fraudulently claim asylum.

I think we are still having a bit of distortion, not from the Senators from Vermont or Ohio, but when someone says that they will not be interviewed by ''the guy at the border,'' that is simply not true. This provision will only be administered by specially trained asylum officers with translators. There will be translators. There always are translators of any language, subject to review by a superior, another trained asylum officer. These are not low-level immigration officers. This is not correct. These are highly trained individuals.

I remind our colleagues of one other item that has sprung from the debate. Our laws and treaties prevent our Government from returning any person to any country where their life or freedom may be in danger. That is the law of the United States. It is the law of the United Nations. It is the sacred law. It is called nonrefoulment: You cannot return a person to a country where their life or freedom may be in danger. That is not done. We do not do it, and that is the law of the United States. That is the law of the United Nations.

No matter if a person can establish credible fear or not, the person will not be returned to certain imprisonment and danger. That will not change under any provisions of this bill.

Finally, I hope that we recognize that 70 percent—I hope these figures can be heard—of all asylum applicants in fiscal year 1995 came from three countries. El Salvador, 72,000, which, at last look, was a democracy. They had worked through tremendous civil war to get where it is a democracy. We gave their people an extended program called ''extended voluntary departure'' a few years ago. Guatemala, 22,900; and 9,300 from Mexico. So out of a total of 149,500 applicants, they are the countries: El Salvador, Guatemala, Mexico.

While there may be problems in those countries, they are not highly repressive countries. At least our Government does not find them such. There is turmoil in Guatemala, killings in Guatemala. There are killings in the United States—an awful lot of them. They are, however, known as leading sources of illegal immigration.

What you are seeing is, when you have a country that is your leading source of illegal immigration, they are picking them up, and they have been here 2, 3 years, and they say, ''I am seeking asylum'' because they know that these procedures are interminable. That is what we are trying to get at. We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system. For every one that you can point to with passion and drama, you can point to a hundred who are gimmicking the system. This is what the people of America are appalled at, that we will not deal with the issue.

There is a balance to be struck between granting asylum to those who are qualified and preventing this country's traditional hospitality being taken advantage of in a most extraordinary way. Remember, when you have 9,304 cases from Mexico—and a case can be more than one person—how many of those asylum claimants from Mexico were granted asylum? There were 55—55 out of 9,304. If that is not gimmickry of the system, I am missing something. It means that one-seventh of our asylum applicants, even under the new provisions, are almost guaranteed to be bogus or fraudulent. I hope that our colleagues will hear that as we go to the eventual vote on that.

Of the first four major countries of asylum cases—Guatemala, Mexico, China, and India—the final approval rate is 2 percent—2 percent of these people that we have heard these poignant, powerful stories about. And 98 percent of them are fake or bogus. So if we hear the 1 and forget the 100, we are making a mistake.

I yield the floor.

Mr. BRADLEY. If the distinguished Senator from Wyoming will yield, I wonder if we can get some time agreement on the amendment that I offered. I know a couple other Senators would like to speak. Is that possible?

Mr. SIMPSON. Mr. President, I do not think I am prepared to do that until the two people that have indicated they wish to debate come over. When I get in touch with them, and I will get back to you, perhaps we will get a half hour or an hour. I will work toward that, with the approval of Senator KENNEDY.

I yield the floor.

AMENDMENT NO. 3752 TO AMENDMENT NO. 3743

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

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM], for himself, Mr. FEINGOLD, Mr. DEWINE, Mr. INHOFE, Mr. MACK, Mr. LOTT, Mr. LIEBERMAN, and Mr. NICKLES, proposes an amendment numbered 3752 to amendment No. 3743.

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

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

The amendment is as follows:

Strike sections 111–115 and 118.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor for the amendment.

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

Mr. ABRAHAM. Mr. President, the amendment I proposed is cosponsored, in addition to myself, by Senators FEINGOLD, DEWINE, LOTT, MACK, LIEBERMAN, INHOFE, and NICKLES.

Mr. President, our amendment does basically two things. First, it would strike sections 111 through 115 of the bill, which would currently begin to implement a national identification system.

Second, the amendment would strike a related provision, section 118 of the bill, which would require State driver's licenses and birth certificates to conform to new Federal regulations and standards.

Mr. President, I intend to devote at least my opening statement here today to the first Senate provisions that we seek to strike with this amendment, those which pertain to the national identification system. Senator DEWINE, while in addition to commenting on those sections, will be speaking in more specific terms about the driver's license and birth certificate provisions.

I recognize that we are not under a time agreement and that it will be the option of the Presiding Officer in terms of floor debate. But we hope Senator DEWINE will have an opportunity following my remarks to be recognized soon so that he may comment on that portion of the bill which he has particularly been focused on.

That said, Mr. President, let me just begin by making it clear that those of us proposing this amendment consider the hiring of illegal aliens to be a wrong thing. We think wrongful hirings, no matter how they might be brought about, are not appropriate. We are not bringing this amendment to in any way condone, or encourage, or stimulate wrongful hirings of people who are not in this country under proper documentation.

The question is, how do we best address that problem, and how do we do it in the least intrusive fashion? Already this bill contains a variety of provisions which will have, I think, a marked impact on addressing the problem. In the bill we already increase substantially the number of Border Patrol employees, people patrolling the borders to prevent illegal aliens from entering the country.

Mr. President, in the bill we already addressed a very serious problem alluded to by the Senator from New Jersey, people who overstay their visas, and constitute some 50 percent of the illegal alien population by for the first time imposing sharp, stiff penalties on those who violate the visa rules. In addition, as we dealt with on numerous occasions yesterday, Mr. President, we have attempted to address the issue of access to public assistance for noncitizens, and particularly for illegal aliens, as a way of discouraging some who may have come to this country, or who might consider doing so for purposes of accessing our social service programs.

In addition, under the bill, we have dramatically, I think, moved to try to expedite the deportation of criminal aliens, a very substantial part of our current alien community, and by definition, in the case of those who have committed serious offenses, individuals who are deportable, and thus no longer appropriate to be in the country.

I believe these steps, combined with other provisions in the legislation, move us a long way down the road toward addressing the concerns we have about the wrongful hiring of illegal aliens. I think we need to understand the provisions that pertain to verification, which, at least in this Senator's judgment, are a very obvious example of a highly intrusive approach that will not have much of an effect on the problems that we confront.

Frankly, Mr. President, what we confront in this country is less, in my judgment, of a case of an innocent employer who has been somehow deceived, or baffled by a clever alien. We have largely confronted a situation in which some form of complicity takes place between employers who are looking for ways to hire less expensive labor, and illegal aliens who have no choice in terms of the options available to them. So what we find is intent on the part of the employer, and, obviously, a willingness on the part of the illegal alien to be an employee.

This identification system is not going to do very much to address that problem because no matter what type of identification document is used, whether it is a birth certificate, a driver's license, an ID card, a Social Security card, or anything else, at least in my judgment, it is not going to matter

if the employer's objective is to hire a lower priced employee who happens to be an illegal alien because, whatever the system is, it will be circumvented intentionally to accomplish the objective of trimming down on overhead.

As a consequence, to a large extent, the system, no matter how effectively it is perfected, is not going to really have much impact on the large part of the problem we confront with regard to the hiring of illegal aliens. In my judgment, that makes the cost of this program greatly disproportionate to any potential benefit it might have in terms of reducing the population of illegal aliens who are improperly employed.

I also say in my opening today that we have taken, I think, with the amendment, with the provisions of the bill that were sustained yesterday in the vote with respect to providing employers with a shield against discrimination cases, a further tool that will allow employers who are innocent to take the steps necessary to avoid hiring unintentionally people who are meant to be hired under the current laws.

That is the backdrop, Mr. President. We have big Government, an expansive Government, an intrusive Government solution being brought to bear in a circumstance where I do not think it is going to do much good. For that reason, I think the verification system is headed in the wrong direction.

This approach is flawed, and it is, in my judgment, overextensive in the way it is structured in the bill right now without any definition as to the dimensions that such pilot programs are envisioned in the bill might encompass, it has the potential to be a very, very large program. What is the region? And how advanced are all regions in an entire quarter of the country? The bill does not specify how large the pilot programs might be.

So for those reasons we believe that the verification part of this legislation is unnecessary and should be struck.

Let me talk more specifically about why the costs are going to be greater than the benefits under the program.

First, Mr. President, even though this is a potential pilot program, it seems to me, it is impossible to effectively run a pilot program of this type unless a national database is collected. That national database check is going to be a very extensive step in the direction of a national identification system.

Furthermore, Mr. President, it seems to me, given the enormous downstroke cost of developing that kind of system, that there will be an enormous amount of pressure on us to continue building the system into a national system in the very near future. Indeed, that is the direction that the sponsors of the legislation in both the House and Senate had originally envisioned. But the bottom line in terms of the costs of the program really falls on three categories of U.S. citizens that we need to focus on today.

First, it is extremely unfair and costly to honest employers. Any kind of system that involves verifying new employees prior to hiring them in the fashion that is suggested here will be costly. The employer must phone a 1–800 number in Washington, or someplace else to determine whether an individual's name is in the database, or the person who is the employer must develop some type of, or require some type of, computer interface system, whatever it might be. These are additional business costs that will fall hard—especially hard—on small businesses at a time when I think this Congress at least in its rhetoric has been talking about trying to make the burdensome costs on small business less cumbersome.

In addition, there will be a very disproportionately costly burden on those types of small businesses that have a high turnover of employees. And there are a number of them in virtually every one of our States, whether it is the small fast food restaurant, or whether it is the seasonal type of small business. The list is endless of those kinds of businesses which have huge amounts of turnover in terms of their employee ranks. For each of those under a verification system we are adding additional costs and additional burdens that must be borne regardless of the circumstances.

But really, Mr. President, this is an unfunded mandate on these small businesses, on businesses in general, on employers in general, whoever they might be. And, in my judgment, it sets a very bad precedent because it would be for the first time the case that we would require people to affirmatively seek permission to hire an employee.

To me, Mr. President, that is a gigantic step in the direction of big government that we should not take. I do not think we want to subject employers, no matter how, or how many employees they have, to this new-found responsibility to affirmatively seek permission to hire employees.

Again, though, the people who will pay these costs and suffer these burdens are going to be the honest employers.

Those who are dishonest, those who would hire illegal aliens knowingly will not engage in any of these expenses, will not undertake any of these steps because, obviously, their intent is to circumvent the law, whatever it might be. They are doing it today. They will do it whatever the system is that we come up with.

So what we are talking about in short is a very costly, very cumbersome, very burdensome new responsibility on employers in this country that will disproportionately fall on the shoulders of those employers who are playing by the rules instead of those who are breaking them. As I say, Mr. President, it will, for the first time, require employers to affirmatively seek permission to hire employees, seek that permission from Washington.

However, it is not just the employers who will suffer through a system of verification as set forth in the legislation; it is also the workers, the employees, U.S. citizens who will now be subjected to a verification system that, in my judgment, cannot be perfected accurately enough to avoid massive problems, dislocations and unhappy results for countless American citizens.

As I have said, there is no way such a system can really be effective unless there is, first, a national database. Such a national database, no matter how accurately constructed, is bound to be riddled with errors. Indeed, some of the very small projects the INS has already launched have been discovered to have error rates, in terms of names in the database, as high as 28 percent.

Now, I hope that we could do better than 28 percent, but let us just consider if the database had an error margin of 1 percent and let us also consider that that was a national program. That would be 600,000 hirings per year that would be basically derailed due to error rates in the database.

The project, of course, is not a national program to begin with, but 1 percent of any sizable regional project is going to mean that U.S. citizens who are entitled to be hired will not be hired and be placed in limbo because of this experimental program.

Again, though, Mr. President, this is not going to be a problem in the case of illegal aliens hired by employers who knowingly choose to do so because they will not be subjected to this verification process.

If we were to have this margin of error, if we were to even have a small handful of American citizens denied employment under these provisions, we would set in motion what I think would be an extraordinarily costly process for those employers and employees so affected.

Is it right to impose a system that would in fact mean that U.S. citizens or legal permanent residents who are entitled to work would be potentially put on hold for weeks to months while the system's database is corrected? I think that is wrong. I think it is the wrong direction to go. Anybody who has dealt with computer databases knows the potential for error in these types of systems. In my judgment, to invite that kind of high cost on the employees and employers of this country would be a huge mistake.

So those are the first two issues to consider, the first two. The victims are the honest, play-by-the-rules employers and employees or potential employees who want to play by the rules. They are going to be the victims. They are going to pay a high cost.

So, too, Mr. President, will the taxpayers pay a high cost for this, in effect, unfunded mandate, because just building the database capable of handling any kind of sizable regional project will cost hundreds of millions of dollars. The question is, is it going to produce the results that are being suggested? I would say no.

As I have indicated already, those who want to circumvent a system will circumvent this system, and they will do so intentionally. Meanwhile, the taxpayers will be footing a very substantial bill for a system that can be easily avoided by those employers and illegal alien employees who wish to do so.

I intend to speak further on this amendment this morning, but let me just summarize my initial comments. I believe we should strike these verification procedures. I believe that the cost of imposing these programs even on a trial basis is going to be excessive. I feel as if it leads us in the direction of big Government, big Government expansion and the imposition of costly Federal regulations and burdens, especially on small businesses that they do not need at this time.

I believe that the tough standards we have placed in the bill to deal with illegal aliens, combined with some of the other relief that has been granted to employers to try to ferret out those who should not be employed, are the sorts of safeguards that will have the least intrusive effect on those who play by the rules. The costs of this verification system, in my judgment, far outweigh any potential benefits. For those reasons, I urge my colleagues to support our effort to strike these provisions.

At this point, as I said, Mr. President, I realize we are not on a time agreement to yield time, but I know the Senator from Ohio would like to speak to another part of this, so I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Ohio.

Mr. DeWINE. I thank the Chair. I rise today to support this amendment.

The Senator from Michigan has discussed very eloquently the problems that we see with the employer verification section of the bill. I am going to talk in a moment about a related problem, a problem that we see in the part of the bill that will require for the first time, in essence, a national birth certificate, a national driver's license.

Before we discuss these parts of the bill, however, let me start by congratulating my colleague from Wyoming. He said something about an hour ago on this floor that is absolutely correct. We are going to pass an illegal immigration bill, and after we have had our way with the amendments, one way or the other, we are going to pass a bill. It is going to be a good bill, and it is going to be a real tribute to his work over the years and his work on this particular bill.

Make no mistake about it: This bill has very, very strong provisions, strong provisions that are targeted directly at the problem of illegal immigration. The bill that the Senator reported from the subcommittee, because of his great work and the other members of the subcommittee, is a strong bill targeted at illegal immigration, targeted at those who break the law. The bill that the committee reported out is a good bill as well. There are, however, several provisions in this bill—and this amendment deals with these provisions—we believe, frankly, are misguided and that are targeted and will have the undue burden not on the lawbreakers but we believe will have an undue burden, unfair burden on the other law-abiding citizens in this country. Let me discuss these at this point.

My colleague from Michigan has talked about the employer verification system. What is now in the bill is a pilot project. I am going to discuss this at greater length later on in this debate, but let me state at this point my experience in this area comes from a different but related field, and that is the area of criminal record systems. I started my career as a county prosecutor, and I became involved in the problem with the criminal record system. In fact, I discussed this at length with the current occupant of the chair.

I have seen, as other Members have, how difficult it is to bring our criminal record system up to date, to make sure that it is accurate. We have spent hundreds of millions of dollars in this country to try to bring our criminal record system up to snuff so that when a police officer or parole officer or the judge setting bond makes a life and death decision—that is what it is many times—about whether to turn someone out or not turn them out, they have good, reliable information. We have improved our system and we are getting it better, but we still have a long, long way to go.

If, when the stakes are so high in the criminal system, and that is a finite system—we are dealing with a relatively small number of people—if we have such a difficult time getting it right in that system, can you imagine how difficult it is going to be for us to create an entirely new database, a much, much larger database? How many millions are we going to have to spend to do that and what are the chances we are going to get it right, and get it right in a short period of time? So I support the comments of my colleague from Michigan in regard to this national database, in regard to this national verification system.

Let me now turn to another part of this bill, a part that is addressed also by this same amendment we are now debating. This section has to do with the creation, for the first time, of a federally prescribed birth certificate and the creation for the first time of a federally prescribed driver's license.

Under the bill as currently written, on the floor now, all birth certificates and all driver's licenses would have to meet Federal standards. For the first time in our history, Washington, this Congress, would tell States how they produce documents to identify their own citizens. Let me read, if I could, directly from the law, or the bill as it has been introduced and as it is in front of us today. Then in a moment I am going to have a chart, but let me read from the bill. My colleagues who are in the Chamber, my colleagues who are in their offices watching on TV, I ask them to listen to the words because I think, frankly, they are going to be very surprised.

> No Federal agency, including but not limited to the Social Security Administration and the Department of State and no State agency that issues driver's licenses or identification documents may accept for any official purpose a copy of a birth certificate as defined in paragraph 5 unless it is issued by a State or local authorized custodian of records and it conforms to standards prescribed in paragraph B.

Paragraph B, then, basically is the Federal prescribed standards. The bureaucracy will issue those regulations. Again, we are saying no Federal agency could issue this, and ''No State agency that issues driver's licenses or identification documents may accept for any official purpose.'' Those are the key words.

Let me turn to what I consider to be the first problem connected with this language. It is a States rights issue. We hear a lot of discussion on this floor about States rights. This seems to be the time and the year when we are trying to return power to the local jurisdictions, return power to the people. It is ironic that the language of this bill as it is currently written goes in just the opposite direction. Although we oftentimes talk about the 10th amendment, I cannot think of a more clear violation of the 10th amendment than the language that we have in front of us today. This is the language that pertains directly to the States.

> . . . no State agency that issues driver's licenses or identification documents, may accept for any official purpose a copy of a birth certificate . . . unless it is issued by a State or local government registrar and it conforms to standards . . . promulgated by the Federal agency designated by the President. . . .

Listen to the language, ''No State agency that issues driver's licenses or identification documents, may accept for any official purpose. * * *'' We are telling a State in one of the basic functions of government, one of their oldest functions, the issuance of birth certificates, and other functions we rely on States to do, issuing driver's licenses, we are turning to them and saying you cannot accept documents except as prescribed by the Federal Government. We are telling that agency, we are telling that State, what they can and cannot accept. This, I think, is going in the wrong direction.

I am not a constitutional scholar but I think it has clear problems with the 10th amendment if anything has any problems with the 10th amendment. You tell the State what they can accept and what they cannot accept for their own purposes.

Let me move, if I could, to another problem that I see with this provision. The second problem, I will call it sort of a nonmonetary problem, the nonmonetary cost. This bill as currently

written, going to the national driver's license, going to a national birth certificate, is going to cause a tremendous amount of anguish and tremendous amount of inconvenience for the American people. It is the American people who are abiding by the law who are really going to be punished by this. This is, in essence, what the bill says. It says to the approximately 260-some million Americans, each presumably who has a birth certificate somewhere, that your birth certificate is still valid, it is still valid, you just cannot use it for anything, or almost anything. If you want to use that birth certificate, you have to get a new one. You have to get a new one that conforms to what the bureaucracy has said the new birth certificate must conform to.

Your old birth certificate is no good. You can keep it at home, you can keep it stored in your closet or wherever you have it, that is OK, it is still valid, but if you want to use it to get a passport or you want to use it for any purpose, you cannot do that. You have to go back and get a new birth certificate.

What am I talking about in the real world where we all live and our constituents live? Let me give three examples, real world examples of inconvenience and problems that this is going to cause. Every year, millions of Americans get married and many of them change their names. To have a name change legally accepted by Social Security—this is the law today—today, to have a name change legally accepted by Social Security or by the IRS, today you must show a marriage certificate plus birth certificate. That is the law today.

This amendment will not change that. But here is how it will affect it. If this bill becomes law, the birth certificate you currently have is no good and you will not be able to use it for this purpose. You are going to have to go back to your origin, the place of your birth. You are going to have to do as Mary and Joseph did, you are going to have to go back to where you came from, where you were born, or at least you are going to have to do this by mail, or in some way contact that county where you were born, because the birth certificate they gave your parents 20 years ago, 25 years ago, you cannot use that anymore, because that is what this bill says. They are going to have to issue you a new one and you are going to have to go back and get that new birth certificate. I think that is going to be a shock to many people when they decide they want to get married.

June is historically the most popular month, we are told, for weddings. My wife Fran and I were married in June so I guess we are average, with a number of million other Americans. If this bill passes, I do not think it is too much to say that June will not only be known as the month of weddings, people getting married, it will also be the month where people will have to stand in line, because that is really what people are going to have to do. It is one more step back to get a new birth certificate for them. How many people get married each year? I do not know, but each one of these people will be affected.

Let me give a second example. What happens when you turn 16 years of age? You ask any teenager. They will tell you that in most States at least they get the opportunity to try to get a driver's license. How many of us have had that experience, gone down with their child or, if we remember that long ago, ourselves, trying to get a driver's license? How many people had to stand in line? I do not think it is unique to my experience, or the experience of my friends. You go and stand in line and it takes a while. Imagine your constituent or my constituent, our family members going down with our child at the age of 16, standing in line at the DMV. We get to the head of the line. You have a birth certificate. And the clerk looks at you and says, ''Sorry.'' You say, ''What's wrong? I have this birth certificate.''

They say, ''No, we are sorry. This is not one of the new federally prescribed birth certificates. This was issued 16 years ago. This doesn't conform. It doesn't work. The Federal law says we cannot accept that birth certificate.''

You then leave and either go back to the place your child was born or write to the place your child was born and you get that birth certificate.

We live in a very mobile society. I always relate things to my own experience. In the case of our children, that means we would have to go back to Hamilton, OH; we would have to go back, for one of them, to Lima, OH; one to Springfield, OH; one to Springfield, VA, a couple to Xenia, OH. You would have to go back in each case to where that child was born and go back to the health department or whatever the issuing agency was of the State to get that birth certificate.

Once you got the birth certificate, you then have to get in line at the DMV. That is how it is going to work in the real world. Let me give one more example.

When people turn 65 in this country, they have an opportunity to receive Social Security and they have the opportunity to get Medicare. One of the things you have to do, obviously, is prove your age. How many people, Mr. President, who turn 65 in 1996, live in the same county they lived in when they were born? I suspect not too many.

How shocked they are going to be when they go in to Social Security and they present a birth certificate and Social Security says, ''Sorry. Yeah, you waited in line for half an hour; sorry, we can't take this birth certificate.''

''Why not? I have had this certificate for 65 years.''

''No, Congress passed a law 2, 3 years ago. You can't use this birth certificate anymore. You have to go get a new one.''

Imagine the complaints we are going to get in regard to that.

Getting married, turning 16 and getting a driver's license, wanting to go on Social Security—these are just three examples of how this is going to work in the real world.

I think it is important to remember that this is an attempt to deal with a problem not created by the people who we are, in essence, punishing by this language, not created by the teenager or his or her parents who turned 16, not created by the senior citizen who turned 65 and wants Social Security.

How many times are we going to have people call us saying, ''I certainly hope you didn't vote for that bill, Senator.'' ''I certainly hope, Congressman, you didn't vote for that bill.''

Let me turn to another cost, because this is a costly thing, and we will talk just for a moment about the costs incurred in the whole reissuing of birth certificates. You can just imagine how many million new birth certificates are going to have to be issued. Somebody has to pay for that.

It is true the CBO has said this does not come under the new law we passed, because under that law, you have to be up to $50 million of unfunded mandates per year before it is labeled an unfunded mandate. But that does not mean it is not an unfunded mandate, nor does it mean it is not a cost to local or State government. Nor does it mean it is not going to be a cost to citizens. Let me go through a little bit on the cost.

If you look at the language in the bill, the idea behind the language is very good, and that is to get birth certificates that are tamper-free. We took the opportunity to contact printers and to talk to them to find out, under the language of this bill, what a State would have to do.

Although there is discretion left to the bureaucracy in how this is going to be implemented and the States are going to have some option about how it is done, the printers we talked to said there is anywhere from 10 to 18 to 20 different safety features that one would expect to be included in this new birth certificate.

Let me just read some of the things that they are talking about. I am not going to bore everyone with the details. We have two pages worth of different types of things:

Thermochromic ink—colored ink which is sensitive to heat created by human touch or frictional abrasion. When activated, the ink will disappear or change to another color.

Abrasion ink—a white transparent ink which is difficult to see, but will fluoresce under ultraviolet light exposure.

Chemical voids—incorporated into the paper must be images that will exhibit a hidden multilingual void message that appears when alterations are attempted with chemical ink eradicators, bleach or hypochlorites.

A fourth example: Copy ban and void pantograph.

A fifth example: Fluorescent ink.

A sixth example: High-resolution latent images.

A seventh example: Secure lock.

And on and on and on. This is not something, as I say, that is brain surgery. It is not something that cannot be done. It is something that clearly can be done. But let no one think this is not going to cost millions and millions of dollars, and someone is going to pay for it.

The American people are going to pay for it one way or the other. They are going to pay for it if the local government eats up the cost or absorbs the cost, and that is going to be what we like to refer to as an unfunded mandate.

If they pass it on to the consumer, to the couple who just got married, or the 16-year-old who gets his driver's license, or they pass it on to the 65-year-old who wants Social Security, that is going to be a tax. It will be a hidden tax. The cost is going to be there, and it is going to be millions and millions of dollars.

As my colleague from Michigan pointed out, all these changes, all this burden, all this inconvenience, all these violations of the States rights is being done, really, to go after the problem of illegal aliens and the people, really, who are hiring them.

We have talked—it is difficult to get accurate statistics on this—we talked to INS, we talked to the people who are experts in the field, and I think it is a common opinion that the majority of illegal aliens who are illegally hired are hired by people who know it. They know it.

This portion of this bill is not going to solve that problem at all. So, again, we narrow it down. We are doing an awful lot. We are doing all these things to correct only a portion of the problem.

Let me conclude by simply stating, again, this is a good bill. No one should think that there are not tough provisions in this bill. If a bill like this had been brought to the Senate floor 2 years ago, 4 years ago, 8 years ago, it probably would not have had any chance. I think I heard my colleague from Wyoming say something very similar to that.

It is a strong bill. It is a very strong bill without this what I consider to be a horrible infringement on people's rights. What we intend to do, or try to do, with this amendment is to take out these sections, these sections that are going to impact 260 million, 270 million Americans and punish them to try to get at this problem. We do not think it is going to work. We think it is going to be very intrusive, and we point out also that the bill, without these provisions, is, in fact, a very, very strong bill, and it is a bill that every Member in this Chamber can go home and be proud of and can say, ''We have taken very tough measures to deal with illegal immigration.''

I thank the Chair, and I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to oppose the Abraham-Feingold amendment. Let me not mince words. This amendment, in my view, is a bill killer, it is a bill gutter, it decimates the foundation of employer sanctions. It will provide, if it passes, a bill that is gutless, toothless, aged, and will not work.

We must make employer sanctions work. And let me tell you why. The reason why is, take my State, California. We have 2 million people in California illegally. How do these people survive? They survive one of two ways—they either get on benefits through fraudulent documents or they work. How do they work? With employer sanctions, an employer is not supposed to give them jobs.

My opponents would have you believe that every employer wants to break the law, that every employer is going to hire people simply because they know them. I can tell you from the State that has the largest number of illegal immigrants in the Nation—40 percent of them—that is not the case.

Employer sanctions can only be effective if there is some method of verification. The Simpson-Kennedy language is a pilot to ask the INS to see how we can verify information that employers receive. Let me show you graphically why it is important that we do so. The birth certificate, which Senator SIMPSON has pointed out correctly, is the most counterfeited document in the United States. Let me show you why. Let me show you a few forms for birth certificates.

This is one from the State of Illinois. It is a fraudulent document that has not been printed upon.

This is a second one from the State of Illinois. There are literally tens of thousands of different kinds of birth certificates in the United States. This is a form from somewhere in Texas.

So the birth certificate is easy. These papers are duplicated in the right color, that of Austin, TX, then they are put out wholesale. They are then laminated, as you see here. And no one can tell the difference.

Same thing goes here. This is a forged copy of a record of marriage, a marriage certificate.

This is another from Cook County, IL, a forged copy of a marriage certificate.

This is another one, a forged copy of a marriage certificate.

This is a forged GED application. I mean, if I am interviewing someone and this application is filled out, and they say this is testimony to the fact that they have gotten an equivalency degree in this country—and, look, there is the official seal and here are my grades on it—who am I to say it is not true? I would have no way of knowing.

Here is a forged divorce certificate. If this were handed to me as an employer I would have no way of knowing.

Here is a trade school diploma that is forged. If this were handed to me, I would have no way of knowing.

Here is an achievement test certificate for high school from the State of Indiana. If this were handed to me as an employer, when I asked the question, ''are you qualified to work in this country?'' how would I know? I would not.

Here is another forged divorce certificate. If this were handed to me, I would not know. Why would I not? Because the industry is very sophisticated.

Here are some of the preliminary forgeries, the basic paper from which these forgeries are done. How easily it is replicated.

Here is the back of a green card before it is finished. How easy it is replicated.

Let me show you what the final result is. This is a forged green card. The names are blotted out. This is a real green card. Who can tell the difference? No one. These are the backs. Who can tell the difference? No one.

This is a forged green card. Who can tell the difference?

This is forged—and look at them, look at the numbers. These are all perfect forgeries, every single one of these. These exist by the millions. They are made in less than 20 minutes. And they cost anywhere from $25 to $150. Anyone can get them. How is an employer supposed to know? You cannot know without some way of verifying the authenticity of the document which is submitted to you.

What the Simpson-Kennedy test pilot does is ask INS to see what can be done so that the documents can be verified by an employer. The bill narrows the list of documents down to six. So at least some of the confusion can be avoided there.

It is not fair to anybody to have a system that exists in a bogus form more frequently than it exists in a real form. How does a birth certificate mean anything to anybody for any official purpose if it is counterfeited by the tens of millions in this country? How does a green card mean anything? How does a divorce certificate mean anything if it is counterfeited and you cannot verify it?

These are the real problems with which this bill attempts to deal. If this amendment is successful, you might as well junk employer sanctions, you might as well say, ''We're going to permit people to continue to submit bogus documents.''

Remember, somebody here illegally has only two choices—one, they earn a living, secondly, they go on public support. Unless they have somebody very well to do in this country who can take care of them—and I would submit to you that that is a remote possibility—those are the only two chances. So the only way they can exist or stay—and right now it is very attractive to come to this country illegally because it is so easy to obtain these counterfeit documents.

That is the reality. That is why we have on the Southwest border 5,000 people crossing every single day, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, because they can go to Alvarado Street in Los Angeles, and they can purchase these documents on the street within 20 minutes. Our system of verification is nonexistent, and they know that. Therefore, if they submit a counterfeit document to an employer, the employer has little choice other than to accept it or ask for more documents. Then if the employer asks for more documents, the employer very often is sued.

So it is a very, very tenuous, real-life experience out there. This bill makes a very modest attempt—where in committee, it became a test pilot. The language, which I think it was a Kennedy amendment, was already a compromise. Many of us on the committee wanted an absolute verification system, put into affect right away. That did not pass in committee.

So the compromise was a pilot. Then the results of the pilot would be brought back to Congress. Now we see an attempt to get rid of the pilot. If you get rid of a pilot, what is left? What is left is that we make ourselves into hypocrites, in my opinion, because we create a system that cannot function.

What we are seeing today is an employer verification method that does not function. It does not function because you cannot verify fraudulent documents, and because fraudulent documents abound.

I must say that I think it is very possible to verify. We live in an information age. Hundreds of data bases now exist in both public and private sectors, data bases for national credit cards, for health insurance companies, credit rating bureaus. Technology is, in fact, advancing so rapidly that the ability to create these data bases and ensure their accuracy is enhanced dramatically every year.

Why, then, does the Senate of the United States not want the U.S. Government to use a computer data base to try to find a better way to help employers verify worker eligibility? I really believe that many of the issues raised by opponents to this provision—that it is bureaucratic, that it is prone to errors, that it is unworkable, that it is too intrusive—are simply unfounded.

In fact, the provision was specifically written, as I understand, to alleviate such concerns, by defining clear limits on the use of the system, establishing strict penalties for the misuse of information, and requiring congressional approval before any national system goes into effect. What are the authors of this amendment so afraid of? Any national pilot system would come back to this body for approval prior to its being put in place.

The legislation also imposes some limits. It limits the use of documents. Documents must be resistant to counterfeiting and tampering. The system will not require a national identification card for any reason other than the verification of eligibility for employment or receipt of public benefits. There is no one card. Those who use, I think, as a ruse to defeat this pilot project, I hear out there, ''Well, Senator FEINSTEIN, you are calling for a national ID. That violates all our civil rights.'' To that I have to say, ''There is no national ID anywhere in the legislation before this body''. None. It is a red herring. It is a guise. It is a dupe. It is a ruse, simply to strike a mortal blow at the system.

I have a very hard time because California is so impacted by illegal immigration. For 3 years we have said we must enforce our border, we must improve customs, we must be able to really put a lid on the numbers because the numbers are so large. I have come to the conclusion that within the scope of possible immigration legislation, we are stuck with an existing system. That existing system is employer sanctions. Therefore, why not try to make them work? The already compromised verification system—just a pilot, which allows the INS to work it out, and bring it back to this body and let us say yea or nay to it—is simply a modest attempt to get some meaning into this legislation.

Let me say what I honest to God believe is the truth. If we cannot effect sound, just and moderate controls, the people of America will rise to stop all immigration. I am as sure of that as I am that I am standing here now, because where the grievances exist, they exist in large number. Where the fraud exists, it exists in large numbers. Where it exists, wholesale industries develop around it. It is extraordinarily important, in my opinion, that this amendment be defeated.

Let me talk for a moment about discrimination because I just met with a group of California legislators who wanted to know how this works. One of the big areas they raised was discrimination. As I understand the system, it must have safeguards to prevent discrimination in employment or public assistance. The way it would do that is through a selective use of the system or a refusal of employment opportunities or assistance because of a perceived likelihood that additional verification will be needed. The legislation contains civil and criminal remedies for unlawful disclosure of information. Disclosure of information for any reasons not authorized in the bill will be a misdemeanor with a fine of not more than $5,000. Unauthorized disclosure of information is grounds for civil action. The legislation also contains employer safeguards, that employers shall not be guilty of employing an unauthorized alien if the employer followed the procedures required by the system and the alien was verified by the system as eligible for employment.

In my view, the Simpson-Kennedy test pilot makes sense. I have a very hard time understanding why anyone would oppose it because it is the only way we can make employer sanctions work.

I yield the floor.

Mr. KENNEDY. Mr. President, the case for ensuring that birth certificates are going to be printed on paper to reduce the possibility of counterfeit has been made here. I want to speak to that issue because it has been addressed by some saying this is ultimately the responsibility of the State, and the Federal Government does not really have any role in this area.

Mr. President, sometime we will have to decide whether States will have their own independent immigration policies or whether we will have a national immigration policy. It really gets down to that. I have my differences with some of the provisions in this bill. One that I think the case has been made, and I know it will be made again in just a few moments by the Senator from Wyoming, is that if we do not deal in an important way with ensuring that we will have birth certificates which are going to be, effectively, even printed on paper that cannot be duplicated and other safeguards, really, this whole effort ought to be understood for what it is.

That is, basically, a sham. It will be a sham not only with regard to immigration, but it will be a sham on all of the programs that we talked about yesterday in terms of the public programs because individuals will be going out and getting the birth certificates and getting citizen documents to prove they are American citizens and then drawing down on the public programs.

We spent hours yesterday saying which programs we are going to permit, even for illegals to be able to benefit from, or which ones we will be able to permit legals to be eligible for, and we went through the whole process of deeming. If you go out there and are able to get the birth certificates and falsify those, you will be able to demonstrate you are a senior citizen and you will be able to draw down on all of those programs. This reaches the heart of the whole question of illegal immigrants. It reaches the whole question of protecting American workers. It reaches the whole issue of protecting employers. It reaches the issue about protecting the American taxpayers.

Let me give a few examples of what we are looking at across the country. Some States have open birth record laws. In these States, anyone who can identify a birth record can get a copy of it. The birth certificates are treated as public property. In some States—for example, in the State of Ohio, you can walk into the registry of vital statistics in Ohio, an open record State, and ask for, in this instance, Senator DEWINE's birth certificate. The registry would have to give it to me, no questions asked. I could walk into the registry in Wisconsin and get Senator FEINGOLD's birth certificate just as easily. Some States even let you have a copy through the mail. Once I have a

copy of one of their birth certificates, I could take it, for example, down to the Ohio Department of Motor Vehicles and get an Ohio driver's license with Senator DEWINE's birth date and address, but my picture instead of his. I now have two employer identification documents to establish an eligibility to work in the United States and also to be able to be eligible for public programs.

Mr. President, with all that we are doing in terms of tamperproof programs, and all that we are doing in terms of setting up additional agencies and investigators and protections for American workers, and all of the resources that we are providing down at the border, when you recognize that half of the people that will be coming in and will be illegals came here legally, and they will have an opportunity to take advantage of these kinds of gaping holes in our system, then the rest of the bill—with all due respect, we can put hundreds of thousands of guards down on the border, but if they are able to come in, as half of them do, on various visas and be able to run through that process that anybody can achieve in a day or day and a half and circumvent all of that, then I must say, Mr. President, we are not really being serious about this issue.

We can all say, well, our local—I know the arguments and I have heard the arguments. There is a lot of truth in much of what is said in the arguments. But we have to, at some time—and I hope it is now—recognize that we are going to have to at least set certain kinds of standards and let the States do whatever they want to do within those standards. They have to print it on paper that is as resistantproof to tampering as we can scientifically make it. They can set this up, and they can do it whatever way they want to do it. But there are minimum kinds of standards to try to reach the basic integrity of the birth certificates that are going to be necessary. That has been pointed out. That is the breeder document. That is where all of this really starts. It is easily circumvented. We can build all the other kinds of houses of cards on top of trying to do something about illegal aliens, and unless we are going to reach down and deal with this basic document, we are really not fulfilling, I think, our responsibility to the American people with a bill that is really worthy of its name, because we are leaving these gaping holes.

I could go into other things, but I will not take the time because others want to speak. I will go through other kinds of illustrations that are taking place today. We know what the problem is. You have, as Senator DEWINE said, the fraudulent documents that are all being duplicated fraudulently down at the border when we might be able to do something about tamperproof elements. But unless we are going to deal with the breeder document, which is the birth certificate, we are really not going to be able to get a handle not only on illegal immigration, but also on protecting the taxpayers, because people will be able to use the birth certificate to demonstrate that they are a citizen and then draw down on the various programs. That, I think, really makes a sham of a great deal of what is being attempted at this time.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I rise today to urge my colleagues to support the Abraham-Feingold amendment to strike the worker verification proposal from this bill.

It has been said many times already in the past, and today on the floor, that we cannot effectively combat illegal immigration without having a national worker verification proposal. It has been said that the employer sanction laws implemented in the 1986 act have been largely ineffective due to the absence of such a verification system.

As we all know, Mr. President, there are two major channels of illegal immigration. The first is composed of those who cross our borders illegally, without visas and without inspection. Roughly 300,000 such individuals enter and remain in our country unlawfully each year.

This, as we all know and agree, is unquestionably a serious problem along our southwestern border. This Congress does have a responsibility to provide additional resources to the U.S. Border Patrol and other enforcement agencies to prevent such individuals from crossing the border in the first place. So I strongly support the provisions in S. 1664 that provide additional border guards and enforcement personnel.

Mr. President, the second part of the equation, though, which represents up to one-half of the illegal immigration problem, is the problem known as visa overstayers. These are people who enter our country legally, usually on a tourist or student visa, and then remain in the United States unlawfully only after the visa has expired.

But despite this phenomenon, representing up to 50 percent—50 percent—of our illegal immigration problem, there was not a single provision in the original committee legislation to address this problem—not a single word about half of the whole illegal immigration problem.

Instead, the bill supporters proposed a massive, new national worker verification system, complete with uniform Federal identification documents. So, rather than targeting the individuals who break our laws and are here illegally, the premise of that proposal was to ensure that the identity of every worker in America—U.S. citizens, legal permanent residents, and so on—had to be verified by a Government agency in Washington, DC.

Mr. President, we are going to hear extensive debate about whether or not what is in this bill is actually going to work, and I will comment on that in a few minutes. But I think we first need to ask the question of whether this, in any way, is an appropriate response to the illegal immigration problem.

According to INS figures, less than 2 percent of the U.S. population is here illegally. Mr. President, do we really want to require 98 percent of Americans to have their identities verified by the Federal Government every time they apply for a job or public assistance?

Think about what this means to every employer in this country, Mr. President. Every employer would have to live under such a system if it was fully implemented. Suppose a dairy farmer in rural Wisconsin, or perhaps rural New Hampshire, wants to hire a part-time employee. Should that farmer have to get permission from a Washington bureaucrat before he hires the worker? How is the verification check to be completed? If it ends up being an electronic system, does that mean the farmer is going to have to spend $2,000 or $3,000 on a new computer and another $1,000 on the required software to be able to interface with a computer somewhere in Washington, DC—all so he can hire just one part-time employee on his farm in Wisconsin or New Hampshire?

Mr. President, if fully implemented, this, obviously, is not a measured response to the illegal immigration problem. It suggests that the way to find a needle in a haystack is to set the haystack on fire.

It is not as if we are moving to a national verification system as a last resort. Just in the past few years has the administration begun to take seriously the task of patrolling our Nation's borders. Experiments such as Operation Hold the Line in El Paso, and Operation Gatekeeper in San Diego, have demonstrated that there is a way to prevent undocumented persons from entering the United States.

Moreover, we have never tried to attack the visa overstayer problem. Again, that is the problem that constitutes nearly one-half of the illegal problem. No one has ever proposed such targeted reforms—until now.

Our amendment contains provisions that impose tough new penalties on persons who overstay their visas by withholding future visas from persons who violate the terms of their agreements.

In addition, anybody who applies for a legal visa must submit certain information to the INS that will allow the INS to track such persons and determine who is here lawfully and who is here unlawfully.

These bold reforms should be given an opportunity to work. Let us give them a try before we commit ourselves to experimenting with a costly and burdensome national verification system.

Moreover, Mr. President—and, of course, I acknowledge that during the committee's work, this was turned into

more of a pilot program approach. Nonetheless, the so-called pilot programs contained in this legislation are riddled with problems. Let us be honest. We would not be having these so-called pilot programs if the eventual goal was not to have a national verification system up and running in the near future. Why would we do them if that was not the ultimate objective? Indeed, in addition to the pilot programs, this bill, as reported out of the Judiciary Committee, requires the President to develop just such a plan for a national system and submit it to Congress.

We also know there are going to be numerous errors in the system. As the Senator from Michigan has pointed out, one Federal data base that is to be used with this system currently has an error rate of over 20 percent.

So we know that millions and millions of Americans will be wrongfully denied employment and Government assistance due to bureaucratic errors.

Now the sponsors of the provision will tell you that the system is only supposed to have an error rate of 1 percent. But read the bill. The bill clearly states that the system should have an objective of an error rate of less than 1 percent. It could have an error rate of 5, 10, or 20 percent and it would be perfectly OK under this bill.

But perhaps nothing is as troubling to me about this proposal as the fact that it puts us squarely on the road to having some sort of national ID card.

Now I know that the very words ''ID card'' ruffles the feathers of the sponsors of this provision. And I know that they have crafted this language very carefully so there is not an actual identification document created by this language.

But even many of the congressional supporters of a national verification system have pointed out that this proposal will not work without some sort of national identification document. Why? Because any job applicant can hand an employer a legitimate ID card that has, for example, been stolen or doctored.

The employer will run the card through the system and it will check out. But the card does not belong to the individual, so that individual has just fraudulently obtained a job or received welfare assistance.

That is exactly what is likely to happen if this bill becomes law.

Well, Mr. President, is there any way to prevent this sort of fraud from happening? One solution has been suggested. Let me quote Frank Ricchiazzi who is the assistant director of the California department of motor vehicles.

In testimony before the Judiciary Committee last May, Mr. Ricchiazzi said the following:

> All the databases and communication systems in the world fill not prevent the clever and resourceful individual from assuming multiple identities with quality fraudulent documents. What is needed is the ability to tie the documents back to a unique physiological identifier commonly referred to as biometric technology (retinal scan, fingerprint, hand print, voice print, etc).

So fingerprinting every person in America is one suggested solution to this problem.

Now this approach may sound a little farfetched, but my colleagues on both sides of the aisle may be surprised that the original committee bill required every birth certificate and driver's license in America to be adorned with a fingerprint.

This is not totally far-fetched. It is what we had to consider in the first place in committee.

And it is my understanding that even with the last-minute changes made yesterday to the birth certificate requirements, the bill continues to allow Federal agencies to preempt the authority of the States by requiring State agencies to follow federally mandated regulations with respect to the composition and issuance of their birth certificates and drivers license.

The bill's supporters claim that the fingerprint requirements have been removed from the legislation. But again, read the bill. The legislation before us allows the administration to determine what sort of safety and tamper-proof features every State's driver's licenses must have.

We are going to put something in this Congress to say you cannot use it for something else.

So if the Department of Transportation decides to require the State of Wisconsin to begin collecting and processing fingerprints of all driver's license applicants, the State of Wisconsin would be forced to comply under this legislation with the national fingerprint mandate.

That is why this provision, even with the recent modifications, continues to be opposed by the National Association of Counties and the National Conference of State Legislatures.

The bill's supporters will also say that the legislation clearly prohibits any identification documents required for the verification system to also be required for other purposes.

Mr. President, that is not much of a guarantee. In fact, it is no guarantee and on the contrary, by establishing such federally mandated identification documents we open the door for these documents and the verification system to be used in the future for a variety of purposes that could be completely different from what we intended, and something that none of us would support.

At first, Mr. President, Members of Congress may propose that people present these documents and go through the verification process for very legitimate purposes. Maybe they will say, ''Well, we have to use these ID's or documents to board an airplane; maybe we will be required to use them to adopt a child; maybe it will be required if you want to enlist in the Armed Forces.''

And pretty soon, the verification process and identification documents will be required for so many purposes that it just might be a good idea to carry the I.D. document around in your wallet.

Does that sound farfetched Mr. President? It should not, because I just described the Social Security card—a card that was originally intended for one purpose and is now required for so many purposes that most people carry it around in their wallets or pocketbooks. And Social Security numbers are used for numerous identification purposes from the number on your driver's license to assessing computer networks.

I know, Mr. President, that the Senator from Wyoming will claim that the bill specifically prohibits the verification system from being used for other purposes.

But nothing in this legislation, including the so-called privacy protections, can prevent a future Congress from passing a law to require these identification documents and the verification system to serve different purposes than originally intended.

That is precisely why Senators should not be misled into believing that the pilot projects contained in this legislation are harmless and will have no effect on their constituents.

The pilot programs are not intended to merely provide a testing ground. If the pilot programs are just meant to provide us with test results, why does the bill specifically require the President to develop and submit to Congress a plan for expanding the pilot projects into a nationwide worker verification system?

That is the goal of the verification proposal contained in the legislation and Senators should not be misled into believing that these are harmless pilot programs that are not going to affect their constituents and are going to somehow magically disappear in a few years.

Mr. President, the number and range of groups and organizations supporting the Abraham-Feingold amendment is quite astounding. It is a coalition of the left, represented by the ACLU, the National Council of La Raza and the American Jewish Committee, and the right, represented by the NFIB, the National Restaurant Association and the U.S. Chamber of Commerce, as well as some 30 other national organizations representing business, labor, ethnic and religious organizations which all support the Abraham-Feingold amendment.

Why do they do this? Because they know it is critical that we abandon this rather heavyhanded, costly approach to combating illegal immigration and instead focus on true reform that focuses on the individuals who break the law, and not those who abide by them.

So I very much commend my friends from Michigan and Ohio, and others, in their efforts in fighting this intrusive proposal.

I ask unanimous consent that a listing of the organizations supporting the Abraham-Feingold amendment be printed in the RECORD.

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

ORGANIZATIONS SUPPORTING ABRAHAM-FEINGOLD

National Federation of Independent Business.
National Council of La Raza.
National Restaurant Association.
American Civil Liberties Union.
U.S. Chamber of Commerce.
American Bar Association.
Americans For Tax Reform.
United States Catholic Conference.
Mexican-American Legal Defense and Education Fund.
National Retail Federation.
American Jewish Committee.
Associated Builders and Contractors.
Associated General Contractors.
National Asian-Pacific American Legal Consortium.
Asian-American Legal Defense and Education Fund.
International Mass Retail Association.
Cato Institute.
Service Employees International Union.
Asian-Pacific American Labor Alliance.
National Association of Beverage Retailers.
UNITE (Union of Needletrades, Industrial and Textile Employees).
National Association of Convenience Stores.
League of United Latin-American Citizens.
Food Marketing Institute.
Hispanic National Bar Association.
Food Distributors International.
The College and University Personnel Association.
American Hotel and Motel Association.
International Association of Amusement Parks and Attractions.

Mr. FEINGOLD. I thank the Chair. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I rise in strong opposition to the amendment.

Let me differ with my friend from Wisconsin who is one of the finest Members of this body. It was a great day for the Senate when RUSS FEINGOLD was elected to serve here.

When he says this amendment increases penalties for those who come in legally and overstay, this amendment does nothing of the sort. This amendment does one thing and one thing only, and that is to weaken enforcement of illegal immigration.

What the bill does—not this amendment—on those who overstay legally, anyone who overstays more than 60 days cannot apply for coming back in again legally for 3 or 5 years. We hire more investigators. You have to apply for a visa to the original consular office where you made the original application.

Three things I do not think anyone can question. No. 1 is the thing that Senator SIMPSON has stressed over and over again, and that is the attraction for illegal immigration is the magnet of a job. I do not think anyone seriously questions that. No. 2 is that we have massive fraud that assists people who are here illegally. I do not think anyone questions that. No. 3 is the GAO report shows that we have a serious problem with discrimination particularly against Hispanics and Asian-Americans or people who speak with an accent, maybe a Polish accent or whatever the accent might be because there is a reluctance on the part of employers to hire them.

Unless we have some method of a voluntary identification, that discrimination is going to continue. So, in line with the recommendations of the Jordan Commission, pilot programs have been suggested. No pilot program can be followed through by a Clinton administration or a Dole administration or anyone else without congressional action. So there is that safeguard here.

I think this is essential. If this amendment is adopted, frankly, you just defang the whole bill. It is a toothless venture. You are trying to eat steak without teeth. I hope to never try that. I hope the Presiding Officer never has to try that. You have to have teeth in this if we are going to do anything about illegal immigration.

There are provisions in this bill that I do not like. I was defeated last night on an amendment, and I am probably going to be defeated today on a couple of amendments that I think make a great deal of sense. I think in some ways the bill is too harsh. But it is essential that we take a look at this.

Let me just add—and I know you should not make appeals on the basis of personalities—this whole issue of immigration is one of these cyclical things. Right now there is a lot of interest, but for a while there was very little interest. There were just three of us who served on that subcommittee, the smallest subcommittee in the Senate, because there was not that much interest—ALAN SIMPSON, TED KENNEDY, and PAUL SIMON. I was the very junior member both in terms of service and in terms of knowledge.

I say to my colleagues who may be listening or their staffs who may be listening, whenever ALAN SIMPSON and TED KENNEDY say this is a bad amendment in the field of immigration, I think you ought to listen very, very carefully. They know this area. Complicated as it is, they know this area well. We have a problem with illegal immigration, and you cannot deal with this problem unless you deal with the magnet that employers have, the area of fraud, and I also think the area of discrimination. There is no way of solving this without having some pilot programs.

We could launch something without having a pilot program. I think that would be unwise. It seems to me this is a prudent approach that really makes sense, and with all due respect to my friend from Michigan, I think this amendment should be defeated.

I yield the floor, Mr. President.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Wyoming.

Mr. SIMPSON. I think we have had an interesting debate. We probably will have a little bit more. There is no time agreement here. But there are some serious distortions presented to us, and that is always vexing because obviously persons are listening to those distortions and taking them to heart.

I have been in this business for 17 years, and that is not to say it has been a joyful experience, but it was much more a pleasure when Senator PAUL SIMON joined this ragged subcommittee consisting of Senator TED KENNEDY and myself because no one else would take on the issue. So for several years it was just a little three-member subcommittee—Senator KENNEDY, myself, and Senator SIMON—because others would come up to us in the course of the entire year of work saying, ''When you get busy on doing something about illegal immigration, you let me know and I will help you.''

Unfortunately, nobody does help because there are so many cross-currents. I have never seen more—I am not talking about the Senate. I am talking about outside the Senate. I have seen groups hop into the sack with other groups they would not even talk to 10 years ago. I have seen some of the most egregious pandering and prostituting of ideals outside this beltway that I have ever seen, people who are cynical, cynical in the extreme with what they are doing on this issue, some of the think tanks cynical to the extreme. I am not, please hear me, talking about a single person in this arena. I have the deepest respect for Senator SPENCER ABRAHAM. I helped campaign for him in Michigan and would do it again in an instant. I have high regard for Senator MICHAEL DEWINE. I helped campaign for him in Ohio, and I would do it instantly. Senator FEINGOLD I have come to know, a spirited legislator of the old school—doing your homework. So that is not the issue.

But you are missing everything we are trying to do. Somebody is missing the entire thing, and Senator SIMON has expressed it beautifully: You cannot do the things that are in this bill unless you have at least an attempt to find out what verification systems we will use in the United States.

The present stature of the bill simply says that we will have verification projects or processes of these following options. If I had my way, I would make them requirements, and I would say it is required that these following pilot projects take place in the next years. That is what we should be doing. Then none of them go into effect, or not one of them goes into effect, until we have another vote.

That is what is in this bill. There is nothing in here that has to do with national ID or all the sinister activity that you can ever discuss—Americans on the slippery slope, a tragedy of employers having to seek permission to hire people. They already do. It is almost as if one were speaking into a vacuum.

I know what it is. It comes from the fact when you are in it this long, you understand the nuances. That is not a cocky statement, I can assure you. But, boy, I tell you, when I first started the business, I would say, ''You can't do that.'' Then 2 years later I said, ''You have to do that.''

That is where this one is. When I am up at Harvard teaching, I shall think of you all, and I will reflect. In a year or two—and I hope you are all here for many years—you are going to say, ''I didn't know that's what we did,'' because if this amendment passes, you will have taken away everything from this bill. The rest of it, as Senator PAUL SIMON says, is like eating steak without teeth. You cannot do it with what you have put in this bill. If you think you have solved the problems of illegal immigration by the Border Patrol—put 20,000 of them down there—if you think you are going to solve it by this or that and all the things that are in this bill, forget it, because over half the people come here legally. You will not even touch them unless, ah, with the new Border Patrol we will give them the power to now go up and ask visa overstayers if they are visa overstayers. How is that one for discrimination in America? You are going to go up to people who look foreign under this provision, when we have nothing else that gives us any power or authority to do anything, and find out whether people are visa overstayers. I assume they will most likely be people who look foreign. So, remember, that one will take place.

It is a curious thing that the people and the institutions who want to do the most to hammer illegal, undocumented persons will give us the least hammer. I do not understand that and I would like to have that explained to me in the course of the debate. How you can come to subcommittee and full committee and the floor and add layer upon layer of things which have to do with tightening the screws on illegal, undocumented people—and that is what you have done, and that may assuage all guilt, it may take care of all pain—but, then to take every bit, every tiny crumb left of how to do something about illegal undocumented persons in the United States, and that is to allow some kind, some kind of more counterfeit-resistant, more verifiable, identifiable—whether it is through the phone system with a slide-through or some kind of revised Social Security card or something—and then to go home and tell our people that, here in the United States of America, we finally did something about illegal immigration? And a year from now or 2 years from now you find out you could not get it done because you did not take the final step, which was minuscule, and that was to do something about the breeder document that Senator FEINSTEIN described so powerfully—you did not do anything with that document, did not do a thing with it.

You did not do a thing with the most stupefying thing that happens in America, where you look at the obituary list, and if you are between 20 and 40 years old you really look at that. You find out who died and then you go get their birth certificate—and between the years of 20 and 30 and 40, that is when most of this happens—and then off they go with the new birth certificate and into the stream they go, into the stream they go with a Social Security card, and into the stream with a driver's license, and into the stream of the public support system.

We are talking about the cost of a system to set that up? The cost to America, by what is happening to the welfare systems, the cost of what is happening to America with the hemorrhaging of California and Illinois and Florida, hemorrhaging—absolutely hemorrhaging, and we are not going to do anything about it? We are going to talk about the cost of a system? If this system costs $10 billion, it would be worth it, because we are losing $20, $30, $40 billion, with people who gimmick the housing programs, gimmick the welfare program, gimmick the employers. That is where we are. It is absolutely startling to me that those who want to do the most will allow us to do the least.

Let me just address a couple of old canards that just have to be addressed. In this league you are supposed to be as patient as you can. But I am always reminded of that great phrase in Rudyard Kipling's ''If.'' Read it. You want to read ''If.'' Read it every 5 years of your life because it will change.

If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated, don't give way to hating,
And yet don't look too good, nor talk too wise:

* * * * *

If you can fill the unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son.

But there is one part in it that is marvelous. It says:

If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,

And that is what I have seen outside, in this beltway, ''twisted by knaves to make a trap for fools.'' I am not referring to a single person in this Chamber. I am referring to people who I know out there. I know the groups. I know them well. I have seen them in action.

So, let us look at the stuff that has floated through here with regard to the national ID card. In an April 11 ''Dear Colleague'' letter you were all told that:

Americans should not have to receive permission from the Federal Government to work and support their families, nor should U.S. employers need permission from the Federal Government to hire their fellow citizens. But ill-conceived measures in the illegal immigration bill to be taken up on the Senate floor during the week of April 15 will do just that.

And we have heard similar claims here on the floor today. I do not know whether this outrageous statement reflects willful distortion or something more bizarre, because, first, it is already unlawful under section 274(a) of the Immigration and Nationality Act, 8 U.S.C. 1324(a) for any person or entity to knowingly employ illegal aliens, or to hire without complying with the requirements of an ''employment verification system.'' That is the law. And that is described in that section.

Most important, neither current law nor the proposals in S. 1664 require citizens or lawful permanent residents to obtain any form of permission from the Federal Government to work: None. Nor is there any requirement that U.S. employers obtain ''permission'' to employ such persons. In the present context, the word permission connotes a form of consent that can be withheld, at least partly on the basis of discretion.

In fact, there is not, under current law, and there would not be under any pilot project authorized under the bill or any system actually implemented in accordance with the provisions of this bill, after the required implementing legislation, that would give any legal authority to withhold verification except on the basis that an individual is not a citizen, lawful, permanent resident, or alien authorized to work.

Indeed, the bill includes as an explicit prohibition, a requirement that verification may not be withheld except on that basis. That was to protect the employer. We did not do that for any other reason but to protect the employer.

In that same letter you were informed that the verification provisions of the bill are ''more than merely a pilot program. It is a new system that can cover the entire United States and last for up to 7 years at the discretion of the President.''

In fact—fact, section 112 of the bill authorized the President to conduct ''several local or regional demonstration projects.'' Are you going to let California just sink? Are you going to let California just sink and float off into the ocean? That is what you are doing if you do not allow them at least to do something; a pilot program. What about Texas? Are you just going to let it sink? What about Illinois? What about Florida? You cannot get there.

So we provided several local or regional demonstration projects. That this does not authorize at all what the authors of this letter assert, it will be made ever clearer as we finish up our work on this bill.

I had an amendment. We will see what happens with that. The word ''regional'' will be defined as an area more than an entire State, or various configurations. That would make it clear that the system covering nearly the United States of America, the entire Nation, would not be authorized. No one ever intended that. But the letter also asserts that the bill ''does not replace the I–9 form but is added on top of the existing system.''

The bill does not say that. The bill provides that if the Attorney General determines that a pilot project satisfies accuracy and other criteria, then requirements of the pilot project will take the place of the requirements of current law, including the I–9 form.

Furthermore, those are things that seem to escape us. We are trying to assure that employers will not have to comply with the requirements of both current law and pilot projects, pilot projects where their participation is mandatory. In addition, this same letter states, ''Error rates are a serious problem.'' The letter refers to an estimate by the Social Security Administration that in 20 percent of the cases handled, it will not be able to identify an individual's employment eligibility ''on the first attempt.''

Hear that, ''the first attempt.'' I am not familiar with the details of the estimate, but there are three responses that come to mind immediately.

First, in the INS' pilot project, if verification is not obtained electronically and the very first time, an additional, nearly instantaneous, electronic attempt is made—instantaneous—using alternative databases or names. In the vast majority of cases, verification of persons actually authorized to work is obtained in a very few seconds.

Obviously, the whole point is to not verify certain individuals. Illegal aliens will not be verified. A handful of cases then require a visit to an INS office. To our knowledge, every one of those cases was resolved without significant delay, and remember that this is a pilot project and not a fully developed system.

Second, if there is something wrong with the data base of the Social Security Administration, it should be fixed, but we will not have to worry about that because we do not deal with that issue either. We cannot do anything with the Social Security card, to make it as secure as the new $100 bill. We cannot seem to do that, and it will not bother us because we are already told that Social Security will be broke in the year 2029 and will begin to go broke in the year 2012. But we do not deal with that one at all. That one will be one for all of you to deal with.

Third, the whole point of the pilot project is to develop a workable system, I say to my colleagues. We are not trying to do a number on our fellow Americans. We do not have a workable system right now, and you helped correct some of that yesterday, and I appreciate that. Well done. You protected the employer from a heavy fine or penalty just by asking for another document. That was good work; I think good work.

We do not have a workable system. We do not know all the problems on the surface as these projects are conducted, but if the development process is not begun, if something as milk soup in consistency as the present part of the bill, which is the Kennedy-Simpson verification process, which is all optional, if we cannot even start that, we will never have a workable system, at least in the years to come.

The letter also states that, ''Employers who break the rules will continue breaking the rules while legitimate business owners must confront new levels of bureaucracy.''

Most employers try to comply with the current law. They work hard to do that. They work hard not to hire illegal aliens. However, the current verification system, with which they are required to comply, is not reliable because of fraudulent documents.

I am going to show it one more time. There is no such thing in our line of work as repetition. There it is. Anybody can get one and when you get one, you can begin to do things that to the Cato Institute would be repugnant, because when you get one of these, you can go down and get welfare. You can get welfare, you can access other programs, you can do this and you can even vote in some jurisdictions with that kind of a card.

What are you going to do about that? Well, we have something in there about that, about forgery and about this and about that. We handle that. You will not handle it until you go to a pilot program to figure out what you are going to do with this kind of gimmickry, and then every time I read a report or paper from some of these opinion-filled brilliants off campus here, I am always stunned by the fact that they say what are we going to do, what are we going to do about people who abuse the welfare system, what are we going to do about people who come here pregnant and have a child in the United States of America and then give birth to a U.S. citizen? What are we going to do about people who denied a mother or father the opportunity to receive a welfare benefit because the county and the State had expended it all? It is all gone, millions are gone down the rat hole because of fake documents.

So what you have here without reliable documents is you have hundreds of thousands of illegal aliens employed by such employer. Employers can be punished if they fail to employ someone because they suspect a person is illegal if such person has documents that ''reasonably appear on their face to be genuine.'' At least we protected the employer a bit yesterday. Right now employers can be fined by simply asking for another form of document.

Now the letter asserts, finally, ''The system will lead to a national ID card. A number of congressional advocates of this system have admitted that the system will not work without a biometrically encoded identification card.'' I am quoting. ''Establishing this far-reaching program sets us on a dangerous path toward identity papers and other objectionable elements incompatible with a free society.''

I also saw an article during the days of this issue coming before the American public where it was even suggested that we were looking into the examination of bodily fluids. There is a debate and there is a thing of give and take and there is a thing such as honesty, but bodily fluids was never anything ever mentioned by any ''congressional advocate'' that I have ever met.

This is an especially blatant—blatant—example of the misleading nature of so many of the statements in these letters.

First, the assertion that there is a national ID card, but then the statement about congressional advocates does not refer to a national ID card, and I am one of those trained ''congressional advocates'' who has opposed national ID cards for all of the 17 years I have been involved in this issue, period.

I put it in every bill. Anybody who can read and write has found it in there and ignored it. I am tired of that one. You do not have to take all the guff in this place, and that is not a personal reference. I have heard that one, too. I am talking about lying.

I have put in every bill I ever did that this would not be a national ID card, and that it would be used only at the time of new hire, and it would be only presented at that time or at the time of receiving welfare benefits, that it would not be carried on the person, that it would not be used for law enforcement. That is in every single bill I have ever done, period.

The card that I believe is probably necessary is the one already used for ID purposes by most Americans, and especially in California, the State that takes all the lumps while we give all the advice. That is the driver's license or some kind of a State-issued identification card. But, ladies and gentlemen, what do you think this is? This is a State-issued identification card. That is what this is. That is why I favor the bill's required improvements in these State documents.

The reference to ''biometrically encoded'' is pure demagogery. ''Biometric'' merely refers to information relating to physical characteristics that are unique to an individual making it easier to determine if a card is being used by an impostor. That is what ''biometric'' is. Look it up. A photograph is a common example. A fingerprint is another.

Use of the ominous term ''encoding,'' I guess, just appears as a totally gratuitous crack or shot. Is a photograph on a card encoded on that card? I guess it is, if you want to be stern about it. You will have to ask the authors what they mean, if they mean anything at all, by the use of that term, except inflammatory language.

With respect to the ''dangerous path'' statement, it is an indication of something I have noticed about many of the opponents of any improved verification system. I have found, in the 17 years of my work in this area, and especially with the Congressman from California, who is tougher than anybody ever in this Chamber—he is no longer a Member, but I had the highest respect for him; he was tough—but he displayed a fundamental distrust of the Government to do what it would do, fundamental distrust of our people, fundamental distrust of our political system. That has to be the root of this, a fundamental distrust of what we are doing. For, as I said many years ago, ''There's no slippery slope toward some loss of liberty, only a long descending stairway. Each step downward has to be allowed by the American people and their leaders.'' That will never happen.

The claim is also made that the system ''imposes costly new burdens on States and localities.'' CBO estimates the cost of all of the birth certificate and driver's license improvements required by section 118 of the bill, as modified by the floor amendment which was adopted without objection yesterday—how curious, a floor amendment of mine to get all of the snarls and the bumps out of an amendment that had objection in the committee, and I then made these specific corrections to satisfy most of my colleagues, and it passed here by a voice vote without objection. That will be stricken by this amendment.

This motion to strike will take the work product that was done, with all of us in here and their staffs, and junk it, gone, history. You can do that. You may do that. If that happens, life will go on, the Sun will rise in the east, and it will be a joyous day on the morrow.

But let us be real. What I did with the phase-in of the driver's license requirements is going to cost now $10 to $20 million, spread over 6 years. I have seen estimates of the losses to the American people because of the use of fraudulent ID's. That is in the billions and billions and billions of dollars, ladies and gentlemen. That is what is happening. Not to mention voter fraud, terrorism, and other crimes that often involve document fraud.

One other one we have to put to bed, at least pull the covers up, and then go on anywhere you wish to go with this. I have to respond to a wild charge that has been made before. You try not to respond to all this stuff, but finally you just kind of get a belly full of it. The heated rhetoric which has been flying about the Chamber—threatening and stern—is totally untrue. That was about the pilot program in Santa Ana, CA.

My colleagues have heard the bill will create a massive, time-consuming, error-prone, error-riddled bureaucracy. They have heard accusations that we are racing, with no brakes, toward a national ID card that will be ''riddled with mistakes'' and will be ''dangerous to our own workers.''

Mr. President, I would like to extinguish this fiery, heated rhetoric with the cold splash of hard fact. Once my colleagues hear the truth, maybe they will be better able to sort out some of the rest of it, and the American people will finally hear the truth. I believe we will no longer have to deal with some of the old canards which are in vogue and have been in vogue for weeks here, because currently under the authority of the 1986 immigration bill, the INS is conducting a pilot project on an employment verification system. I hope no one here will try to stop it, but you never know. It is working. You might want to go scotch it before it goes too far. It is just like the pilot projects authorized by this bill.

Let me tell you what has happened so that you can hear it. Over 230 employers in Santa Ana, CA—230 employers—have volunteered to participate in this INS project, volunteered.

After the hiring of a new worker, the employer fills out an I–9 form and checks the worker's documents. Everybody is doing that in the United States, so if you hear any more argument about what we are putting on the employers to find out if the people in front of them are authorized to work in the United States of America, are citizens, do not think that I put it in this bill. It has been in the law for nearly 10 years.

So this is just like every other employer in the United States. It is a requirement of current law. It is a total distortion of fact and reality to say that we are going to ask something more of an employer to either get ''permission to hire,'' or to ''clear it'' when he had not had to clear it before.

Ladies and gentlemen, they have been doing it for 10 years, every single day while we go about our work here. The I–9 is asked for, and people do it every single day. Some were offended when it first began. ''Why should I do that?'' I have a provision, if you are a U.S. citizen, you need do nothing more than a test that you are a U.S. citizen. That would take care of that. But we will not get the opportunity, likely, to get to that.

So let us at least start with what is there. We have a requirement in current law which requires the employer to ask the potential employee in front of him for documents. He is asked to ask for 29 different ones under the previous legislation, the present law—worker authorization ID—and then to make a tragic mistake, with no intent to discriminate, and ask for another one, and get a fine or the clink. So we corrected that. I hope we will keep that.

But remember now, in this pilot program, if the new hire is not a U.S. citizen, the employer then begins the verification process. Using a computer the employer transmits the alien registration number or the ''A'' number on an employee's green card to the INS. This happens after the employee has been hired. Please remember that. It happens after the employee has been hired. The majority of the time the employer's request is answered in 90 seconds. All of the inquiries are answered within 48 hours by the INS.

Here is where this fake figure comes in. For 17 percent of the newly hired workers—or maybe it is 20; I have heard both, about 1,100 workers; this was newly hired, about 1,100 workers—the INS was unable to confirm that they were legally authorized to work, ladies and gentlemen. So all of those individuals then were given 30 days to set up an appointment with a specific INS officer in a special office set up to correct possible mistakes in the INS data base.

Guess how many—I hope my colleagues will hear this—guess how many of these 1,100 individuals actually came to the INS? Mr. President, 22—22—of them came to the INS. Of these 22 people, only 17 were actually authorized to work in the United States. Their troubles were resolved within the day—within the day. The other five people who showed up were not authorized to work in the United States. I guess you have to assume that the other 1,000 people or so who never showed up to the INS were not authorized to work, either.

What about the 17-percent error rate, or 20 percent, that some opponents have spoken about? Is it the number of illegal aliens who were denied jobs by the INS pilot program? Is that it? Look at the statistics, the real statistics. The current INS pilot project is more than 99 percent accurate. In the few cases where mistakes were made, they were fixed promptly. In no case did any legal permanent resident of the United States lose a job due to this system—not one, nor any U.S. citizen.

Let me repeat myself because this is one of the most important facts my colleagues should remember: No one has ever lost a job due to faulty data in the INS pilot program. The system is used only after a new employee had been hired.

No one will ever be denied a job under this system. The horror stories which opponents have bandied about are completely and utterly without basis and fact. They are fears and illusions summoned up from the vapors to scare the wits out of the American people.

My colleagues should also know that the employers who participate in this verification pilot program think it is great stuff. They do not consider it a burden. They believe it to be a great help. I share with my colleagues' comments of those who use the system and try to look askance at the blather of

the business lobbyists. When I make these remarks, I am not speaking of people in this Chamber, but those groups I know so well. I know them well. So they look askance at this blather of the business lobbies whose sole job is to vigorously oppose all legislation which impacts business.

Here is what these employers say about the INS pilot program. ''I love this system,'' says Virginia Valadez, the human resources officer for GT Bicycles. ''Now I don't have to be responsible for whether or not these people are legal. I don't have to be the watchdog.''

Comments of the California Restaurant Association: ''Some means of verifying Government documents is vital to the integrity of the employment system. We desperately need a reliable, convenient means for employers to verify the authenticity of the documents that the Government itself requires. I can assure you the restaurant industry will participate eagerly.'' It will be the first time in my memory—the restaurant groups, when I started this business, were the most resistant, and they feel this would be extremely helpful.

Says their publication, describing the fledgling pilot verification program, ''Bring offers of ready volunteer to our offices.'' The testimony of Robert Davis, the president of St. John Knits Co., before the select committee of the California Assembly, after describing the widespread availability of this stuff and the great difficulty that puts on the law-abiding employer says, ''To a business that wants to comply and build a stable labor force, this is a major concern. Economic loss from hiring, training and loss of output from the removal of a forged document worker can be severe.'' He said, now he can ''invest with confidence in the training of the individual, and plan for a long-term permanent work force.'' He believes in it. He has seen it work. ''As a businessman * * * it is exciting and reassuring'' and has had dramatic success.

There they are. The current program only tests individual or noncitizens in order to get a job. The illegal alien only has to claim to be a U.S. citizen, present a driver's license, Social Security card, and those are the things we will find out. How do they avoid the verification process? What do they do? Find out.

Others say we should try and call in—there has been a toll-free number called 1–800–BIG-BROTHER. They must have forgotten the one called 1–800–END-FRAUD. That is an 800 number, too, that you want to pipe into that next time you are grappling with 1–800–END-FRAUD or BIG-BROTHER and find out whether it will be cost effective, find out what we will do, see what is up in this country, do the testing we need to do, trust a Congress 6 years in the future having to cast another vote to do it right. If you do not get started, you will never get it started.

Obviously, I hope my colleagues will oppose the Abraham amendment and will acknowledge that some of the apocalyptic cries that come from out there, from the beltway, are truly without foundation and reality or fact. Remember, this is a pilot project that you are seeking to strike, with all the inevitable problems that a pilot project to a new system will involve, but if we do not even try to work out the bugs through pilot projects, we will never have a workable system. That will be, then, truly a hazing of the American public. They thought we got the job done, but we failed—and failed totally—in that.

I yield the floor.

Mr. ABRAHAM. Mr. President, I similarly acknowledge the efforts of Senator SIMPSON both with respect to the broad subject of immigration policy over the last 17 years and, more specifically, his hard work on the bill before the Senate on illegal immigration.

The positions which I have advocated on a number of the issues that are part of this bill, in some cases, have been this opposition to his position, and, in some cases, they have been on the same side. They have always been advocated with great respect for his efforts here.

I must say I sympathize with his feelings about some of the rhetoric which those outside of this Chamber have launched during the past couple of months as we have dealt with this issue before both the committee and here on the floor. I, too, have been the target of many rather unusual, strange, and exaggerated charges, as well as complaints. In my State of Michigan, in fact, groups who oppose some of the views I have on this issue have even launched paid media campaigns critiquing my activities here in the U.S. Senate on these issues. I am both an admirer of Senator SIMPSON's efforts and a sympathizer with the role he finds himself thrust into when he chose to become involved in highly important issues that touch a large number of Americans.

I comment now and finish on the comments I made earlier with respect to the implications of this verification system on the American people. We have been told as a starting point that the bill, without this pilot program, would be gutless, it would be toothless and, in various other ways, be a bill unworthy of us here. I cannot help, when we talk about exaggerated rhetoric, be a little shocked and surprised at those allegations, because I consider the bill as it currently stands, even if it did not have these pilot programs, an extraordinary piece of legislation that will combat many of the problems this country has with illegal immigration, and combat them squarely, head on, effectively, whether it is increasing the border patrols, whether it is cracking down on and ensuring the deportation of alien criminals, whether it is in partially penalizing the visa overstayers who make up such a large percentage of the illegal alien population, or whether it is sharply reducing the availability of public assistance programs to illegal aliens. All of these, I think, combined, will play a very effective role in dramatically reducing the illegal immigration problems we confront.

Equally, I think, we will see that the provisions in the legislation which protect employers, particularly small employers, from charges of discrimination, in cases where no intent to discriminate exists, are going to, likewise, allow us to address the problem of individuals who are legal aliens securing employment in this country and do so, I think, with great effectiveness.

(Mr. BROWN assumed the Chair.)

Mr. ABRAHAM. Does that make this pilot program that we are talking about, this identification verification program, the linchpin in this legislation? Is the absence of that going to make this toothless, Mr. President? I do not think so. Quite the contrary. I think, if anything, it will burden the bill and burden American citizens—taxpayers, employers, and employees—with an excessive amount of redtape, bureaucracy, and big Government intrusion that is not going to handsomely pay off in terms of the benefits it produces.

Let me just talk about some of those costs once again. First of all, this approach is the kind of big Government bureaucracy approach that I think most of us in this Congress have been arguing we find too dominant already in the American economy. Do we really want to have another bureaucracy, another effort here to try to create hoops for businesses to jump through as they make employment decisions, or for U.S. citizens, who are entitled to be employed, to jump through in order to secure employment?

Clearly, it is going to be a costly venture and a costly one both in terms of bureaucratic redtape as well as in taxpayer dollars. I was glad to hear the term ''$10 billion'' used as a possibility of the cost involved here. I do not know what the total costs are going to be. No one, in fact, on the floor knows that. But it is certainly conceivable that it will be great. Just as far as we are aware to this point, the assembling of this database is going to be in the hundreds of millions of dollars. The Social Security Administration has said that a national program would be $3 to $6 billion, and then it would have to be sustained.

Mr. President, that is thousands of dollars per illegal immigrant in the country just to build this system, if that is what we would end up doing. I do not think that is exactly the kind of cost-benefit approach we want to take. Let us not just talk about the burdened taxpayers; let us talk about the burden to business, and particularly to small business.

We can debate the terminology, we can talk about whether it is seeking

permission or some other way to describe what would be called for under this type of an approach. But it certainly would be an additional step in the process, and it certainly would require, in some way, communicating with someone in a bureaucracy run by the Federal Government somewhere in America to determine whether or not verification indeed has occurred.

We have never, in my judgment, Mr. President, ever placed that level of burden on employers in this country. It is a costly burden, potentially a very costly burden, for small businesses, and particularly for those small businesses that have a large turnover of employees.

In addition, it is a burden on the employees themselves. Again, we have one pilot program in Santa Ana, CA, carefully monitored by the INS, who are presumably pulling out all the stops to try to minimize delays on a database. So there are 22 cases out of 1,000—1, 2, 3 percent. Extrapolate that to the entire country or a large region, as is contemplated by the pilot program, and we are talking about thousands of American citizens who will be, in one way or another, denied initial hiring because the verification system database is not able to run at 100 percent.

While it may be the case that when a program is highly localized in a single city, with INS monitoring, the 22 people can get relatively quickly into the correct category, I do not think such a quick turnaround will be possible if the program is indeed larger, whether it is larger in terms of a full State or a region that goes beyond one State, or certainly if it was a national program.

We have had other similar kinds of things happen, Mr. President. Whenever databases are involved, there could be interminable delays. The Social Security Administration encounters this quite often, and it takes days to months to correct errors. I do not think that is the way to deal with the illegal immigration problem in America—by creating problems for people who are citizens who are entitled to work, rather than cracking down on those who are not entitled to work.

Let us not overlook the acquisition costs of the documents that will be required in order to effectuate this type of system if it goes beyond a very small project. The acquisition costs were so, I think, accurately and movingly laid out by the Senator from Ohio earlier. Imagine what we will encounter from our constituents if they determine or learn that we have moved us in a direction where new birth certificates are required, whether it is for passports, weddings, or anything else. Imagine what we will encounter if when young people go to get their driver's license, now living in a wholly different State or part of the country, find out that our law here today, in attempting to crack down on illegal immigration, has thwarted that effort, forcing them to incur additional costs in order to get their first license.

These are significant costs—costs not borne by the people who are breaking the rules, but by the people who are playing by the rules.

I do not believe, Mr. President, that we should attempt to solve the illegal immigration problem by bringing huge burdens on people who are playing it straight. I am sympathetic to the problems raised with respect to people who live in States such as California. I understand that they have different circumstances than we might have in my State, or yours. But to basically impose upon the entire country ultimately or, in the short-term, full States or regions the kinds of burdens that are contemplated by this type of verification system, it just seems to me, Mr. President, that is not a cost-benefit analysis that works out favorably for the American people.

Now, Mr. President, the real issue that we should focus on, in addition to costs, are benefits, because that is the calculus. I think it is important for everyone who is considering how they feel about this issue to think about the degree to which such a program as is being contemplated here can possibly work. Will the forgery stop, Mr. President? Will it really mean that there is not the capability of circumventing the new system that might be developed? Do we really believe that a system can be made perfect? Do we really think that on Alvarado Street in Los Angeles, or in any other city where there might be this type of forgery, in a couple of years, if not sooner, somebody not will come up with a system that breaks the code, that somehow penetrates the new security that is developed as part of these pilot programs? I am very skeptical, Mr. President.

But, also, let us not lose sight of the fact that, even separate from the ability to develop a foolproof system, we have the problem that many, if not an overwhelming percentage, of the employer problems we have are intentional. So let us ask ourselves this: If there is an employer who knowingly or intentionally intends to hire someone who is an illegal alien, are they even going to participate in the verification system? I do not think so. I do not think so, Mr. President.

So while the people who play by the rules are incurring the additional costs of setting up the kinds of systems that will be required to interface with the database in Washington, the ones who would shun the rules today will shun the rules tomorrow. As a consequence, the issue of whether or not there is a job magnet will not be very effectively addressed by this type of an approach, because as long as there are people willing to work around the rules, there will be an audience of people who will think they can come to the country illegally and get jobs with those who basically eschew the responsibilities as employers of following the rules today.

So there we bring ourselves to the final balance. On the one hand, massive costs, taxpayer costs, putting this kind of program together. Whether it is a national database, regional database, State database, it is going to be costly—costs for the small businesses, in particular, but for the employers of America, who have to develop whatever system it is to comply with and interface with the database; and then costs in terms of actually doing such compliance; costs to the employees themselves, who will be required to go through the additional step, and especially to those who, because of a database mistake, do not initially get hired and have to go through the additional bureaucratic red tape to get back into the system; costs to all who will need either birth certificates and driver's licenses and find out that because of what we have done, they now have to get a new one. Those are the costs on one side.

On the other side, as I say, the benefits, in my judgment, are substantially less than that which has been suggested earlier, because I think it will ultimately still be possible to find a way around the system. For those who want to find a way around the system on the employer side, a verification system will only make a very minimal impact. For that reason, I think we do not need this step in the direction of more big Government. I think we should strike the verification system and the driver's license and birth certificate provisions of the legislation.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I again rise in support of the amendment.

I would like to return, if I could, to the issue of the birth certificate because I think it is so revolutionary what we would do if we actually passed this bill as it is written and if we turn this amendment down. As I pointed out earlier, we are saying to 270 million Americans that your birth certificates are still valid. You just cannot use them for anything. If you really want to use them in the traditional way in which we use birth certificates today, you have to go back to the county where you were born or contact that county. You have to get a new birth certificate under the prescription of the Federal Government. For the first time, we have a federally prescribed birth certificate. We have a federally prescribed driver's license. In essence, they are not even ''grandfathered in,'' to use the term we use many times. You will have to get a new one if you want to use it.

A 16-year-old who just wants to get his or her driver's license, we are going to say, ''No, you cannot use that birth certificate that your parents have held onto for 16 years. You have to get a new one.'' We are going to say the same thing to someone who wants to get married. You have to go back to contact that county where you were

born 20, 30, or 40 years ago to get that birth certificate. You have to be reissued a new form. We will have to say to someone 65 years of age who wants to get Social Security, or Medicare, ''Sorry.'' You come into the Social Security Administration and you think you are going to get your check next month. You sign up, doing what you are supposed to be doing. We will say to them, ''No, you have to go back and get a new birth certificate,'' a birth certificate that was issued initially 65 years before that. I think that is an undue burden. I think it is a terrible burden.

I would like to talk now for a moment about another aspect of this, and that is those who argue in favor of requiring this national birth certificate—nationally prescribed birth certificate. To those who argue that it is worth it, we are going to help solve the illegal immigration problem—and I know they are well intentioned when they say this—and it is worth it to require the people we represent to do all of this, I would argue, walk through this with me and see if at the end you still think that a birth certificate—this new tamperproof birth certificate—is really going to solve very many problems, because it is based upon the premise that the person who gets this new tamperproof birth certificate is in fact the person they purport to be. That, I think, is a leap in logic which may not necessarily be true.

My colleague from Wyoming has consistently—and I respectfully say that he has been at this for 17 or 18 years. He refers to the birth certificate as the ''breeder document.'' This is the real problem: We have to get at the birth certificate. The difficulty with that is that under the laws of many States and the way it operates in many States, that breeder document may be a second-generation document or a third-generation document.

Let me take my home State of Ohio. Ohio is what might be referred to as an open State. It is not the only State that follows this procedure. There are many other States that follow this as well. All you need to do in Ohio to get a birth certificate is to stop in at the county health department office. You put down your $7, and you get a copy of your birth certificate. Not only can you get a copy of your birth certificate, Mr. President, but you can get a copy of anybody's birth certificate. It is a public document. It is a public record. So I can go into Ohio and get a birth certificate for anybody if they were born in that county.

What is the protection here? You can issue the finest document in the world, with all the bells and whistles on it in the world; you can spend all of the money you want to make it tamperproof, but if the person who walks in and gets that document is not that person, what good have you done? So in States like Ohio that have this open system, open record system, what good does it do? There is absolutely no good at all.

There are other States that probably are more restrictive, but I would say even in those States that are more restrictive, unless we are willing to impose burdens on American citizens that no one in this Chamber will impose, unless we are willing to say to the 65-year-old who wants to get Social Security who now lives in South Carolina and was born in Ohio that you have to personally go back to Cleveland, OH, or Cincinnati where you were born to get your birth certificate, unless we are willing to say that, how in the world do you protect the integrity of that birth certificate? How in the world do you do it by mail?

Let us take it a step further. Let us assume the State even has some very restrictive ways in which they will issue a birth certificate. What is the use of being able to demonstrate who you are, whether it is a driver's license, if you have a driver's license such as Senator SIMPSON has over there—I heard him tell the story of how cheap it was to get that driver's license. It is a great story. It illustrates a lot of the problems that we have. Then you go to get the breeder document, and you can go circular. Even if you have a restrictive State, not like Ohio and other States where you can get anybody's birth certificate, what in the world good does it do to have all these bells and whistles on these birth certificates?

We will spend a ton of money. We will violate States' rights because we are going to tell the States what they can accept and what they cannot accept for official State business, all in the name of trying to solve this problem. I would submit it is not going to solve it at all. In fact, again, it is not too much of a leap of the imagination to think it may create more problems. Why? Because now you are going to have this routine of millions of people every year having to go back through when they turn 16 and want their driver's license and want their Medicare card, or when they want to get married; millions of people have to go back to the origin county of their birth to get a birth certificate. These will be issued en mass.

It seems to me that you do not have to be too smart if you are a person who wants to violate the system. If you are a person who wants to game the system, as the Senator from Wyoming said very eloquently, there are people who are doing it, and it is a problem. But now you do not have to be too bright to be able to figure out how to start working that system and how to get out of some of these counties, particularly in States that are open for birth certificates, this breeder document. Only now it is going to be a breeder document that is going to be superior. You are going to be in the situation where you, as an imposter, are going to have a better document than the person who is actually that person.

MIKE DEWINE can go in; I could figure out how to game the system. I could get someone's birth certificate if I was close in age to that person. It might be able to pass. It might be able to work. I have a great birth certificate. If I took it to the Chair and he was the employer, he would say, ''That's it, a new birth certificate, it has to be right.'' And if the next day the real person came in and they had their old birth certificate, the old, moldy birth certificate that had been in their closet or in their attic, or had been in the desk for a number years, you would say, ''Well, that is not as good. I have to take the other one.''

So I think when you work this out—it all sounds great in theory—it just will not work. If you look at how the government really works at the county level, if you look at how health departments issue these certificates that really work, if you take into consideration the fact that an open State can get anybody's birth certificate, this just does not make any sense.

Let me turn to another point. I think my friend from Wyoming has been too modest. This is a good bill. He has made it a good bill. He has had 17 years of experience at looking at things that we need to do. There is a consistent list of things that we have done. I say ''we''—''he'' has done. This is the legal immigration bill passed by the subcommittee, a portion of it. These are the things each one of us think relates to a specific problem of dealing with illegal aliens.

I reduced it to a chart form because I do not want anyone in this Chamber to think that if this amendment is accepted—which I certainly hope it will be—that there is nothing left in the bill to deal with illegal aliens. This is a tough bill. The Senator has done a great job. He has taken his years of experience in the subcommittee, along with members of the subcommittee, and he did a great job.

Look at what the subcommittee did:

Increased Border Patrol, INS investigators, wiretaps for alien, smuggling, and document fraud;

RICO for alien smuggling and document fraud;

Increased asset forfeiture for alien smuggling and document fraud;

5. Doubled fines for document fraud;

Next, faster deportation of illegal aliens;

And finally, faster deportation of immigrants convicted of crimes.

That was the bill coming out of the subcommittee. It is a bill that I think I have heard my friend say would have been hard to get through on the Senate floor even as recently as a couple of years ago. But it is tough and it is good.

Then the bill went to the full committee, and the full committee even upped the ante. The full committee added additional things. This is what the full committee did.

''Bill Made Tougher in Committee.''

Increased penalties for visa overstayers.

Let me stop with that for a minute because that is a problem. My friend

from Wyoming has identified this as a problem. These are people who overstay. They are people who come here legally—they are not legal immigrants, but they are people who come here legally. They are students. For any number of reasons they are here, but then they stay. That is a problem. This provision put in by the full committee deals with that—increased penalties for visa overstayers.

Next: More investigators for visa overstayers;

Next: Eliminate additional judicial review of deportations;

No bail for criminal aliens;

Three-tier fence along the border;

Next: Expand detention facilities by 9,000 beds;

And finally: Increase Border Patrol by 1,000 agents.

All of those provisions are in this bill. So it is a bill that is a strong bill, and no one, no one should be ashamed of voting for this bill. No one should feel they cannot go home and be able to say, ''We passed a very, very tough bill.''

Let me turn, as I said I would earlier, to the issue of a national verification system.

I understand that this is a pilot project. Again, I only bring to the floor my own experience. Each one of us brings our own experience. I think that is the great thing about the Congress and the Senate. We do have varied backgrounds. My background has been, at least in part, in law enforcement as a county prosecuting attorney.

One of the things that shocked me 20 years ago is when I found what kind of state our criminal records were in. What am I talking about when I am talking about criminal records? I am talking about basically the same type of thing here, only I am talking about a finite group of individuals, criminals.

It is important for the police officer who comes up behind a car to be able to determine who is in that car, if that person has a record, to be able to determine if that person is wanted, or at least if that car is a stolen car. When someone is apprehended, then it is important to be able to determine whether that person is wanted, whether they have had a criminal record in the past. The same way for a judge who looks down at arraignment. He is on his 52d person, or she is on her 52d person, the judge is, and is trying to determine what the bond is. It is important, when they glance at that record, the record be complete; that they know 3 years ago this person committed a rape, or they know that 4 years ago this person fled the jurisdiction. All of that is important, and police officers deal with this every day and have to rely on this information to make life and death decisions.

I was shocked a number of years ago to find that this system is not entirely accurate. That is a kind way of putting it. When I became Lieutenant Governor in Ohio, we had as one of our goals to try to upgrade the criminal records system so police officers would know who they were dealing with. We found that only 5 percent of the criminal records in the State of Ohio were totally accurate—only 5 percent. That is not unusual. That is not unusual.

In all the discussion about the Brady bill, we got into the whole issue of the accuracy of criminal records. We found that there are very, very few States that could put in an instant check system because of the high inaccuracy level.

Now, after having spent hundreds of millions of dollars to try to upgrade a criminal record system that we depend on to make life and death decisions, how in the world do we expect to, overnight, re-create a national data base system for employment, a system that, by definition, is going to have to be a lot bigger?

Now, people could say: ''Well, you are talking about a pilot project, Senator. Isn't that what you are talking about?''

''Yes.''

Yes, we are talking about a pilot project, but I have been thinking about this, and I cannot come up with any way you can have a pilot project that really works and is really accurate and really protects employees or potential employees unless you have a national system. We cannot build walls around States. We cannot build walls around communities. People go back and forth. You have to create a national system, even if you are only using it in four or five pilot projects, and so we will have to build a national system. We will have to build a national system that is not going to be error prone. Anyone who has had any experience with the criminal system in this country, who really has looked at it, I think is going to be hard pressed to be able to make a good argument that this new system we are going to create is not going to cause serious, serious problems as well as be extremely expensive.

I know there are some of my colleagues who want to talk some more on this bill, but I just believe this amendment makes eminent sense. It is a good bill without it. It is a great bill. It does a lot. The Senator from Wyoming is to be commended for the work he has done. But unless we take out these provisions, unless this amendment passes, I think we are all going to be very sorry, and I think we are going to have a lot of explaining to do to our constituents when that 16-year-old wants to get his or her driver's license and they find out, no, that birth certificate is not any good; the 65-year-old finds out, no, my birth certificate is not any good anymore; I have to go back and get a new one, or when someone wants to get married and they find out their birth certificate is not any good either. I think that is a very serious problem.

Mr. President, I see my friend from Wyoming standing. I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Senator. I wish to review the situation. We have a Leahy amendment, on which, I believe, if anyone wishes to address that, we are ready to close that debate. There is no time agreement here, but I think that is ready to be closed. I think Senator HATCH has a statement and maybe will enter that in the RECORD. Senator BRADLEY has an amendment, and there were several who said they wished to speak on that. I have not had any further word from anyone on that. There is no time agreement on it. Then the Abraham amendment, which now goes to Senator KYL for his time. I have really nothing much further on any of those three.

So, again, if we are going to go on, maybe we could lock in a time agreement to be sure that we let our colleagues know there will at least be three votes on these three amendments.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I shall be quite brief. If the ranking majority and minority members wish to discuss a time agreement, that would be fine, or perhaps while I am speaking they could do it, but I will not speak more than 15 minutes for sure.

Mr. President, I rise in opposition to the amendment. The discussion that my colleague from Ohio has just engaged in primarily relating to the issue of the birth certificate, I will leave to Senator SIMPSON. I should rather respond to arguments primarily made earlier by the Senator from Michigan and, to some extent, the Senator from Ohio relating to the problem of verification of employment status.

I wish to go back in time to set this issue in proper context. In 1990, 6 years ago, the Congress increased the limit on legal immigration to the country by 37 percent because we thought the laws that imposed serious sanctions for hiring illegal immigrants would have the effect of reducing that illegal immigrant population; that making it harder to employ illegal immigrants would in effect remove that magnet—employment—that was drawing many people across the border, particularly from Mexico.

Unfortunately, it has not worked out that way because the system just has not worked very well. Unfortunately, between 300,000 and 400,000 illegal immigrants are now entering the United States every year, many of them people seeking these job opportunities. In fact, in my own State, the INS estimates that about 10 percent of the State's work force is made up of illegal immigrants.

I hope Members of the Senate believe that it should not be acceptable to have so many illegal immigrants taking jobs here in the United States. The question, then, is what we do about it. We have a system that is not working, and we need to do something about it.

That is what the bill attempts to deal with. We started out with a bill that dealt with it in a much more effective way. But in order to compromise and get more support over the weeks and months, many changes were made, to the point, now, that it is really a very modest approach. This is a very modest change we are seeking, to try to find out how to strengthen this verification process so not so many illegal immigrants are working in the United States. This is clearly the focus of the effort, to reduce the effect of the magnet of employment.

It has been illegal to hire illegal aliens for 10 years now. So I think the first thing you have to do is ask what is not working and what can we do about it? The Jordan commission, which has been referred to many times in this debate, studied this problem as much as any, and it came up with several recommendations. What the Jordan commission and many other immigration experts have concluded is that the best way to reduce the number of illegal aliens working in our country today is to implement some kind of an easy-to-use, reliable employment verification system. In fact, the Jordan commission reported that current employer sanction laws cannot be effective without a system for verifying the work eligibility of employees.

So, if the current system is not effective in weeding out those individuals who are here illegally and, as the Jordan commission and others have said, we have to find a way to develop a workable system, what is the next step? You do some research. You try to do some pilot projects, some experiments, some demonstration projects, as they are sometimes called, to find out what will work the best. That is what the committee did. It adopted a verification provision which authorizes a series of pilot projects. We are not changing the law. We are not imposing a system. We are certainly not imposing a national system. We are simply authorizing the Attorney General to experiment with some pilot projects over a short period of time, 4 years, to determine what will work, what is the most effective way for employers to verify that the person they have hired is legally authorized to work. That is very straightforward.

These projects are intended to assist both the employer and, frankly, the person seeking employment. Because, if an individual seeks employment and, frankly, looks like me, there probably are not going to be too many questions asked. But, in my own State of Arizona, we have a very large Hispanic population. There are a lot of people who seek employment in which the employer is basically in a dilemma, in a catch-22 situation. If he asks too many questions of that individual, perhaps because he or she looks Hispanic, speaks with a Spanish accent, that employer can be charged with discrimination. But if the employer does not ask enough questions to verify the legal status of the employee, he can be charged with violating our immigration laws for hiring somebody who is not legally authorized to work here.

As Senator SIMPSON and others have said, the system we have tried to devise to verify the working status, or legal status, of the individual for work purposes is not working because it relies on a series of documents, all of which are easy to forge. Therefore, you end up with a situation where it is virtually impossible for the employer to really know whether the individual is entitled to work or not.

The employer fills out what is called an I–9 form to verify the eligibility of each person hired. But, as I said, that system is open to great fraud and abuse. So one of the purposes of the verification system is, obviously, to make the law work. Another purpose is to make it easier for the employer to verify the legal status of the individual. Another purpose is to protect the individual seeking employment.

I want to make it very clear that the bill specifically prohibits the establishment of any national ID card. What many of us believe, ideally, is there is no card at all. Let us take the Social Security number. You are frequently asked to give your Social Security number, but you do not necessarily have to have a card with you that identifies you as an individual for other purposes. On those few occasions in your life, hopefully few for most of us, where you are applying for a job, you give the Social Security number. Perhaps one of the pilot projects is a 1–800 number that the employer can dial up and punch in the numbers of the Social Security number and get information back that the individual who he has just hired is, in fact, legal.

In any event, we are not talking about a national ID card here, and the debate should not be confused with that prospect. Moreover, the employee verification would only be used after an individual was hired, so you do not run into problems of discrimination here. Perhaps most important—and I really view this as a deficiency in the bill, not something to brag about, but it certainly answers one of the objections of my opponents—is that these pilot projects would not in and of themselves establish any new verification system for the country. The Congress would have to actually act, would have to pass a law implementing a verification system before it ever took effect. So there would be plenty of opportunity for those who oppose this, once a pilot project had established some good ideas here, to pick those ideas apart if they do not like them. Basically what they are arguing against is something that has not even been created yet. They are saying we cannot imagine a system that would work well and therefore we should not even try to find one.

As one of my colleagues said, it is impossible to have a foolproof system. That is the last argument, except for the ad hominem argument, that is made in a debate when you do not have a good answer. It makes perfection the enemy of the good. There is only one perfect thing in this universe and that is He Who made the universe. None of us is perfect. None of our laws is perfect. No system we can devise is perfect. Nothing is foolproof. Nothing is even tamperproof for people who are not fools but are very clever individuals.

But we can try to do something to enforce a law that, 10 years ago, everyone thought was still a good law and none of the opponents of this verification system is trying to repeal. They are, in effect, willing to allow a law on the books they know cannot be enforced. Nothing detracts more from a society than keeping laws on the books that everyone knows are not being enforced. It breeds an attitude against the law, and, after all, the law is the underpinning of the country. We are a nation of laws.

If we willingly, knowingly, allow a lot of laws to be on the books that everybody ignores because we know they do not work, it makes them unimportant, in effect. It make the purpose behind them unimportant. I submit we are not seriously doing our job if we simply argue against trying to improve a law with nothing to substitute to make it better. There are no concrete, positive suggestions here, no constructive criticism. It is all negative criticism. You cannot make a perfect, foolproof system, they say.

Nobody is saying we can. But we can sure make it a lot better than it is. We cannot make a foolproof system along the border either, but that does not keep us from trying. Almost everyone here is going to support training 1,000 new agents to put on the border and in our cities every year for the next 7 years; to build fences, to build lights, to do all the other things to try to keep the border more secure than it is. It will never be totally secure, but we do not give up. We try to seek new ways of protecting that border. In fact, we have some pilot projects in this bill to experiment with different kinds of fencing and different kinds of lighting and roads, to see what works the best to secure the border.

Why can we not have some pilot projects to experiment, to see what are the best ways of verifying the legal status of people for employment purposes—and welfare benefits, I might add? It is a false argument, to make perfection the enemy of the good.

All this bill does is allow us to try some new things to see if they will work. Now what is wrong with that, Mr. President?

I also heard an argument that it is going to cost the employers. Absolutely false. First of all, we made it very clear that the pilot projects cannot cost the employers anything and, secondly, one of the reasons we are trying to develop a new verification system is to decrease the cost of compliance. It is not easy to comply with the

filling out of these I–9 forms. I know, I talked to a lot of employers who do it. It is a hassle. It will be much easier and less costly for them if we can implement a truly effective verification system.

In the end, Mr. President, as I said, the verification system that is contemplated in this legislation is really a very minimal effort. It is a pilot project only. There is no assurance, as the original bill provided, that a nationwide system will ever be implemented. Such a system would only arise if we concluded that there are some really good ideas that come out of this pilot project, presumably with a majority of the House and Senate agreeing to implement that verification system with legislation.

As I said, this can really only be called a beginning, but it is an important first step, and I think that the verification provisions of this bill, minimal as they are, should not be eliminated as the opponents suggest, but rather should be retained.

Therefore, I urge my colleagues to vote against the motion to strike these important provisions from the bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I know we have had a good debate and discussion on this amendment. Let me just summarize very briefly the reasons that I believe that the existing provisions are so important if we are serious about dealing with the problems of illegal immigration.

First of all, there have been comments by those who are supporting striking these various provisions that utilize an old technique that we know of around here and many of us have seen many times, and that is, misstate what is in the bill and then differ with it. Misstate what is in the bill and then differ with it.

That is true with those who have suggested that we are moving toward a national identity card. It is also true of those who say we do not want a new kind of national system that is going to be governing in the rural areas or urban areas of this country; that it somehow is going to be national.

Mr. President, at the present time, we know, as it says in the Immigration and Nationality Act, to hire for employment in the United States an individual, complying with the requirements of the subsection (B), and subsection (B) is spelled out in such a way as to require everyone in the United States of America, whether they are in Maine, Wisconsin, Florida, Massachusetts, Texas or California, to fill out this particular form, the I–9 form. That is a national requirement in existence at the present time.

Do we understand that that is already in existence? And behind that, with the other requirements in terms of the identification of the individual, you have a list of acceptable documents.

The purpose and the thrust of this particular amendment in the first instance, on the question of the birth certificate, is to make sure that documents that are going to have to be required and be supplied are going to be accurate.

Why is that important? It is important, first of all, if we are serious about doing something about illegal immigration. If we are not going to do that, then the magnet attraction of jobs in the United States is going to continue to invite people from all over the world to come to the United States.

We can build fences and fences and fences and hire border guards and border guards and border guards, but we have seen what happened in Vietnam when we had those various fences out and mine fields and every kind of lighting facility. People still were able to bore through to where they wanted to go if they had a sufficient interest in doing so.

No. 1, we have a national program at the present time.

No. 2, everyone who wants to work and every employer in this country is required to fill this out.

The thrust of the Simpson proposal is to get at the question of ensuring that the documents that are going to be provided to that employer are going to be legitimate and that we are going to make substantial improvements with the problems of fraud in the making of those documents, as well illustrated by the Senator from California. That is what this is all about.

One of the provisions says that we are going to have to try and make sure that we are going to have birth certificates put on tamperproof paper. We hear how the world is coming down because we are going to have that requirement.

Let us look at what the legislation says on birth certificates:

The standards described in this paragraph are set forth in the regulations on page 38, and it says on line 13:

(i) certification by the agency issuing the birth certificate—

Whatever agency in the State issues the birth certificate.

Use of safety paper, tamper-free paper, that is true. We have said that they have to move toward tamper-free paper.

The seal of the issuing agency—

Whatever that agency is in any State.

and other features designed to limit tampering—

Left up, again, to the State.

counterfeiting, and use by impostors.

There it is, I say to my friends. Those are the provisions that we are asking in order to stop illegal immigration into this country. How can we say that these are unreasonable? How can we say that these are not necessary? How can we say if we are serious about illegal immigration that just insisting that there is going to be tamperproof paper out there, the seal of the issuing agency, whatever that might be, and other features designed to limit tampering and counterfeiting. We let the States do whatever else they want to do, but we are trying to get a handle on this.

Mr. President, we have heard a lot of questions about how this is going to be costly. It is approximately $10 an issuance of a birth certificate in the State of Georgia. We can give other illustrations of that as well.

So it is important as we go to this issue about the birth certificates to really understand it. As has been pointed out time in and time out during this debate, the birth certificate is that breeder document. If you get that birth certificate from any State that has open files on it—we have 13 States that have open files on it—as I mentioned earlier, and you can go on in there and get a copy of anyone's birth certificate and get your own picture put with that birth certificate, and you can have a driver's license, if you pass the driver's requirement, and that is one of the eligibility cards for employment.

So, Mr. President, if we are serious about trying to deal with this underlying issue, this proposal that Senator SIMPSON has is absolutely essential, necessary and reasonable to try and deal with this issue.

On the second question about the various pilot programs to figure out a better way to help employers verify who can work, because the current approach is not working, our provision simply requires the Attorney General to conduct some pilot programs.

I wish we would spend a moment, and I will just take a moment, referring our colleagues to those provisions on page 13 of the legislation which outlines what will be necessary in terms of these various pilot projects. We pointed out they are not being put into effect. They will be completed and then a report will be made to the Congress, and the Congress will be able to take whatever steps that it will.

It says:

(2) The plan described . . . shall take effect on the date of enactment of a bill or joint resolution . . .

The objectives it must meet: the purpose is to reduce illegal immigration, to increase employer compliance, to protect individuals from unlawful discrimination, to minimize the burden on businesses.

Those are the objectives. They sound pretty good to me. That is basically what we are considering on that.

Within that, Mr. President, as I have seen as a member of the Judiciary Committee, they believe that they may very well be able to issue or develop programs to increase the certification and accuracy that are industry based, perhaps regionally based, but industry or employer based. You have about 80 percent in seven States, 80 percent of the illegals in seven States.

There are some very interesting pilot programs that are in the process at the present time. We have not the time to

go through them, although I think anyone on the Judiciary Committee who took the time to get the briefing from the Justice Department has to be impressed about what they think the possibilities are of really strengthening the whole process to be able to root out illegal immigrants from the employment process in this country.

There are very important privacy protections, Mr. President, and the list goes on. We have drafted to deal with that. The amendment has been drafted to try to take into consideration every possible limitation and sensitivity.

But, Mr. President, we are going to have to ultimately make a judgment. If you are serious about controlling illegal immigration, serious about that, recognizing that half the illegals get here legally and then jimmy the system with these documents that are fraudulent, picked up easily, and get jobs and displace American workers. If you are interested in halting illegal immigration, you are going to have to do more than border guards. You are going to have to get at the breeder documents and get it in an effective system.

If you are interested in protecting the Federal taxpayer, from illegal aliens getting fraudulent documents so that they can qualify for public assistance programs, you better be interested in doing something about these fraudulent documents or otherwise we are just giving lip service to trying to protect the taxpayer.

If you recognize the importance of trying to do something about the illegals, again, displacing jobs, we feel that it is important that we at least try to develop three pilot programs to see what recommendations can be made to try to deal with this problem. These are recommendations that are made by the Jordan commission and by others who have studied it. We ought to be prepared to examine those at the time they are recommended, to evaluate them, to find out if they are going to make a difference. I believe they can make important recommendations and suggestions.

Mr. President, this is a hard and difficult issue. It is a complicated one. For people just to say that we can solve our problems with illegal immigration by bumper-sticker solutions, that with that we are going to halt illegal immigration, that all we have to do is put up fences and more border guards, that we are going to halt that just by adding more penalties—I have been around here. We have added more penalties on the problems of guns since I have been around here than you can possibly imagine. You think it is stopping gun crimes in this country? Absolutely not.

You can just keep on adding these penalties, but unless you are going to get to the root causes of any of these problems, we are not going to have a piece of legislation that is worthy of its name in dealing with a complex, difficult problem.

Let me just say, finally, unless we are going to do that, we are going to do what we have heard stated out here on the floor, the American people are going to get frustrated by the failure to act; and then we are going to have recriminations that are going to come down in a cruel kind of world and divide families and loved ones, and there will be a backlash against legitimate people being reunited and trying to make a difference and contribute to this country.

This, I think, is one of the most important pieces of this whole legislation. I hope the Abraham-Feingold amendment will be defeated.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. This has been a good debate. It appears to be winding down. Let me just add a couple responses to the comments of the Senators from Wyoming and Massachusetts.

One of the words that has been kicked around here is the word ''permission.'' Does this employer identification system, if it is fully implemented, require permission from the Federal Government for an employer to hire somebody? It has been sort of muddying the issue.

I suppose you could call the current system, asking for ''permission.'' It is kind of a loose use of the word, because what is required now with the I–9 is the obtaining of a certain kind of identification card. But what it does not include—and this is the phrase I used when I spoke; I did not just say ''permission,'' I said, ''having to ask permission from Washington, DC.'' That is what this system that could arise from this proposal may create.

What happens now is the employer does not have to get on the phone or through a computer to find out something from a national databank. That is a big difference. Ask anybody who tries to run a small business or a farm how they are going to like the idea that, in addition to everything else they have to do now to try to keep their business going, every time they want to hire somebody under one of these alternatives, they would have to either call Washington or they would have to communicate with Washington through some other system, such as a computer system.

Who is going to pay for all those systems? Who is going to make up for the lost time of the employer who has these additional burdens? It is very important to distinguish here between what is current law and what this bill could do if this amendment is not adopted—getting permission from Washington, DC. I think that is a fair statement of what this adds to this bill.

How can this possibly square with the rhetoric and legislation proposed in the 104th Congress? Whatever happened to the notion that we should not do more unfunded mandates from Washington, especially on small businesses? Whatever happened to the notion of regulatory reform, which almost every Senator at least paid lip service to? This seems to be one of the biggest potential unfunded mandates that has ever been proposed on this floor.

I am confident that almost no employer in the State of Wisconsin would feel comfortable with the notion that suddenly, in addition to everything else they have to do, they have to call up Washington under this. If there is any ambiguity involved about the possibility that this might occur, I refer to page 26 of the bill, and subsection (E), where it explicitly states that one of the things that could be done in these pilot projects is to create the following:

> A system that requires employers to verify the validity of employee social security account numbers through a telephone call, and to verify employee identity through a United States passport, a State driver's license or identification document, or a document issued by the Service for purposes of this clause.

So it is explicit in the bill. It is not just some objectives, general objectives, as the Senator from Massachusetts was reading earlier.

You go 13 pages later, there are the explicit approaches that are permitted. One of those approaches is to put in place a pilot program that presumably would lead to a national program requiring every employer to essentially call Washington after they have hired someone. I think this is very troubling and certainly something that should be removed from the bill.

Another comment that I found interesting was the comment of the Senator from Wyoming. He said that if this system costs $10 billion, it would be worth it. I think that is debatable, perhaps. But we have no assurance that even after we have gone through this process, either allowed every employer to do this or mandated every employer to do this, after we spend $10 billion, we have no assurance at all that this system will work.

There will still be fraud. There will still be fraudulent documents. No one has been able to assure us this is foolproof. We may have created this giant mandate and spent $10 billion, have this huge system in place, and it may not work. So it is not just a question of spending the money. There is no guarantee it would, in fact, work.

So the question here in the end is, What the adoption of this amendment will do to this whole bill? Some say it will destroy the bill. Others think, as I do, as Senator ABRAHAM does, that it will make it a measured response. Instead of using a meat ax to deal with the problem of illegal immigration, we will focus on the tough items that are in the bill that the Senator from Ohio identified.

There are strong measures in this bill. Frankly, I think a couple of them might go a little too far. This is not a weak-kneed piece of legislation if we get rid of this extreme mandate that

could potentially arise from these pilot programs.

So, Mr. President, for those who support a strong immigration bill, I reject the notion that getting rid of this potential employer verification system would make it a weak bill. I think that is wrong. I think everyone should remember the balance here between keeping the strong provisions that are in the bill versus making the bill so difficult for so many Americans and so many businesses that it would be resented rather than welcomed. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SIMPSON. Mr. President, let me propose a unanimous-consent request, which will get us to vote on the pending amendments, if I may, and answer any questions, or you may reserve the right to object. I will certainly do that. Here is the consent agreement I would propose.

I ask unanimous consent that the vote occur on or in relation to amendment No. 3790 at the hour of 4 o'clock today to be followed by a vote on or in relation to amendment No. 3780, to be followed by a vote on or in relation to amendment No. 3752; further, that there be 2 minutes of debate equally divided in the usual form prior to each of those votes.

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

Mr. SIMPSON. Let me say, too, that there are two other amendments. There was an amendment of Senator FEINSTEIN from last night with regard to fencing, which Senator KYL and Senator FEINSTEIN are working toward resolving and may have something on that. We are not ready for a vote there. Of course, that is not part of this.

Then there is an amendment of Senator SIMON with regard to deeming, with regard to the issue of disabled persons. We have not included that here, but that will be coming up as soon as we conclude this.

Senator REID has an amendment with regard to criminal penalties on female genital mutilation.

Mr. ABRAHAM. Mr. President, I do not intend to speak much longer. I just wanted to give a brief summary of a few points, both in response to some of the arguments that have been made by the last few speakers and also just to kind of put in perspective exactly what this all comes down to.

First of all, a statement made earlier that this pilot program approach or the broader approach would not have any cost to employers is simply not the case for a variety of reasons, but the National Retail Federation has suggested that even the pilot program as conceptualized would probably work out to something in the vicinity of $7 per verification. That might not mean a lot to a business that does not have much turnover, but to those that have lots of employees coming and going it is a pretty big impact.

In addition, it has been suggested that somehow because the 1986 legislation has not gone as far as people had hoped for, it is a mistake to resist this approach that is being proposed with the pilot program. I think that is actually counter-intuitive, Mr. President. The fact is, every few years people come along with a new, better mousetrap, it would seem, or they would claim, for addressing the problems of illegal aliens securing employment.

Ten years ago we burdened the American economy and our businesses and employers with a lot of redtape—I–9 forms and other things—and they have not worked. Those who bring this amendment today are saying, ''Let's not add yet another level, another tier, another round of redtape to those people who are trying to play by the rules and create opportunities for people in this country.''

Third, Mr. President, it has been suggested that somehow this is really something good for employers, it is good for people who might be discriminated against because of their ethnicity or their race. This is a case, though, where frankly the people who are the alleged beneficiaries are saying, ''Thanks, but no thanks.'' That is why this amendment that we are bringing, both the verification amendment as well as the amendment that Senator DEWINE has separately offered with respect to birth certificates and driver's licenses, are being supported by the National Federation of Independent Business, and they are key votes for that organization, by the chamber of commerce, by the National Association of Manufacturers, by the National Retail Federation, and yes, the National Restaurant Association. We have heard earlier somehow that restaurants were supporting this. The national association opposes it.

The businesses who will have to implement this, whether in pilot program form or otherwise, say, ''Thank you, but no thanks.'' So, too, do groups historically fighting discrimination, such as the ACLU and others. The fact is, the beneficiaries are not really going to benefit, Mr. President, if this is looked at closely.

Meanwhile, I draw attention to the issue of the pilot project. We are being asked to support this on a theory it is not really a national system but a pilot project. The way the legislation is drafted allows that type of pilot program to encompass regions with no definition as for their size. In addition, because of the nature of verification, it almost certainly will require the creation of the type of national data base that will be both costly, onerous, and burdensome. To say that a pilot program is just a small step is not accurate, Mr. President. It is a very big step.

That brings me to the final point I want to make today—the cost versus the benefits. The costs will be great to employers who have to verify new employees, whatever the size of the program. The cost will be great to the employees themselves who are playing by the rules—U.S. citizens and those who legally can seek employment—because those people in some cases will be denied employment because of data base malfunctions. The cost to taxpayers of setting up the type of data base involved will be considerable, and the cost to average American citizens who, because of this type of program, find they need new birth certificates or new driver's licenses, will be considerable as well. A lot of costs, Mr. President.

The benefits, on the other side, are not very clear to me. First of all, as I have said in previous comments, those employers who intend to fire illegal aliens at lower-paying jobs or below the wage level they otherwise would have to pay will get around any kind of verification system because they will not participate. To the idea that we will create a foolproof system, a card that defies any type of tampering or counterfeiting, to me, is a remote possibility.

There will be plenty of costs and very few, in my view, benefits. Rather than going down the route we went in 1986, it is our argument that we understand, very simply, the losers here are the taxpayers, the employers, the employees, the people playing by the rules. Those are the folks we should be helping, Mr. President.

The balance of this legislation does exactly that, by cracking down on the people who are violating this. I do not think we should take a step other than in that direction. For those reasons, Mr. President, I strongly urge passage of this amendment, support for the striking of both the verification procedures as well as the procedure of the driver's license and the birth certificate procedure.

Mr. SIMPSON. Mr. President, I think this has been a very impressive and important debate. I commend Senator ABRAHAM. I can see why the people of his State placed him here. He will have a great career here. I wish him well. He is very able, formidable, and fair. We try to express to each other what is occurring on the floor, even though it may be arcane and somewhat bizarre from time to time, but I always try to do that. To Senator DEWINE and his participation, and Senator FEINGOLD, a very thorough debate.

Now, the reason we set that unanimous-consent agreement is that there are at least several who have told me, ''I do want to get over and speak on the amendment of Senator LEAHY and Senator BRADLEY.'' I do not believe any further persons intend to debate on the issue of the Abraham amendment, but the reason we set the vote for 4 o'clock is to allow those who wish to debate the issues of Senator LEAHY's amendment and Senator BRADLEY to come forward. If they do not, they are foreclosed as of 4 o'clock. I hope they realize that, that there will be no further opportunity to address those two amendments, or three amendments

—the Abraham amendment, too—after the hour of 4 o'clock. Then we will go to the order of the amendments as Senator BRADLEY, Senator LEAHY, Senator ABRAHAM, with the usual 2 minutes of debate.

Mr. President, let me inform the Chair that the majority leader has designated Senator HATCH as the manager of the bill for the present time and that the majority leader has yielded 1 hour to me, in my capacity as an individual Senator, for the purposes of being able to complete debate on the bill, because I only have 27 minutes left. That is the purpose of that. I promise I shall not expend any more on the other issue. Maybe on the birth certificate—I could do a few minutes on that.

Well, I think I will since no one has come forward.

Let me indicate that I will speak a very few minutes on the issue of the birth certificate, but if these Senators who are going to come forward immediately will notify me—I will yield to them—that will expedite our efforts.

Let me just briefly remark about the birth certificate, because I think it is very important that we understand that that is the fundamental ID-related document. I think it would be just as disturbing to the Senator from Ohio as it is to me. We do not have any way to match up birth and death records in the United States. That seems bizarre, but we do not. Maybe some States have tried to do that. One of the questions that arose in the debate was, well, what will this do? One thing it will do, which we do not do now, is that if it is known that the person is deceased, the word ''deceased'' will be placed upon that birth certificate, wherever that birth certificate is. Now, that is one of the advantages of the word ''deceased'' being stamped on a birth certificate. You would think, surely, they must be doing that in the United States of America. But they are not doing that in the United States of America.

That is just one part of the proposal. Again, please recognize that the motion to strike is directed toward the revised or amended form as it left the Senate Judiciary Committee, as I say, trying to work with all concerns, realizing that we cannot indeed satisfy all aspects; but a good-faith attempt was done with regard to that.

Of course, the ID-related document that is the most fundamental. It proves U.S. citizenship, the most valuable benefit the country can provide. As we all have indicated, it is the common breeder document used to obtain other documents, including a driver's license and a Social Security number and card. That is the power of the birth certificate.

With the birth certificate, plus the driver's license, and a Social Security card, a person can obtain just about any other ID-related document and would be verified as authorized to work and receive public assistance by nearly any verification system it is possible to conceive, including any system likely to be implemented in the foreseeable future.

Yet, the weird part of it is that this birth certificate—and it is a sacred document, the type of document that is pressed into the Bible; it is the book that goes into the safe deposit box—is the most easily counterfeited of all ID-related documents, partly because copies are issued by 50 States, some with laws like Ohio, some with laws like Wyoming—50 States and over 7,000 local registrars in a myriad of forms and political subdivisions and, as Senator LEAHY indicated in committee, I think townships.

So how can anyone looking at a particular certificate know whether it even resembles a bona fide certificate? Furthermore, birth certificates can readily be obtained in genuine form by requesting a copy of a deceased person's certificate. And birth and death records are only beginning—this is the very beginnings—to be matched. That is puzzling to me in every sense. In most States, it is only for recent deaths. So we have a situation where people want to build a new identity. They try to get the certificate of a person who was born in the year they were, or near their own birth year, or died as an infant, perhaps, so that the deceased person would not have obtained a Social Security card or otherwise established an identity.

It is acknowledged by a great majority of experts that a secure verification system cannot be achieved without improvements in the birth certificate, and in the procedures followed to issue it. Without a secure, effective verification system, the current law prohibiting the knowing employment of illegal aliens cannot be enforced. I emphasize current law because some of my colleagues argue as if this bill would put this provision into law, and that is not so. It need not.

This is the law now. We are not putting this into the law. There is a system in the law. The issue simply is, do we here in Congress intend to take reasonable steps so that this part of current law can be effectively enforced? That is the problem. Do we want to do that?

Mr. President, without effective employer sanctions, illegal immigration, including not only unlawful border crossing, but visa overstays, will not be brought under control. It is just that simple. Thus, fraud resistant birth certificates and procedures to issue them are a crucial part of any effort to make that effective. In addition to immigration and welfare advantages, a more secure birth certificate will help us to reduce many more harms associated with fraudulent use of ID's, ranging from financial crimes—we will see ever more of those—and then those through the Internet—and we will see more of those—and through electronic and computer-based systems, to voting fraud, to terrorism. Accordingly, S. 1664 proposes significant reforms in birth certificates themselves, and in the procedures followed to issue them, and improvements of a similar nature for driver's licenses, which I think are critically important.

The final provision on birth certificates was drafted with assistance from the Association for Public Health Statistics and Information. I want to share that with my colleagues. The National Association of State Registrars and Vital Statistics Offices—that was drafted with their assistance—these officials made very valuable suggestions to us, and they expressed their approval of the final language, which is here to be stricken. Additional improvements were made in the amendment I offered yesterday, which was accepted, and which will be stricken if this amendment is passed.

I will just summarize the birth certificate provisions of the bill. I am using my time, but I will yield to my friend from Ohio. I emphasize to those who are waiting to come to the floor on the Bradley amendment or the Leahy amendment that their opportunity will close at 4 o'clock on that procedure.

If my friend from Ohio has any comment at this time, I will save some of my time.

Mr. DEWINE. Mr. President, I thank my colleague from Wyoming, and I agree with him that we have had a very spirited debate and, I think, a very good debate—a debate that has covered, I think, most of the issues that we are going to cover here today.

Let me just state, on a couple of related subjects, the following. We have, again, confirmed, I say to the Members of the Senate, this afternoon that this amendment is supported by the National Conference of State Legislators, the National Association of Counties, and by the National League of Cities. All three organizations support this amendment. Again, they emphasize they support it on the basis of cost—cost to them as local units of government—and they also support it on the basis of the whole question of preemption. Once again, that is the Federal Government coming in and, frankly, telling them exactly what to do.

Let me just make a couple of additional comments in regard to the issue my colleague from Wyoming was talking a moment ago about, which is birth certificates. To me, it is almost shocking when we think of the implications of what this bill, as currently written, would do. I have given the example here on the floor that when you turn 65, you are hopefully going to get Social Security and Medicare; at 16, in most States, a driver's license, or try to get your driver's license; or you will get married. For any of those purposes, you will have to get a birth certificate, and your old birth certificate is no longer going to be any good for that purpose.

Let your imagination run. You can think of all the other reasons why during your lifetime you might need a birth certificate. Everybody can just about figure 270 million Americans are

at some point in time going to need their birth certificates.

I suppose if you are over 65 and already on Social Security, and you are not traveling, I suppose some folks never are going to have to use this new birth certificate and are never going to have to do what tens of millions of Americans are now going to have to do under the provisions of this bill, which is to go and get new birth certificates.

Again, what we are saying in this bill and with this amendment, what we are saying to 270 million Americans is, ''Yes, your birth certificate is still valid, but you really just cannot use it much for anything. You will have to get a new one.'' That, to me, is onerous, whether you travel overseas—how many of us have had occasion as Members of the Senate or the House to get the frantic call from someone who says, ''I am supposed to be going overseas and I had this passport. I cannot find it. I found out today it is expired. I am leaving in 5 days, or 4 days.'' What if you had to add to all of the problems they have to go through now, with the red tape, one more thing—you have to go back and get a new birth certificate because that birth certificate which you have had all of these years will not work anymore. That might be acceptable. At least, it would not be for me. I do not think it would be.

If we could make the case that the reissuance of a new birth certificate on this tamperproof paper, with all of the bells and whistles prescribed by the Federal bureaucrats, if that would deal with the problem—but maybe I am missing something in this discussion. I believe my colleague from Wyoming when he says it is the breeder document. I trust him on it. He has had enough experience on this. He has talked about this problem. But it still is going to be a problem, and, in fact, it may be even worse of a problem, more of a problem.

There are States—and Ohio is one, but Ohio is not the only one—where you can get anybody's birth certificate. Let me repeat that: You can get anybody's birth certificate. You walk into the county, and if someone was born there, you can get their birth certificate. You put down $7; you can get 5, 20, or as many birth certificates as you want as long as you know the name of the people. You can get them. They are public records.

What we are now saying is, instead of the old birth certificate copy, these are going to be new ones. Obviously, they are more expensive—tamperproof, bells and whistles—with all of the things the printers told us when we tried to find out what the cost would be, and they will have them. So what? What is the protection? What is the protection if I have walked in and MIKE DEWINE, at the age of 49, went in and got somebody else's who is 49 and might look the same? I now have a birth certificate. I do not see what has been accomplished. I do not see what we have done in regard to this, even in States where it is more difficult.

Again, instead of the breeder document, instead of the father document or the mother document, this may be the son, or the granddaughter. This may be two generations away. It may be an illegal license, as my colleague still has displayed in the Senate here, maybe an illegal license that is the breeder document. I do not know.

Again, this is not going to solve the problem. My friend talks about now the provision is in the bill that States should, if they know it, stamp on this birth certificate if the person is deceased. We can imagine how accurate that is going to be, or what percentage of these birth certificates is going to ever be stamped with the deceased on them. It may be a great idea. But, again, it is going to be a very, very small percentage where the local clerk of the county is going to know that someone is deceased. In some cases, they will, but in a great majority of the cases, they will not. We live in a very mobile society, Mr. President. This, I do not think, is going to help a great deal.

If you really want to make these tamperproof, what you are going to do is require people to go in and, face to face, get their new birth certificate. I do not think we are going to do that. I do not think we are going to say to a retiree who lives in North Carolina or who lives in Florida or lives in California, ''You have to go back to Cincinnati, OH, you have to drive back and get a new birth certificate.'' I do not think anyone is going to make them do that. I do not think it is a serious idea. But yet, if you are going to make it tamperproof, you at least have to do that, not allowing it to be by U.S. mail and getting anybody's birth certificate. I think it is very onerous, but I think it is not going to be effective. It is going to be no good at all.

In thinking about this, we ought to learn from our past mistakes. We ought to learn from what this Congress has done in the past that we have regretted. I have cast votes that I have regretted. I have cast votes where I looked around and said later on that I was wrong. This is not the first time we have tried in this Congress within recent memory to deal with a specific targeted problem by putting an onerous burden on everybody. We have a finite problem. It is important. But the way we deal with it, the way we would deal with it, without this amendment, is to put the burden on absolutely everyone, to say to 270 million Americans that ''your birth certificate no longer is any good. You will have to go get a new one.'' If you ever want to use it, you will have to say to every employer in this country that if you, in fact, want to hire someone, you will have to call a 1–800 number. You will have to seek permission from the Federal Government. I know there has been comment on the floor about that not being the right terminology. That is what it is. You will have to check the person out and to do it by how the Federal bureaucracy tells you how to do it. As an employee, you are going to be in the situation of arguing with a computer.

Again, I have had some experience in dealing with the criminal records system. Anybody who has dealt with any kind of big data base knows the problems. Someone gets turned down for a job or someone is told after they have been hired that we have a problem. You need to get this problem straightened out with the INS. You need to get this problem straightened out with the computer data base. How many of us in this world today enjoy dealing with computers, particularly in regard to one of the most important things in our lives, how to make our livelihood?

So this is not the first time Congress has spread a burden among every single American to deal with a few people. If history tells us anything, it tells us that people in this country ultimately will not put up with this.

Let me give you a couple of examples. Remember contemporaneous recordkeeping for people who used their car in business? Remember when we passed that? We did it because some people cheated on their taxes when calculating the business use of their car. Because of that fact, because some people cheated, Congress made all of the people who used their car in business to keep very detailed daily records. I was in the House when that happened. I was in the House when we started getting calls. I was in the House when I would go out and have office hours and be flooded by people who said, ''What is this? I do not keep records every single day just because a few people cheat.'' What did we do, Mr. President? We did what we always do: We repealed it. It was a mistake.

Remember section 89 because some businesses discriminated in setting up the benefit plans for their employees? Congress made all businesses comply with detailed recordkeeping to prove they were not discriminating. We did that. The public did not stand for that either. And, again, it was repealed. It happens every single time that we spread the burden among everyone for a very specific problem. In fact, I do not think Congress has ever had a provision as burdensome or really as broad as this particular provision. This provision applies to everyone who wants to use a birth certificate or a driver's license—to everyone.

I submit, Mr. President, that we do this at our own peril. The public ultimately is not going to stand for it. I think it is a very, very serious mistake.

Therefore, again, I urge my colleagues to pass the Abraham-Feingold amendment. It is an amendment that is supported by a broad group of Senators, certainly across the political spectrum.

At this point, Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent the pending amendment be set aside.

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

AMENDMENT NO. 3865, AS MODIFIED

Mr. REID. Mr. President, I send to the desk a modified version of my amendment, No. 3865.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 3865), as modified, is as follows:

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . FEMALE GENITAL MUTILATION.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;

(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;

(3) such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional;

(4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control;

(5) the practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or under any other law; and

(6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the Fourteenth Amendment, as well as under the treaty clause of the Constitution to enact such legislation.

(b) CRIMINAL CONDUCT.—

(1) IN GENERAL.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 116. Female genital mutilation

''(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) A surgical operation is not a violation of this section if the operation is—

''(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

''(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

''(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.

''(d) Whoever knowingly denies to any person medical care or services or otherwise discriminates against any person in the provision of medical care or services, because—

''(1) that person has undergone female circumcision, excision, or infibulation; or

''(2) that person has requested that female circumcision, excision, or infibulation be performed on any person;

shall be fined under this title or imprisoned not more than one year, or both.''.

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

''116. Female genital mutilation.''.

(c) EFFECTIVE DATE.—Subsection (c) shall take effect on the date that is 180 days after the date of the enactment of this Act.

Mr. REID. Mr. President, the modification I send to the desk is a modification of the amendment regarding female genital mutilation. The modified version of this amendment strikes the language requiring the threat of female genital mutilation be made consideration for an asylum claim.

I repeat, at this time I believe in the asylum aspect of it, but I understand the problems associated with this; that we would need to make a better case to the committee and to this body. Therefore, I will not go into the reasons why I think it should be made a basis for asylum. The fact of the matter is, we are not going to do it in this legislation. We will look down the road to work with the committee to see if we can come up with a basis for doing that.

I offer this modified version of my amendment today so we can criminalize this torture in the United States, as a number of other countries have already done.

The PRESIDING OFFICER. Is there further debate?

The Senator from Wyoming.

Mr. SIMPSON. I thank the Senator from Nevada. This is not some issue that he has come to in recent times, simply because of media attention. He has been involved in this, and I have observed him with great admiration. It is a serious issue. It is an issue of criminal activity. It is an issue of assault. It is an issue of culture. And there is much to it.

As the Canadian experience has indicated, the problem, sometimes, with bringing in an asylee is that soon thereafter, when other family members join, they have not only brought the victim but they bring the perpetrator. We will be glad to have some hearings on that. We will discuss that.

I thank the Senator from Nevada. He has always been very helpful. This is very helpful, that we do not go into the deep issue of asylum, but that we make it a crime because at that point we will solve a great deal of it.

Mr. REID. Mr. President, I will just say in closing—and I would want spread on the record—that I have spoken personally with the chairman of the Judiciary Committee in the House, HENRY HYDE. He acknowledges the brutality of this and has indicated on the bill that was signed by the President last Saturday, the omnibus appropriation bill, there was this provision that was taken out in conference.

That is not because of the chairman of the Judiciary Committee in the House that was taken out. He supports this issue. I hope my friend, as I know he will during the conference on this matter, will hang tough for this issue.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3865), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I think we may be able to dispose of one of my amendments just before the 4 o'clock vote. I will simply speak briefly on this.

This is an amendment that says, ''To exempt from the deeming rules, immigrants who are disabled after entering the United States.''

That is the current law. It simply goes back to the current law. It sets a safety net there. So that no one thinks all of a sudden people are going to claim that they are disabled, the amendment says, the requirements of subsection (A) shall not apply with respect to any alien who has been lawfully admitted to the United States for permanent residence and who since the date of such lawful admission has become blind or disabled, as those terms are defined in the Social Security Act.

Social Security disability is not an easy thing to achieve, as my colleagues here know. I will add, the amendment is endorsed by State and local governments. I think it makes sense, and I hope it can be adopted.

Mr. SIMPSON. Mr. President, we do have a Member ready to debate briefly the Leahy or Bradley amendment. May we come back to that, please?

I yield to Senator HATCH, whose time is limited. We certainly thank the chairman.

The PRESIDING OFFICER. The Senator from Utah is recognized.

AMENDMENT NO. 3780

Mr. HATCH. Mr. President, with regard to the Leahy-Simon amendment, let me say that this amendment is an improvement of the amendment that Senator LEAHY offered in the Judiciary Committee, because it will permit for special summary exclusion procedures in extraordinary migration situations. The amendment will remove summary exclusion procedures where they could be problematic.

In particular, the amendment removes the summary exclusion procedures for asylum applicants. Those would require that INS officers at

points of entry make threshold determinations of how an alien traveled to the United States and whether someone claiming asylum has a credible fear of persecution. This would present a burden to our INS officers at borders, who would now have to become experts in asylum law and would have to perform additional bureaucratic functions.

I am also concerned about the harsh consequences that could result to asylum applicants who do have a valid claim but who may not speak English, may not have the necessary proof of their claim with them, and that sort of thing.

I also note that the INS has had success with reducing frivolous asylum claims. This provision seems unnecessary at this time and could create burdens on INS border agents, who should be focussing on other matters.

This amendment also deletes provisions of the bill providing that an alien using fraudulent documents for entry is excludable and ineligible for withholding of deportation. Many asylum applicants fleeing persecution may have to destroy their documents for various reasons and may have to present fraudulent documents. The bill does provide for an exception for those who have a valid asylum claim. Accordingly, I do not think those provisions of the bill are as problematic. but I think that on the whole the provisions of the amendment are meritorious and I support the amendment.

I realize that the terrorism bill that came out of conference included summary exclusion provisions for asylum applicants. That provision was primarily driven by some House Members and, although I did not think it belonged in the terrorism bill, I knew that we would deal with this here on the immigration bill. Accordingly, I do not think it is inconsistent for those who supported the terrorism bill to support the Leahy asylum amendment.

Mr. President, I am going to support the Leahy asylum amendment because I think it is the right thing to do. I do like the changes he made. Even though I voted against the amendment in committee, I think the changes make the amendment a good amendment.

AMENDMENT NO. 3790

Mr. HATCH. Mr. President, I would like to speak to the Bradley amendment for a few minutes as well, and I appreciate my colleagues giving me this opportunity.

This Congress is supposed to be about reducing the Federal bureaucracy. I must confess that I am perplexed about where the idea for a new Federal bureaucracy is coming from. The administration opposes this provision for a new Office of Enforcement of Employer Sanctions. It argues that this new Office would be duplicative of ongoing programs within the INS and the Office of Special Counsel. In fact, the Attorney General's office suggests that a new office would not only be a waste of money, but make the program even less effective.

The employer sanctions provisions of the Immigration Reform and Control Act of 1986 [IRCA] have not successfully controlled illegal immigration. That is not simply my opinion, it is a fact.

Illegal aliens continue to pour into this country. A cottage industry in counterfeit and fraudulent documents has flourished, and an increasingly lucrative black market in smuggling aliens into this country has thrived.

Employer sanctions do not work. If they did, we would not be debating a verification system. If sanctions worked, we would not have the level of concern we presently have about the very issue of illegal immigration. We would not have seen so much television footage of persons illegally crossing our borders by running against traffic on highways in order to defeat vehicular pursuit. We would not have seen a ship ground off of the New Jersey shore a few years ago loaded with aliens to be smuggled into our country. We would not be reading about illegal aliens loaded onto boxcars which are then sealed south of our border on their way north.

At the same time, sanctions have had serious adverse consequences. Though unintended, they are still very real. Some employers have engaged in illegal discrimination against Americans who look or sound foreign in order to avoid potential lawsuits, fines, and jail sentences under IRCA's sanctions provisions. Further, the paperwork and related burdens on American businesses—as small as entities with just one employee—impose costs onto the American consumer.

In my view, employer sanctions simply are not worth the price of increased employment discrimination and increased burdens on small business.

Let us speak for a few moments about the anticivil rights nature of employer sanctions. The easiest way for an employer to avoid sanctions is to refuse to hire those who look or sound different. To be sure, the law penalizes such discrimination. But the law does not always catch up with all the discrimination that occurs. So to place an incentive into the law for discrimination is, I respectfully submit, truly unfortunate.

The Comptroller General's testimony before the Judiciary Committee on March 30, 1990, highlighting key issues in GAO's report to Congress on IRCA and the question of discrimination was quite simple and straightforward: He stated that the GAO had found widespread discrimination as a result of IRCA.

The GAO said:

> The results of our survey of a random sample of the Nation's employers shows that an estimated 891,000 employers, 19 percent of the 4.6 million in the population surveyed reported beginning discriminatory practices because of the law.

The American people have a right to know these facts, and I think Members of the Senate have a right to know these facts.

Notably, in 1994 the AFL–CIO Executive Council called for ''a thorough reexamination of * * * employer sanctions * * * and their effects on workers, as well as the exploration of changes and viable alternatives that will best meet our criteria of fairness and justice for all workers.''

EMPLOYER SANCTIONS PLACE AN UNREASONABLE BURDEN ON BUSINESS, PARTICULARLY SMALL BUSINESS

Even those who have long disagreed with my position on sanctions have, in effect, acknowledged that the current system does not work. The failure is due, in part, to the number of work eligibility documents and the widespread use of fraudulent documents.

This bill seeks to address those deficiencies in some way, but potential improvement efforts have not yet been implemented, let alone evaluated. To assume, therefore, that the employer sanctions program will now be more workable is simply wrong.

There is little evidence to support the assumption that employer sanctions have done anything more than increase discrimination and place tremendous burdens on small business. While jobs may be a magnet for illegal immigration, there is no evidence that the existence of sanctions has in any way deterred illegal immigrants from attempting to enter this country. These sanctions have been in effect for 10 years. The problem of illegal immigration, as we all know, has gotten worse during that period.

The employer sanctions regime, in effect, converts our Nation's employers into guardians of our borders—that is the job for the Border Patrol and the INS.

I support many of the provisions in this bill, and I compliment my distinguished colleague from Wyoming for the hard work he has done in putting this together. I support including strengthening our Border Patrol and curbing alien smuggling.

Our 10 years of experience with employer sanctions, however, offers more than sufficient evidence that they do more harm than good.

Our employers have enough to do competing in the global marketplace while complying with hundreds of other Federal rules and regulations.

The appropriate response to a bankrupt policy with a 10-year history of all costs and no benefits should not be to throw more money at it. And most certainly, the appropriate response is not to create a new Federal bureaucracy to manage it.

Mr. President, I really believe that we should defeat this amendment, and I ask my colleagues to consider doing that.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Bradley amendment.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I hope people will support this amendment. What is the problem with illegal immigration? Why are illegal immigrants coming to this country? Because they get jobs. Employers hire them.

In 1986 we said, if an employer hires an illegal immigrant, taking that job away from an American, that person can be fined, ultimately can be put in jail for up to 3 years. Employer sanctions were the right policy in 1986. The problem is, they were not enforced.

The number of inspections, the number of inspectors between 1989 and 1995, dropped 50 percent. Employer sanctions should be enforced. If so, we would have fewer illegal immigrants coming into this country. This amendment simply creates a special enforcement office in the Immigration Service, allocates such funds to do the job, and says to the Immigration Service, ''Enforce employer sanctions. Stop illegal immigration.''

I am pleased to yield the remainder of my time to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I do agree with the Senator's amendment. Senator HATCH and I respectfully differ on this. There are two things wrong with employer sanctions—lack of enforcement and fraudulent documents. This will solve one.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 30 seconds to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 30 seconds.

Mr. FEINGOLD. Thank you, Mr. President.

I use these few seconds to say I strongly agree with the Senator's opposition to this amendment. As we learned in committee, this is a duplication to add to this agency. Where is the $100 million going to come from that this amendment provides for this agency? The Clinton administration has been clear that they do not need it, that this would probably make their lives more difficult in terms of fighting the problem.

On a bipartisan basis in committee we were able to defeat this notion. I hope we will not go backward on it on the floor. I thank the Senator from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the Clinton administration, as my distinguished colleague just said, opposes the creation of an office for the enforcement of employer sanctions. The Congress should be about cutting the Federal bureaucracy, not adding to it. This bill throws another $100 million of employer sanctions enforcement on top of the $43 million spent in the current year on worksite enforcement.

Sanctions have not worked. They are a burden on business, especially small business. They cause discrimination against those who look and sound foreign. The Judiciary Committee struck the office from the bill. Frankly, I urge the rejection of the Bradley amendment for those reasons.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY.

Mr. BRADLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 26, nays 74, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—26

Akaka	Ford	Moynihan
Boxer	Graham	Nunn
Bradley	Hollings	Pryor
Breaux	Inouye	Reid
Bryan	Lautenberg	Robb
Daschle	Levin	Rockefeller
Dodd	Lieberman	Shelby
Exon	Mikulski	Simpson
Feinstein	Moseley-Braun	

NAYS—74

Abraham	Feingold	Lott
Ashcroft	Frist	Lugar
Baucus	Glenn	Mack
Bennett	Gorton	McCain
Biden	Gramm	McConnell
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Brown	Gregg	Nickles
Bumpers	Harkin	Pell
Burns	Hatch	Pressler
Byrd	Hatfield	Roth
Campbell	Heflin	Santorum
Chafee	Helms	Sarbanes
Coats	Hutchison	Simon
Cochran	Inhofe	Smith
Cohen	Jeffords	Snowe
Conrad	Johnston	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kennedy	Thompson
DeWine	Kerrey	Thurmond
Dole	Kerry	Warner
Domenici	Kohl	Wellstone
Dorgan	Kyl	Wyden
Faircloth	Leahy	

The amendment (No. 3790) was rejected.

AMENDMENT NO. 3780

The PRESIDING OFFICER (Mr. THOMPSON). Under the previous order, there will now be two minutes of debate on the Leahy amendment.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, this is an important amendment. You each have on your desk editorials from the Washington Times, the Washington Post, and the New York Times. They all agree and are in support of this amendment.

Do not confuse asylum with illegal immigration. This speaks of America's vital role in offering asylum. Senators HATCH, KERRY, DEWINE, HATFIELD, and I have united on this because what we are saying is, if somebody comes to this country trying to escape religious oppression, political oppression, or whatever, the mere fact that they have come here under a false passport—usually the only way they can get out of the country these escape—we should not have a low-level person be able to turn them back automatically for that.

Let them have a full asylum hearing. It does not do anything for illegal immigrants. But it makes sure that the U.S. promise of a fair hearing for those who are escaping religious or political persecution can get it.

Mr. SIMPSON. Mr. President, this amendment would seriously impair the bill's provisions to expedite the exclusion of aliens who attempt to enter the United States surreptitiously, or through the use of fraudulent documents. You saw the ''60 Minute'' segment some time ago.

This is the scenario. The alien uses documents to board an airliner, then disposes of the documents, and claims asylum. And that cannot be. The amendment is not required to protect the deserving asylum applicants. We have a credible fear exception. If they have credible fear, they get a full hearing without any question. They simply show that to a specially trained asylum officer, and not to just somebody who is at a lower level. It is a significantly lesser fear standard than we use for any other provision.

That is what we use with Hatians.

I yield two seconds to Senator D'AMATO.

Mr. D'AMATO. Mr. President, if we pass this amendment what you are saying is let people come in with illegal documents with just plain political persecution, and set them lose. They just continue. You are just going to compound this problem. You do not have to the facilities to hold them in, nor the facilities to have hearings. You will be gutting this bill. It absolutely flies in the face of what we are attempting to do.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Vermont. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—51

Abraham	Campbell	Harkin
Akaka	Chafee	Hatch
Baucus	Daschle	Hatfield
Bennett	DeWine	Heflin
Biden	Dodd	Inouye
Bingaman	Feingold	Jeffords
Boxer	Feinstein	Kennedy
Bradley	Ford	Kerry
Breaux	Frist	Kohl
Bumpers	Glenn	Lautenberg
Byrd	Graham	Leahy

Levin	Moynihan	Rockefeller
Lieberman	Murray	Sarbanes
Lugar	Nunn	Simon
Mack	Pell	Snowe
Mikulski	Pryor	Wellstone
Moseley-Braun	Robb	Wyden

NAYS—49

Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Bryan	Grassley	Reid
Burns	Gregg	Roth
Coats	Helms	Santorum
Cochran	Hollings	Shelby
Cohen	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Johnston	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
Dole	Kerrey	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lott	Warner
Exon	McCain	
Faircloth	McConnell	

The amendment (No. 3780) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3752

The PRESIDING OFFICER. The question occurs on amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

There will order in the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, after the 2 minutes of explanation on this, I will make the motion to table and ask for the yeas and nays.

The PRESIDING OFFICER. The Senate will come to order.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it is appropriate you recognize the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will not make the motion now, but immediately after the 2 minutes of explanation on this amendment, I will make the motion to table and ask for the yeas and nays.

Mr. SIMPSON. Are you asking for the yeas and nays?

Mr. SIMON. I have not made the motion to table because we have not had the final 2 minutes.

I move to table, Mr. President, and I ask for the yeas and nays.

The PRESIDING OFFICER. It would not be appropriate at this time. It will be necessary to wait until the time for debate has expired.

Mr. KENNEDY. Mr. President, can we have order, now? This is an extremely important 2 minutes we are having here on this debate. I think it is probably as important as any issue on the legislation. Members ought to have an opportunity to be heard.

If we could still insist on order in the Senate?

The PRESIDING OFFICER. The Senate will come to order. There will now be 2 minutes of debate equally divided.

The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would say this is an amendment brought by Senators DEWINE, FEINGOLD, INHOFE, MACK, LOTT, LIEBERMAN, NICKLES, and myself. It represents an effort to strike from the bill a verification system that is a Government intrusive system to try to verify employment. In our view it will not succeed, but it will be very costly, costly to employers, costly to employees who will be denied jobs because it is impossible to perfect such a system, costly to the taxpayers to the tune of hundreds of millions of dollars, and costly for reasons that the Senator from Ohio will now address in terms of the need for people to obtain new birth certificates in order to comply with this legislation.

I yield the remainder of my time to the Senator from Ohio.

Mr. DEWINE. Mr. President, this bill says to 270 million Americans that your birth certificate is still valid, but if you ever want to use it, you have to go back to the origin, the place you were born, and get a new federally prescribed birth certificate that this Congress is going to tell all 50 States they have to reissue.

If you get a driver's license at age 16, when you turn 65 and you want Social Security or Medicare, or you get married, or you want a passport, you are going to need your birth certificate, and that birth certificate that you have had all these years no longer is going to be valid for that purpose.

It is very costly. It is a hidden tax, and it is going to be a major, major mistake. It will be something I think, if we vote for it, will come back and we will be very, very sorry.

Mr. SIMPSON. Mr. President, this is the critical test of the legislation. Without effective employer sanctions, the United States will not achieve control over illegal immigration. Without an effective verification system, there cannot be effective employer sanctions. Without more fraud-resistant birth certificates and driver's licenses—this is my California variety, you can get them for 75 bucks—there will never be an effective verification system.

This amendment strips the verification process that was in the bill and strips any ability to deal with the worst fraud-ridden breeder document, which is the birth certificate. I yield.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, Senator SIMPSON is absolutely right. This is the most important vote we are going to have on immigration. It is a question of whether we are going to continue with document abuse or not. That is the basic difficulty in terms of trying to protect American jobs, as well as trying to limit the magnet of immigration, which is jobs. If we deal with that, we are going to stop the magnet of immigration of people coming here illegally.

This is the heart and soul of that program. Otherwise, we are going to continue to get these false documents produced day in and day out. This is the only way to do it. It is a narrow, modest program. If we do not do it now, the rest of the bill, I think, is unworkable.

The PRESIDING OFFICER. All time has expired.

Mr. SIMON. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. ABRAHAM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 46, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—54

Akaka	Exon	Lautenberg
Biden	Faircloth	Levin
Bingaman	Feinstein	Mikulski
Bond	Glenn	Moynihan
Boxer	Gorton	Murkowski
Bradley	Grassley	Nunn
Brown	Gregg	Pell
Bryan	Harkin	Pryor
Byrd	Heflin	Reid
Campbell	Hollings	Robb
Chafee	Inouye	Rockefeller
Cochran	Jeffords	Roth
Cohen	Johnston	Sarbanes
Conrad	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Simpson
Dodd	Kohl	Specter
Dole	Kyl	Stevens

NAYS—46

Abraham	Graham	McConnell
Ashcroft	Gramm	Moseley-Braun
Baucus	Grams	Murray
Bennett	Hatch	Nickles
Breaux	Hatfield	Pressler
Bumpers	Helms	Santorum
Burns	Hutchison	Smith
Coats	Inhofe	Snowe
Coverdell	Kassebaum	Thomas
Craig	Kempthorne	Thompson
DeWine	Leahy	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Feingold	Lugar	Wyden
Ford	Mack	
Frist	McCain	

The motion to lay on the table the amendment (No. 3752) was agreed to.

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

Mr. LEAHY. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, let me commend you on a very forceful and fair procedure during these many months. It has been a rare privilege for me to come to know you better and to know you as a legislator. You are fair, formidable, efficient, and effective. That is not just because of the win and lose issue. I would have said that under either circumstance and meant it. And

Senator DEWINE, dogged and determined. I would not want to be practicing law or doing much more of this with worthy adversaries such as Senator SPENCER ABRAHAM and MICHAEL DEWINE and my friend RUSS FEINGOLD from Wisconsin. I commend them all.

Someone came up to me said, ''Oh, you really are on a roll,'' and I said, ''I have been rolled for 6 months.'' The roll is not always in the eye of the beholder. Win a few, lose a few, and you move on in good camaraderie, good spirit. You are setting that tone as you occupy the chair after a very vigorous debate. You have learned the essence of the Senate: Do your work, give it your best shot, take a shot in the neck and a belt in the head, swallow hard and move on, shake hands with the adversary, and go off, have a great big pop or something else.

Mr. KENNEDY. If I could have 30 seconds, I want to thank all those that participated in that debate and discussion. I think the Members found there were appealing arguments on all sides. I think as we find out on these immigration issues sometimes, when you prevail you are not always right. It has been a constant learning experience because it involves human beings' behavior and trying to predict how people will react to different suggestions and recommendations.

I join Senator SIMPSON and thank all those who are on different sides and those that were on our side for the courtesy and attention they gave to the debate and discussion.

Mr. SIMON. Mr. President, let me just comment, I have frequently said on the floor we are too partisan, excessively partisan. It is true. But this is a case where we discussed the issues, where on one side you had the Simpson-Kennedy leadership, on the other side you had Senator ABRAHAM and Senator FEINGOLD. That is the way it should be on most issues. Very few issues, really, involve party political philosophy. Whether you won or lost on this issue, this is the way legislating ought to take place.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I believe the pending amendment is my amendment No. 3810, is that correct?

The PRESIDING OFFICER. The amendment is now pending.

Mr. SIMON. Mr. President, what this does—and this is not a complicated one—this simply says that we are going to go back to the current law that if someone is disabled under the definition of the Social Security Act, if you are blind or disabled, then the deeming provision does not apply.

The pending bill requires that 100 percent of an immigrant sponsor's income be deemed to the immigrants. Say your sponsor has a $30,000-a-year income; it is totally unrealistic, among other things, to assume that sponsor can provide $30,000 worth of support for the immigrant.

I hope we would keep the current law. I think it is simply sensible and compassionate as well as practical that we not move in this direction. I know my colleague from Wyoming has a slightly different perspective on this. My amendment is supported by the National Conference of State Legislatures, the Natural League of Cities and the National Association of Counties.

Mr. KENNEDY. Mr. President, I commend my colleague and friend for this amendment. I think it is important to note that disabled persons are covered by this amendment only if they become disabled after the immigrants arrive. It is unfair to make the sponsors foot the bill for unforeseen tragedies such as this. No one can predict when disability will strike. It is a very small target, but it will make a very important difference to a number of individuals who are experiencing this type of tragedy. I hope we might be able to see this amendment through and accept it.

Mr. SIMPSON. Mr. President, again, what seems to be so appropriate in immigration matters often has a deeper tenor when we are talking about the blind and the disabled. We all want to respond.

Let me say this: We only make the sponsor pay what the sponsor is able to pay. We are back to the same issue. This is a very singular issue, as were the amendments we voted on last night. The issue is, when you come to the United States of America as a sponsor, you are saying that the immigrant you are bringing here will not become a public charge. That is the law.

If you become disabled or blind and you go to seek assistance, the law provides that if your sponsor has a lot of money, you are going to get the money from the sponsor first. That is what we are going to do. It does not matter what your level of disability; that is the law, or will be the law under this bill. It will be clarified, it will be strengthened, and that is what this is about. We are not saying that we are going to break the sponsor because the person is disabled. If the sponsor has tremendous assets, and you have a disabled or blind person, that sponsor is supposed to keep their promise. Why should he or she not? That was the promise made. Maybe they were not disabled at the time. I understand that. But they become disabled and here they are. Should the taxpayers of America pick that up when the sponsor is financially able to do it?

But there is a little more to this here. The number of ''disabled immigrants'' receiving SSI has increased 825 percent over the last 15 years. That is an extraordinary figure. The number of disabled immigrants receiving SSI has increased 825 percent over the last 15 years. American taxpayers pay over $1 billion every year in SSI payments to disabled immigrants. The purpose of the requirement that immigrants obtain the sponsor agreement is precisely to provide a reasonable assurance to the American taxpayer that, if they need financial assistance, it will come first from the sponsor and not from the taxpayers.

It would actually be more reasonable to provide an exception, I think, here, if the sponsor became disabled and it was impossible for that sponsor to provide the support. Of course, please hear this: If the sponsor has no income, there is no income to deem, and no exception is needed. You do not need to have an exception if the sponsor went broke or if the sponsor cannot afford to do this. Then there we are. The sponsor's income is not deemed, and then the taxpayers pick up the program, pick up the individual. That is where we are.

I urge all of us to remember, as we do these amendments, that they all have a tremendous emotional pull. We have seen the emotional pulls for 11 or 12 days on this floor. But in each of these amendments related to deeming—whether it is blindness, whether it is disability, whether it is veterans, whether it is kids, whether it is senior citizens, whatever, plucks genuinely at your heartstrings—the issue is that none of those people should become the burden of the taxpayers if they had a sponsor that remains totally able, because of their assets, to sustain them. That is it. That is where we are. That was the contract made. That is what they agreed to do, and that is the public charge that we have always embraced since the year 1882, and which we are now trying to strengthen, and believe that we certainly will.

Mr. SIMON. Mr. President, I will take 1 minute in rebuttal. The figures that my friend from Wyoming cites are people, many of whom came here disabled, and so they have ended up on SSI. This applies to people who have become disabled after they have come here. I hope that the amendment will be accepted.

I ask the Senator from Wyoming this. I have another amendment that I am ready with. The understanding is that we will stack the votes, is that correct?

Mr. SIMPSON. No, Mr. President, that is not my understanding. The leader is here. Mr. President, we will work toward some type of agreement if we can either lock things in, and maybe get time agreements. There are not many amendments, actually, left. There are some place-holder amendments. But I cannot say that we will be stacking votes.

Certainly, if you wish to present an amendment and go back-to-back on that, we will certainly do that and maybe have 15 minutes on the first vote and 10 for the second. I think we can get a unanimous consent to do that, with the approval of the leader, at an appropriate time, according to the leader.

Mr. SIMON. Mr. President, if this is acceptable to the Senator from Wyoming, I will ask that we set aside the amendment I just offered so that I may consider a second amendment that I have.

Mr. SIMPSON. That is perfectly appropriate with me, Mr. President.

Mr. SIMON. Mr. President, I ask unanimous consent to set aside my first amendment.

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

AMENDMENT NO. 3813 TO AMENDMENT NO. 3743

(Purpose: To prevent retroactive deeming of sponsor income)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. GRAHAM, Mrs. FEINSTEIN, and Mrs. MURRAY, proposes an amendment numbered 3813 to amendment No. 3743.

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

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

The amendment is as follows:

Strike page 199, line 4, and all that follows through page 202, line 5, and insert the following: ''to provide support for such alien.

''(d) EXCEPTIONS.—

(1) INDIGENCE.—

(A) IN GENERAL.—If a determination described in subparagraph (B) is made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period—

(I) beginning on the date of such determination and ending 12 months after such date, or

(ii) if the address of the sponsor is unknown to the sponsored alien, beginning on the date of such detemination and ending on the date that is 12 months after the address of the sponsor becomes known to the sponsored alien or to the agency (which shall inform such alien of the address within 7 days).

(B) DETERMINATION DESCRIBED.—A determination described in this subparagraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor.

(2) EDUCATION ASSISTANCE.—

(A) IN GENERAL.—The requirements of subsection (a) shall not apply with respect to sponsored aliens who have received, or have been approved to receive, student assistance under the title IV, V, IX, or X of the Higher Education Act of 1965 in an academic year which ends or begins in the calendar year in which this Act is enacted.

(B) DURATION.—The exception described in subparagraph (A) shall apply only for the period normally required to complete the course of study for which the sponsored alien receives assistance described in that subparagraph.

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to any service or assistance described in section 201(a)(1)(A)(vii).

(e) DEEMING AUTHORITY TO STATE AND LOCAL AGENCIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, but subject to exceptions equivalent to the exceptions described in subsection (d), the State or local government may, for purposes of determining the eligibility of an alien for benefits, and the amount of benefits,under any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a State or local government (other than a program of assistance provided or funded, in whole or in part, by the Federal Government), require that the income and resources described in subsection (b) be deemed to be the income and resources of such alien.

(c) LENGTH OF DEEMING PERIOD.—Subject to exceptions quivalent to the exceptions described in subsection (d), a State of local government may impose the requirement described in paragraph (1) for the period for which the sponsor has agreed, in such affidavit or agreement, to provide support for such alien.

Mr. SIMON. Mr. President, this is an amendment that is cosponsored by Senator GRAHAM of Florida, Senator FEINSTEIN of California, and Senator MURRAY of Washington.

This amendment simply makes the deeming provisions prospective. Every once in a while—not often in this body—we retroactively change the law. And three out of four times, we do harm when we do it. This simply says to sponsors that this is going to apply prospectively.

Let me give you a very practical example. Let us say that, right now, because under the present law the only Federal programs that are subject to deeming are AFDC, food stamps, and SSI. Without my amendment, I say to my colleagues here from Michigan, Kansas, New Mexico, and Wyoming, if a student is at a community college and getting student assistance of one kind or another, without this amendment, the sponsor who signed up for 3 years is responsible for 5 years, not just for the three welfare programs, but for any Federal assistance.

I just think that is wrong. We ought to say it is prospectively. And I support Senator SIMPSON in this. Let us make it 5 years, but we should not say we are going back to sponsors who signed up for 3 years, and say, ''Even though you signed up for 3 years, we are making it 5. And you thought you were only going to be responsible for three programs—AFDC, food stamps, and SSI—but you are going to be responsible for every kind of Federal program.''

Let me just add, the higher education community strongly favors my amendment.

I think we ought to move in this direction. I think it is fair. I think, again, three out of four times when this body tries to do something retroactively, we make a mistake. If we go ahead with this retroactively, we are going to make a mistake.

I see my colleague, Senator GRAHAM, on the floor. I believe he wants to speak on this, too.

Mr. SIMPSON. Mr. President, here we are again dealing with the issue of deeming. When I said that my colleagues were persistent, I did not mean to leave out Senator PAUL SIMON of Illinois. In my experience of 25 years knowing this likeable man, I know his persistence is indeed one of his principal attributes.

He is back again with another deeming type of amendment. They are all very compassionately offered. They are carefully thought through. But, again, it is an issue we dealt with last night.

It is true, and he is right; he has found this provision that individuals already in this country will not be the beneficiaries of the new legally enforceable sponsor agreements. They are going to be very strict. We have done a good job on that. The ones that will be required is after enactment.

It is also true that some of them who have been here less than 5 years will nevertheless be subject to at least a portion of the minimum 5-year deeming period. Thus, there could be a case where such an individual would be unable to obtain public assistance because under deeming they neither received the promised assistance from their sponsor nor were able to sue them for support.

But, again, let me remind my colleagues that no immigrants are admitted to the United States if they cannot provide adequate assurance to the consular officer, or to the immigration inspector, that they are not likely become a public charge, making that promise to the American people that they will not became a burden on the taxpayers. If they do use a substantial amount of welfare within the first 5 years, they are subject to deportation under certain circumstances. That is not a swift procedure. It is a thoughtful procedure.

I remind my colleagues again that major welfare programs already require deeming—AFDC, food stamps for 3 years, SSI for 5, even though sponsored agreements are not now legally enforceable. Furthermore, the President's own 1994 welfare bill proposed a 5-year deeming for those programs. This would have applied to those who had only received the sponsor agreement to provide support for 3 years, an agreement that is not legally enforceable.

So I just do not believe it is unreasonable for the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for the first 5 years under all circumstances if the sponsor has the assets. If the sponsor does not have the assets, we will pick them up. We have never failed to do that.

It is only on that basis of assurance that they even came here because they could not have come here if they were to be a public charge.

Regardless of the compassionate aspects of it, that is what we ought to do.

Thank you.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had not intended to speak on this subject, but we have now had about a half dozen amendments on this deeming issue. It seems to me that the Senate has spoken on this issue. Far be it from me to say that our colleagues are infringing

on our patience, but it seems to me this is a very clear issue. The American people have very strong opinions about it. We have voted on it. I do not see what we gain by going over and over and over again plowing this same ground, or in this case dragging this dead cat which smells rank back across the table.

Here is the issue. When people come to America, they get the greatest worldly gift you can get. They have an opportunity to become Americans. I am very proud of the fact that I stood up on the floor of the Senate and fought an effort that was trying to slam the door on people who come to this country legally. I believe in immigration. I do not want to tear down the Statue of Liberty. I believe new Americans bring new vision and new energy, and America would not be America without immigrants. But when people come to America, they come with sponsors, and these sponsors guarantee to the American taxpayer that the immigrant is not going to become a ward of the State.

If you want to know how lousy the current program is, in the last 10 years when we have had millions of immigrants come to America legally, how many people do you think have been deported because they have become wards of the State? In 10 years with millions of legal immigrants, we have had, I understand, 13 people that have been deported. Obviously, the current system is not working.

What the bill of the distinguished Senator from Wyoming says is simply this: When you sign that pledge that you are going to take care of these people until they can take care of themselves, we expect you to live up to your promise. We expect you to use your energy and your assets to see that the person you have sponsored does not become a burden on the taxpayers.

So what the bill does, in essence, is count the sponsor's income and the sponsor's assets as yours for the purpose of your applying for welfare.

It seems to me that we do not have anything to apologize about in giving people the greatest worldly gift you can get, and that is becoming an American. I do not think we ought to have any deviations, period, from this whole deeming issue. If you come to America, you have a sponsor. They say they are going to take care of you. If things go wrong, we ought to go back on their assets.

But this idea that there ought to be some magic things that we are going to exempt—and we have seen all of these real tear-jerkers about, you know, in this particular case, or that particular case—this is a principle where I do not think there ought to be any particular cases.

If people want to come to America, let them come to America, but let them come with their sleeves rolled up ready to go to work. Do not let them come with their hand out. If you want to live off the fruits of somebody else's labor, go somewhere else; do not come to America. But if you want to come here and build your dream and build the American dream and work and struggle and succeed as the grandparents of most of the Members, the parents of most of the Members of this body did, welcome. We have too few people who want to come and work and build their dream.

But I think we pretty well settled this whole deeming issue. I think we ought to get on with it. This is now a good bill. We have spoken. I think we are at the point where people are ready to vote. I think after a half dozen votes on this issue that, ''Well, you are exempt from deeming if you are going to church to say a prayer and you trip and you break your back''—I mean, I think we have established the principle. I do not think we have to go on plowing this ground over and over again.

The American people want people to come to work. They do not want people to come to go on welfare. We have a provision in the welfare bill that is even stronger than the deeming provision in this bill. Maybe we could have a vote that says under any circumstances except divine intervention that we stay with the provisions. We could vote on it and be through with it.

Mr. SIMON. Will the Senator from Texas yield?

Mr. GRAMM. I am happy to yield.

Mr. SIMON. My friend talks about the contract you sign. What I want to do is say the United States, which signs the contract with the sponsor, will live up to its side of the contract. That contract right now is for 3 years for every sponsor. I am for moving to 5 years but doing it prospectively. This bill says to the people who signed the contract that Uncle Sam has changed his mind. He is going to make you responsible for 5 years when you sign for 3 years.

Does the Senator from Texas think that is fair?

Mr. GRAMM. Let me respond by saying that I believe that when we are talking about people coming to America, that is a great deal. I do not think we have to second-guess it by saying that we are going to try to see that after so many years you can get welfare. I personally believe that until a person becomes a citizen, they ought not to be eligible for welfare. I am for a stronger provision than the Senate has adopted. I do not think immigrants should be eligible for welfare until they become citizens and, therefore, under the Constitution must be treated like everybody else, because under the Constitution there can be no differentiation between how they are treated as a natural-born American or nationalized. There is only one difference, and that is you cannot become President.

But here is the point. I think that ought to be the provision. That is not even what we are talking about here. We are talking about something much less, and that is the deeming provision. The point I am making is this:

The point I am making is this. We have voted on this thing a half a dozen times. I wish we could come up with every story or manipulation or hardship that we could get, put it all into one and vote on it and settle it. That is all I wish to do.

Mr. SIMON. First of all, the Senator does not understand the amendment, obviously.

Mr. GRAMM. No, I understand the amendment perfectly.

Mr. SIMON. The Senator then did not respond to my question. The question is whether Uncle Sam is going to live up to his contract. We say to the sponsors you are a sponsor for 3 years. Now we come back with this legislation and say, sorry, we are changing the contract. You thought you signed up for 3 years. We are going to make it 5 years.

I think that is wrong.

Mr. GRAMM. Would the Senator, if he wants to change the provision, change it to say that immigrants are not eligible for welfare or public assistance until they become citizens?

Mr. SIMON. We already have a provision in here for 5 years. That is not the issue. The issue is, are we going to go back, on this amendment, retroactively and say to sponsors, sorry, Uncle Sam is not going to live up to his word; we are changing your contract from 3 years to 5 years.

I think I know the Senator from Texas well enough—and, incidentally, he has had a lot more amendments on this floor than the Senator from Illinois over the years.

Mr. GRAMM. I do not think so today.

Mr. SIMON. Not today.

Mr. GRAMM. I object to amendments I am not participating in today.

Mr. SIMON. I am not complaining about the Senator from Texas offering too many amendments. But the question on this amendment—

Mr. GRAMM. Reclaiming my time, Mr. President. Let me just make a point on the deeming issue. The only point I wanted to make is this. We have had a half a dozen votes on it. The outcome has been the same each time, and each time we have had a new amendment we have had some new sob story where we picked out a little blue-eyed girl 3 years old or younger or something.

I am just saying I would like to settle the issue. I think the Senate has decided on the deeming issue, and I think the decision that we have made is you ought not to be able to come to America as an immigrant to go on welfare. We are having to go about that in different ways through different bills. My point is I do not know what the seventh or eighth or ninth amendment is going to do. I hope we will defeat these amendments decisively and get on with passing a bill that the American public wants.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wish to say to Senator GRAMM, first, I am

totally, fully aware of the Senator's commitment to legal immigration, and I have personally told the Senator that I saw his speech in the Chamber which had some personal aspects of the Senator's views because of his family, because of his wife and her family.

I have told the Senator of mine. Both of mine came over as little kids to Albuquerque from Italy. I was very lucky. I always say the only good thing about the farm programs of Italy at the turn of the century was they were so awful that kids like my folks could not make a living and so they sent them to America.

That is true. In my dad's family were six kids, and they had enough acreage, why, for 50 years before that they could all make a living. But as bureaucracies grow, they had a farm policy, and they could not make a nickel. So thank God for bad farm policy in Italy. That is why I am here.

From our earliest days, we did not intend that aliens be public charges. This is not today. This is America when we accepted millions that made America great. We had a philosophy that the public money would not be used for aliens.

Now, that is not a mean, harsh policy. It is a reality. And I am telling you what has happened. If it was a reality of the philosophy of America in the early days, what has happened to it today is that nobody paid attention to the programs that they were applying for, so that Medicaid has, it is estimated, up to $3 billion—it could be that high—being paid to people who are aliens. That is $3 billion of public charge when we probably never really intended it, for all of these did not come in after deeming periods. Everybody knew the deeming periods and all that were irrelevant.

Why did they know that? The Senator just stated it. Nothing happened to them if they violated them. I had them on the witness stand. I asked INS, ''Could you enforce these?'' ''No, we cannot enforce them.'' I said, ''Do you think there are only 13?'' There are 1.2 million aliens on one program—1.2 million people. I said, ''Could you enforce it? Could there be 500 of them that are illegal?'' I said, ''I think probably there are 600,000 that should not be on there.'' I think that might be so.

So I do not think this is an issue of changing the contract. In fact, this is a whole new concept about deeming the resources of a sponsor liable for an alien before the citizens of America under taxes pay for it. And it is pretty patent to me that to say everything stays just like it is for the past is just not fair to the American people.

We are talking about it is unfair to some certain patrons. We are still saying—this bill is very generous because what it says is, if a sponsor does not have the money, they are back on public charge.

Did the Senator know that?

That is different than we were thinking of. That is a generous act on the part of the chairman, saying, well, OK, if the ward does not have any money, then it does not do much good to deem them; they cannot pay for it.

That is pretty generous. That is a whole new act of generosity on the part of America, if that becomes law.

Now, I would say it is fair because if you do not want that new act of generosity, then maybe we will go back to the old one. But you can count on it: Up to the deeming period, we will not pay for you whether your sponsor runs out of money or not because that was the law, albeit never enforced.

So I think there are things on both sides of that scale of fairness, and, frankly, from my standpoint, I have been through so many efforts to cut back programs that Americans get angry at us about that are programs for Americans that I thought we had to come here as budgeteers—the Senator worked at it with me, I say to the senior Senator from Texas. We are over here saying, look, we cannot afford education money, we cannot afford this. Why, here we have $3 billion maybe, $1 to $3 billion in Medicaid going to aliens. And I am not sure the public even knows that. Where should we save first? It seems to me we should save by passing this bill. That is what I think.

I yield the floor.

Mr. SIMPSON. I thank the Senator and Senator GRAMM.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. I thank the Chair.

Let me review where we are and where the leader would like us to be. We have the Simon amendment and two Graham amendments, Senator GRAHAM of Florida, and Senator FEINSTEIN will modify her amendment. Senator KYL and she have resolved any difficulty there. We will take that.

We would like to proceed with debate and try to have votes stacked around 7 or 7:30, if we could proceed with gusto, and I will try to do that, too. It is very difficult. But that would be the pattern, if there is further debate. And I concur with Senator GRAMM. It is about deeming, and we have addressed that last night and we will address it again today.

Just remember one thing. We did not like this before. A few years ago, we voted to extend deeming from 3 to 5 years for SSI, and we did that to achieve savings for an extension of unemployment benefits. We did not ask the sponsors. We just extended the deeming period, and we have done that in the past.

I think those would be my final remarks on that. I wonder if we might—unless there is some further discussion of that amendment, if we might set that aside and go to Senator GRAHAM.

Mr. GRAHAM. Mr. President, I wish to speak in support of the amendment of the Senator from Illinois.

Mr. SIMPSON. I see.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, we had a lot of rhetoric, expressions of what we might have fantasized reality was, what we thought it might be; words like ''we expect you to live up to your promise.'' All of those are patriotic, soaring statements, which have little to do with the reality of the amendment that the Senator from Illinois has offered.

What is the reality today, of the requirement of sponsors to their legal alien sponsoree, who is in the United States? As the Senator from Illinois has pointed out, we Members of Congress have looked at all the programs that we might wish to require deeming to apply to, that is to require the sponsor's income to be added to the alien's income in determining the alien's eligibility for programs. What have we decided? We have decided we will require deeming for SSI, supplemental Social Security income, which primarily affects older aliens; we will require deeming for food stamps; and we will require deeming for aid to families with dependent children.

We could have passed deeming for Medicaid, we could have passed deeming for college Pell grants and guaranteed Federal loans, we could have passed deeming for weatherization and heating for low-income people, we could have passed deeming for any one of the hundreds of programs the Federal Government has that requires some form of means testing in order to be eligible. But we decided thus far not to do so, but to limit it to those three programs. As the Senator from Illinois has pointed out, in two of those three programs the deeming period is 3 years, not the 5 years that is being suggested here today.

But I think even more powerful is the fact that this Congress has known for a long, long time that the courts have held the current application, the affidavit signed by the sponsor, to be legally unenforceable. Let me read a paragraph from a letter from the office of the Commissioner of INS on the issue of what is the enforceability of these affidavits that sponsors sign. To quote from the letter:

> In at least three States, however, courts have held that an affidavit of support does not impose on the person who signs it a legally enforceable obligation to reimburse public agencies and provide public assistance to an alien.

The letter then cites a case, San Diego County versus Viarea, from the California court, a 1969 opinion; the Attorney General versus Binder, an opinion from the State of our Presiding Officer, from 1959; California Department of Mental Hygiene versus Reynault, a case from 1958; another case from New York dated 1959.

The letter goes on to state,

> The Michigan Supreme Court has also held that Michigan public assistance agencies may not consider the income of a person who executed an affidavit of support to be an alien's income in determining the alien's eligibility for State public assistance programs.

That is a 1987 Michigan case, despite the fact that this income deeming is permitted in determining eligibility for food stamps.

Finally, the Missouri Court of Appeals has held that an affidavit of support does not create an express or implied contract for the payment of child support on behalf of a child adopted by a former spouse. That is a 1992 opinion.

Mr. President, I cite these cases, not with the spirit of support but of the cold reality that this is the state of the law. So a person who has sponsored an alien to come into the United States today has had the legal expectation of the unenforceability of that affidavit and this Congress has, at least since 1958, been aware that courts were ruling thus and has not, until the action of the Senator from Wyoming, taken steps to make these affidavits enforceable.

So the consequence of applying this new standard retroactively is going to be to substantially change the expectation of both the legal alien and the legal alien's sponsor, because now we are about to say that an affidavit which the courts have consistently ruled to be unenforceable, we are going to breathe life into that affidavit and we are going to expand that affidavit to cover an indeterminate number of programs for which there is some Federal financial involvement.

Mr. President, I do not disagree with the thrust of the idea that we ought to be making these affidavits financially responsible, that we ought to make them documents which have some legal enforceability. I am concerned about the reach that we are about to apply to the number of programs, but that is for another debate. But I think it is patently unfair to now say we are going to retroactively go back and make affidavits that have been unenforceable, enforceable, and expand them to an indeterminate number of programs.

The argument for doing so, for reaching back retroactively, is that, ''We have two people who can pay. We have one person who can pay who is the sponsor. We have the other person who can pay who is the Federal taxpayer. It is better to force the sponsor to pay even if we do it in derogation of the understandings when the sponsor signed the affidavit, than it is to continue to ask the Federal taxpayer to pay.'' I suggest that is a false analysis of what is really going to happen. What is really going to happen is not that the sponsor is going to pay retroactively, because I do not think we can legally breathe life into a currently unenforceable affidavit. And I do not think the Federal taxpayer is the party that is at final risk.

I suggest what is really going to happen is what the National Conference of State Legislators has said. What really is going to happen is what the National Association of Counties has said. What is really going to happen is what the National League of Cities has said. What is really going to happen is what the National Association of Public Hospitals and Health Systems has said. What is really going to happen is what Catholic Charities USA has said. And that is that there is going to be a massive transfer of responsibility to the communities and States, and they will be asked to pick up these costs.

The most dramatic example of that is going to be in the area of health care. In the field of health care, we have the anomaly that, by Federal law, public hospitals are required to treat anybody with an emergency condition. By laws that we passed, they are prohibited from asking a person seeking emergency assistance, what is your income? What is your financial capability? So we are going to be encouraging people to get sick enough to come in and use the emergency rooms at the local hospital and then, with no one to pay and with the Federal Government no longer picking up part of the cost through Medicaid, they will become a massive burden on those hospitals and on the communities which support those hospitals.

The further irony of this is, this is going to be occurring in communities which are already paying a substantial burden because of the Federal Government's failure to enforce its immigration laws and to have provided adequately for the impact of these large populations. I know it well in my own State, which is one of the States that is particularly at risk under this proposal. Dade County, FL, Miami, has had one of the fastest if not the fastest growing urban school systems in America in the last 10 years, primarily because of the massive numbers of nonnative students who have entered that school system. It has stretched the system to the breaking point.

Now we are about to say in this bill that the Federal Government will provide less support to the education system of that and other stressed counties, and that the Federal Government will restrict the funding for individuals who would otherwise be eligible for these programs, retroactively, so that those costs will now become an additional burden of those already overburdened communities.

I think, Mr. President, in the fundamental spirit of fairness to all concerned, and specifically to those communities that have already paid a heavy price, that it is only fair and proper that we make this change of rules be prospective. Let us apply it to those people who come from the enactment of this bill forward, who come with the understanding that they are signing an affidavit, if they are a sponsor, that will be legally enforceable; that they will know if they are coming as a legal alien what they are going to be able to expect once they arrive here.

I think it is patently unfair to change the rule for thousands of people who are already here and then to have us, essentially, transfer this financial responsibility to the communities in which they happen to have chosen to live.

So, Mr. President, I urge in the strongest terms the support of the amendment of the Senator from Illinois, because without his amendment, I think this legislation carries with it the fatal flaw of fundamental unfairness.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I think we have perhaps completed the debate on that amendment and we might set that aside and proceed to—my friend from Massachusetts is not here.

Is there a second Graham amendment? Does the Senator from Florida have any idea as to the time involved in the presentation of this amendment? May I inquire, Mr. President, of the Senator from Florida if he has any idea where we are, because so many people are involved—apparently there is an Olympics banquet, many awards banquets. Many people have asked for a window. I am perfectly willing to stand right here until midnight and finish this bill. I would do that. If we can get an idea of time, that would be very helpful.

Mr. GRAHAM. Mr. President, in response to the question of the Senator from Wyoming, the time to present this amendment, which is amendment No. 3764, will be approximately 15 to 20 minutes.

Mr. SIMPSON. I thank the Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the pending amendment of the Senator from Illinois be set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is temporarily set aside. The Senator from Florida is recognized.

AMENDMENT NO. 3764 TO AMENDMENT NO. 3743

(Purpose: To limit the deeming provisions for purposes of determining eligibility of legal aliens for Medicaid, and for other purposes)

Mr. GRAHAM. Mr. President, I call up amendment No. 3764.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 3764 to amendment No. 3743.

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

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

The amendment is as follows:

On page 201, strike lines 1 through 4 and insert the following:

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to—

(A) any services or assistance described in subsection 201(a)(1)(A)(vii); and

(B) in the case of an eligible alien (as described in section 201(f)(1))—

(i) any care or services provided to an alien for an emergency medical condition, as defined in section 1903(v)(3) of the Social Security Act; and

(ii) any public health assistance for immunizations and immunizable diseases, and for the testing and treatment of communicable diseases.

(4) MEDICAL SERVICES FOR LEGAL IMMIGRANTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the eligibility for medical assistance under title XIX of the Social Security Act (other than services for which an exception is provided under paragraph (3)(B))—

(i) the requirements of subsection (a) shall not apply to an alien lawfully admitted to the United States before the date of the enactment of this Act; and

(ii) for an alien who has entered the United States on or after the date of enactment of this Act, the income and resources described in subsection (b) shall be deemed to be the income of the alien for a period of two years beginning on the day such alien was first lawfully in the United States.

Mr. GRAHAM. Mr. President, the underlying bill, S. 1664, for the first time would deny to legal immigrants—legal immigrants—access to Medicaid through newly federally imposed or mandated deeming requirements. This prohibition, as the discussion of the amendment of the Senator from Illinois has indicated, will apply both prospectively, to persons who arrive after this bill is enacted, and retroactively, to legal aliens who are already in the country.

My amendment changes the deeming period for Medicaid to 2 years. It eliminates the retrospective nature of this provision, and it would apply these provisions to future immigrants and provide for an exemption for emergency care and public health.

So to restate what the amendment does, the amendment changes the deeming period for Medicaid to 2 years. Second, it eliminates the retroactive nature of the legislation in the same way that the amendment of the Senator from Illinois would do to all of the deemed programs. It would apply these provisions prospectively to future legal aliens, and it would provide an exemption for emergency care and for public health.

This amendment is supported by the National Conference of State Legislators. It is supported by the National Association of Counties. It is supported by the National League of Cities. It is supported by the United States Conference of Mayors. It is supported by the National Association of Public Hospitals. It is supported by the American Public Health Association. It is supported by the National Association of Community Health Centers. It is supported by Interfaith, by the Catholic Charities USA and the U.S. Catholic Conference. It is supported by the Council of Jewish Federations, the Lutheran Immigration and Refugee Services and the Evangelical Lutheran Church of America.

Mr. President, I offer this amendment today which I consider to be a substantial improvement of this bill. It is a substantial improvement by recognizing the fact that health services are different from other benefits that a legal alien might seek.

While I strongly support the idea that sponsors should be required to provide housing, transportation, food, cash assistance to legal aliens who they have sponsored, legal aliens and the sponsor would be unable to provide for themselves, for whatever reason, reasonable access to the health care which unpredictable illness and debilitating disease or injury might impose.

Unlike cash assistance, housing or food, health care must be provided by a qualified professional, tailored to the specific diagnostic and treatment needs. Ultimately, no amount of hard work and personal responsibility can protect an immigrant or anyone else from illness or injury.

My proposal would be to deem Medicaid for 2 years. That is, for the first 2 years that the legal alien is in the United States, the income of the sponsor will be deemed to be that of the alien.

This is a reasonable compromise with what I hope will have bipartisan support. It would not exempt Medicaid from deeming altogether. Instead, it would create a 2-year deeming period for the Medicaid Program alone.

As a result, this amendment eliminates the magnet, the draw or incentive to come to the United States in order to receive medical care, especially since an immigrant cannot plan to get sick 2 years in advance.

However, it does recognize that in the long run, health care is different from other benefits. This amendment also recognizes and attempts to alleviate the tremendous other burdens, cost shifts, unfunded mandates and public health problems which potentially could be caused by S. 1664.

What are some of these potential problems?

First, cost shifting. The Medicaid provisions in S. 1664 are currently nothing more than a cost shift to States, local governmental units and our Nation's hospital system. Simply put, if people are sick and cannot afford to pay for coverage for some of the most disabling conditions, someone will absorb the cost.

The question is whether the Federal Government will pay a portion of that cost, or will such costs be shifted entirely to those States and local governments and hospitals where legal aliens will seek those services?

As the National Conference of State Legislatures, the National Association of Counties and National League of Cities wrote in an April 24, 1996, letter:

> Without Medicaid eligibility, many legal immigrants will have no access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics in States and localities would incur increased unreimbursed costs for treating legal immigrants.

The National Association of Public Hospitals, in their April 12, 1996, letter added:

> The [National Association of Public Hospitals] opposes a deeming requirement for Medicaid. It will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals. * * *

The Congressional Budget Office estimates that the effect of this bill's current provision will be to reduce Federal reimbursement for such Medicaid costs by $2.7 billion. This is nothing more than a massive cost shifting to the States and local governments in which these legal aliens reside.

The bill's deeming provisions, in addition to being nothing more than a huge cost-shift to State and local governments, will also impose an administrative burden and a huge unfunded mandate on State Medicaid programs. In light of a series of calls throughout the year by the Nation's Governors, the administration and this Congress have been asked to provide States with greater flexibility to more efficiently administer their Medicaid programs. This provision is incredibly ironic and in sharp contrast to everything that we have been discussing in Medicaid policy over the last 2 years.

For a Medicaid case worker, who already has to learn the complex requirements of the Medicaid program, he or she now must also learn immigration law. As a study by the National Conference of State Legislatures notes, this would require an extensive citizenship verification made for all applicants to the Medicaid Program.

According to the Conference of State Legislatures:

> These [deeming] mandates will require States to verify citizenship status, immigration status, sponsoring status, and length of time in the U.S. in each eligibility determination for a deemed Federal program. They will also require State and local governments to implement and maintain costly data information systems.

In addition to all these costs, States will have infrastructure training and ongoing implementation costs associated with the staff time needed to make these complicated deeming calculations. The result will be a tremendously costly and bureaucratic unfunded mandate on State Medicaid programs.

This bill also threatens our Nation's public health. Residents of communities where legal aliens live would face an increased health risk from communicable diseases under this provision of the bill because immigrants would be ineligible for Medicaid and other public health programs designated to provide early treatment to prevent communicable disease outbreaks.

Such policies have historically and consistently had horrendous results. For example, in 1977, Orange County, TX, instituted a policy that required people to prove legal status or be reported to the Immigration and Naturalization Service when requesting service at any county health facility.

As noted by El Paso County Judge Pat O'Rourke, in a letter dated September 24, 1986:

. . . within eighteen months, the county experienced a 57 percent increase in extrapulmonary tuberculosis, a 47 percent increase in salmonella, a 14 percent increase in infectious hepatitis, a 53 percent increase in rubella and a 153 percent increase in syphilis.

The judge cites a 1978 report by the Task Force on Public General Hospitals of the American Public Health Association in saying:

Hence, what was a simple condition requiring a relatively small expense became a large matter adversely affecting all taxpayers.

In an analysis of the potential health impacts of S. 1664, the bill before us this evening, conducted by Dr. Richard Brown, the president of the American Public Health Association and director of the University of California at Los Angeles Center for Health Policy Research, Dr. Brown states:

In a study of tuberculosis patients in Los Angeles, more than 80 percent learned of their disease when they sought treatment for a symptom or other health condition, not because they sought a TB screening. Yet [S. 1664] would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers.

Dr. Brown concludes:

Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of the infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

In the interest of our Nation's public health, why, Mr. President, why would we wish to take such an unnecessary risk?

In addition, the Medicaid deeming provisions, by creating a obstacle to preventive health services, will result in certain cases of immigrants resorting to emergency room care. Health care costs will thus be more expensive.

This would further strain the already overburdened and underfunded emergency and trauma care facilities across the country, particularly in our Nation's urban centers. Without reimbursements, such hospitals will be forced to consider shutting their emergency room doors for all residents of the county, affecting all residents, immigrants or otherwise.

For example, Jackson Memorial Hospital in Miami estimates that its uncompensated care costs for fiscal year 1995 for undocumented immigrants was $45.8 million. To repeat, for 1995, in that one public hospital, Jackson Memorial in Miami, the cost in uncompensated care for undocumented aliens was $45.8 million. An additional $60 million in uncompensated care costs was attributed by Jackson Memorial Hospital to legal aliens in the community. However, they currently do receive some reimbursement for care to legal aliens through private health care plans and Medicaid. Without the Medicaid payments, total uncompensated costs will grow and require the local community to either raise its taxes or consider reducing hospital services.

In addition, by reducing access of pregnant immigrant women to prenatal care and nutrition support programs, the health of the U.S.-citizen infants will be threatened. The National Academy of Sciences' Institute of Medicine estimates that for every $1 spent on prenatal care, there is a $3 savings in future medical care for low birthweight babies. Denying prenatal and well-baby care to an immigrant only threatens the life of her U.S.-citizen child. Mr. President, that makes absolutely no sense. In fact, it is neither cost effective nor in the interest of public health.

Another concern raised by Catholic Charities USA is the potential for increased abortions as a result of S. 1664.

To quote from the Catholic Charities U.S.A.,

The most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than to carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1,000 deposit at a hospital for labor and delivery.

In summary, as currently drafted, S. 1664 would have the following negative consequences: It shifts costs to States, local governments, and hospitals. It imposes an administrative unfunded mandate on State medicaid programs. It threatens the Nation's or the public's health. It is not cost effective and it may lead to an increase in abortions.

My amendment would help address these problems. Therefore, it is supported by the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, U.S. Conference of Mayors, the National Association of Public Hospitals, the American Public Health Association, the National Association of Community Health Centers, InterHealth, Catholic Charities U.S.A., and the U.S. Catholic Conference, the Council of Jewish Federations, Lutheran Immigration and Refugee Services, and Evangelical Lutheran Church of America.

Mr. President, I ask unanimous consent to have printed in the RECORD immediately after my remarks statements by several of these organizations in support of this amendment.

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

(See exhibit 1.)

Mr. GRAHAM. Mr. President, I close by saying that I regret we have had to consider so many amendments that related specifically to the provisions in this bill that will apply retroactively and prospectively the income of a sponsor to the income of a legal alien—I emphasize legal alien—for purposes determining eligibility for means-tested programs.

Mr. President, if you represent the concerns of the millions of Americans who are represented by these organizations, if you understand the pragmatic reality of what we are about to do both to individuals and to the communities in which they live, and to the taxpayers in the communities and States in which you live, you would understand why there have been so many amendments offered on this subject.

I believe that the amendment which I have offered is a reasoned middle ground. By setting a 2-year deeming provision it would give us assurance that no one would come to this country with a specific condition—whether that be pregnancy or a known medical infirmity—in order to receive U.S. taxpayer-financed medical service. Very few people are prophetic enough to know what their condition is going to be 24 months from now. By providing that this will be prospective, all persons who come into this country from this point forward, from the enactment of this bill forward, will know under what conditions they will be entering this country.

By exempting those programs that affect the public health and relate to emergency care, we will be recognizing the fact that those steps are not just for the benefit of the individual but they are for the benefit of the broad public with its interest in continuing to have access to emergency facilities and to be saved from having unintended access to communicable diseases.

Mr. President, I believe this is a constructive amendment which deals with serious issues within this legislation. I urge its adoption.

EXHIBIT 1

NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES

April 24, 1996.

DEAR SENATOR: The National Conference of State Legislatures (NCSL), the National Association of Counties, (NCAo), and the National League of Cities (NLC) are very concerned about unfunded mandates in S. 1664, the Immigration Control and Financial Responsibility Act of 1996 that would be an administrative burden on all states and localities. We urge you to support a number of amendments that will be offered on the Senate floor to mitigate the impact of these mandates on, and cost shifts to, states and localities.

S. 1664 would extend ''deeming'' from three programs (AFDC, SSI and Food Stamps) to all federal means-tested programs, including foster care, adoption assistance, school lunch, WIC and approximately fifty others. As you know, ''deeming'' is attributing a sponsor's income to the immigrant when determining program eligibility. It is unclear what ''all federal means-tested programs'' means. Various definitions of the phrase

''federal means-tested programs'' would include a range of between 50–80 programs. Furthermore, regardless of the size of their immigrant populations, this mandate will require all states to verify citizenships status, immigration status, sponsorship status, sponsor's income and length of time in the U.S. in each eligibility determination for ''all federal means-tested programs.'' NCSL estimates that implementing deeming restrictions for just ten of these programs will cost states approximately $744 million. Extending deeming mandates to over 50 programs garners little federal savings and should be eliminated as part of the Congressional commitment to eliminating cost shifts to state and local budgets and taxpayers.

Therefore, we urge you to support Senator Bob Graham's effort to raise a point of order against S. 1664 based on its violation of P.L. 104–4, the Unfunded Mandates Act of 1995. This is a critical test of your commitment to preventing cost-shifts to, and unfunded administrative burdens on, states and localities. We also urge you to support subsequent amendments that will reduce the scope of the deeming provisions and limit the administrative burden on states and localities. These include:

Senator Graham's amendment giving deeming mandate exemption to: 1) programs where deeming costs more to implement than it saves in state or local spending; or 2) programs that the federal government does not pay for the administrative cost of implementing deeming. This ensures that new deeming mandates are cost effective and are not unfunded mandates.

Senator Graham's amendment substituting a clear and concrete list of programs to be deemed for the vague language in S. 1664 requiring deeming for ''all federal means-tested programs.'' This amendment ensures that Congress, and not the courts, will decide which programs are deemed.

Senator Kennedy's amendment conforming Senate deeming exemptions to those accepted by the House in H.R. 2202.

In addition, we urge you to support other amendments that would temper the unfunded mandates in S. 1664 and relieve the administrative burden on states and localities. We are especially concerned about the impact of extending the deeming requirements to the Medicaid program. Without Medicaid eligibility, many legal immigrants will not have access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics and states and localities would incur increased unreimbursed costs for treating legal immigrants. We support the following compromise amendment to preserve some Medicaid eligibility for legal sponsored immigrants.

Senator Graham's amendment to limit Medicaid deeming to two years.

We strongly support amendments to exempt the most vulnerable legal immigrant populations from deeming requirements. We urge you to support the following amendments that will preserve a minimal amount of federal program eligibility for the neediest legal immigrants and protect states and localities from bearing the cost of these services.

Senator Kennedy's amendment exempting children and pre-natal and post-partum care from Medicaid deeming restrictions.

Senator Simon's amendment exempting immigrants disabled after arrival from deeming restrictions.

Senator Leahy's amendment exempting immigrant children from nutrition program deeming.

Finally, we firmly believe that deeming restrictions are incompatible with our responsibility to protect abused and neglected children. Courts will decide to remove children from unsafe homes regardless of their sponsorship status and state and local officials must protect them. Deeming for foster care and adoption services will shift massive administrative costs to states and localities and force them to fund 100% of thee benefits. We urge you to support the following amendments to protect states and localities from this cost shift.

Senator Murray's amendment exempting immigrant children from foster care and adoption deeming restrictions.

Senator Wellstone's amendment exempting battered spouses and children from deeming restrictions.

We appreciate your consideration of our concerns and urge you to protect states and localities from the unfunded mandates in S. 1664.

Sincerely,

JAMES J. LACK,
New York Senate, President, NCSL.
DOUGLAS R. BOVIN,
Commissioner, Delta County, MI, President, NACo.
GREGORY S. LASHUTKA,
Mayor, Columbus, OH, President, NLC.

CATHOLIC CHARITIES USA SUPPORTS THE ELIMINATION OF THE MEDICAID ''DEEMING'' REQUIREMENT INCLUDED IN THE IMMIGRATION REFORM BILL

S. 269 currently requires that the income and resources of a legal immigrant's sponsor and the sponsor's spouse be ''deemed'' to the income of the legal immigrant when determining the immigrant's eligibility for all means-tested federal public assistance programs, including Medicaid. The deeming period would be a minimum of 10 years (or until citizenship).

Catholic Charities USA supports the elimination of the Medicaid deeming requirement for two main reasons. First, requiring deeming for the Medicaid program ignores the dichotomy between medical services and other need-based assistance that Congress has followed since the inception of Medicaid. For over 30 years, Congress has treated Medicaid benefits for legal immigrants in a fundamentally different fashion than other federal benefits programs. Historically, Congress has never required deeming for Medicaid, recognizing that no level of hard work and personal responsibility can protect someone from illness and injury, and that payments for medical care are significantly higher and more unpredictable than payments for other necessities. In addition, although an immigrant's sponsor or other charitable individual may be able to share food and shelter—and even income to a certain extent—a person cannot share his or her medical care. Unlike housing or food, health care must be provided by a qualified professional and must be tailored to a person's specific health needs. In this sense, Medicaid is substantively different than other needs-based assistance. S. 269 would end Congress' longstanding recognition of the special nature of Medicaid.

Second, the Medicaid deeming requirement will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals and other providers who treat large numbers of low-income patients. Although the bill would require the sponsor to agree, in a legally enforceable affidavit of support, to financially support the immigrant, many sponsors may nevertheless be unable to finance the health care costs of the immigrants, many sponsors may nevertheless be unable to finance the health care costs of the immigrants they sponsor.

Finally, it should be noted that in order to qualify for Medicaid coverage an individual must not only be very poor but in addition must qualify under one of the vulnerable categories that include pregnant women, children, the elderly, and people with disabilities. Therefore, because of the strict eligibility requirements for the Medicaid program, legal immigrants who do qualify for coverage are very limited in number and extremely vulnerable.

For these reasons, Catholic Charities USA supports the elimination of the deeming requirement for Medicaid. Should the elimination of deeming for Medicaid prove unworkable in the current political context, we would support an amendment to limit Medicaid deeming to the shortest time period possible.

MEDICAID ''DEEMING'' FOR LEGAL IMMIGRANTS SHOULD BE LIMITED TO TWO YEARS

The Immigration Control and Financial Responsibility Act (S. 1664), which is scheduled for Senate floor action on April 15, proposes harsh new restrictions on immigrants who are in this country legally. The bill denies Medicaid for a minimum of ten years, or until citizenship, for immigrants who have come to this country, worked hard, paid taxes, and in every respect ''played by the rules.'' The bill does this through a mechanism called ''deeming.''

How Deeming Works: To be eligible for Medicaid, an individual must have sufficiently low income to qualify. Deeming is a process where by a person's income is ''deemed'' to include not only is or her own income, but also income from other sources. S. 1664 requires a legal immigrant's income to be deemed to include the income of the immigrant's sponsor and the sponsor's spouse. In addition, the immigrant's income is ''deemed'' to include the value of the sponsor's resources, such as the sponsor's car and home. Although a legal immigrant could well qualify for benefits based on his or her own resources, many immigrants will effectively be denied Medicaid because of their sponsor's income and resources.

Catholic Charities USA opposes Medicaid deeming for the following reasons:

The Risk of Increased Abortions: To most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1000 deposit at a hospital for labor and delivery.

Medical Needs are Unpredictable and Impossible to ''Share:'' If an immigrant cannot provide for him or herself S. 1664 requires that a sponsor provide housing, transportation, food, or even cash assistance in some circumstances. Although Catholic Charities USA opposes these extensions of current law, we acknowledge a distinction between these forms of assistance and the specific area of medical care. Unlike housing or food, health care must be provided by a qualified professional and tailored to a persons's specific diagnostic and treatments needs. Although a citizen may have enough income and resources to qualify as a sponsor, the sometimes expensive and often unpredictable nature of medical care may limit the sponsor's

ability to finance a sudden and drastic emergency.

Early Diagnosis and Treatment is Less Expensive Than Emergency Care: Basic preventative and diagnostic services treat conditions inexpensively before they become aggravated. If such services are denied, relatively unthreatening illnesses may turn into emergencies to be treated with much more expansive and expensive means. For example, $3 is saved on average for every $1 spent in prenatal care. Moreover, if a legal immigrant is denied prenatal services, her child may be born with serious conditions that will last an entire lifetime. These children, born to legal immigrants, are citizens who will be eligible for Medicaid.

The Cost of Denying Care is an Unfunded Mandate to be Borne By Local Hospitals and Communities: Public hospitals in local communities are required to treat anyone with emergency conditions. If legal immigrants are denied medical services and forced to let their illnesses deteriorate, local hospitals eventually will be required to treat them as emergencies. Since public hospitals are funded by local taxpayers, this policy represents an enormous cost-shift from the federal government onto state and local entities. Although designed to reduce federal expense, the deeming provision would essentially create an entirely new population of uninsured individuals, force immigrants to wait until their conditions become more expensive, and then mandate that local hospitals serve them and pay for this service—all effects that will have real-world financial repercussions for citizens.

Denying Medical Services to Immigrants Endangers Entire Communities: Due to the increased cost to local hospitals, services will degenerate—not only for legal immigrants—but for every person in the community who relies on that hospital for care. If a portion of a hospital's budget is diverted to cover the increased expense of handling emergency conditions, less money will be available to finance services for everyone. Perhaps more importantly, if immigrants are not immunized or treated for communicable diseases, entire communities will be at risk.

Immigrants Currently Finance Benefits for Citizens: Legal immigrants are subject to the same tax laws as citizens. However, as a group, legal immigrants pay more proportionally in taxes than citizens. They also use fewer benefits than citizens. Although some claim immigrants drain resources, legal immigrants actually finance public assistance benefits for citizens. Because of these factors, basic fairness counsels against denying legal immigrants the same safety net security as citizens. Immigrants should be able to rely on support times of need in the same manner as other taxpayers, especially since they have demonstrated that they require such services less often.

Catholic Charities USA favors a reduced deeming period of two years for Medicaid. A two-year deeming period would substantially remove what some view as a ''draw'' for immigrants entering the country solely to obtain medical services, especially since an immigrant could hardly plan an illness two years in advance. In addition, this compromise would preserve the distinction between medical services and other forms of assistance, recognizing that no amount of hard work and personal responsibility can protect someone from illness and injury. Although opponents may oppose such an amendment because it won't reduce federal spending as much, the effect of a longer period would be an exponential increase in the cost to state and local entities. The bill itself, by setting the deeming period at two years, recognizes that a sponsor's liability should not continue indefinitely. Catholic Charities USA believes a reduced, two year deeming period for Medicaid is a viable compromise that recognizes all of these concerns.

THE HEALTH EFFECTS OF S. 1664 AND H.R. 2202

(By E. Richard Brown, Ph.D)

S. 1664 and H.R. 2202 threaten the health of immigrants and of the larger community. They threaten the health of immigrants and the larger community by making it more difficult to control the spread of serious communicable diseases and making it more likely that such diseases would spread through the community, threaten the health of U.S.-citizen infants by reducing the access of pregnant immigrant women to prenatal care and nutrition support programs; and threaten the health of immigrants by reducing management of chronic illnesses and early intervention to prevent health problems from developing into more serious ones, resulting in more disability and higher medical costs both among immigrants and their U.S.-citizen children.

PROVISIONS OF S. 1664 AND H.R. 2202

Public health care services and publicly funded community-based services are essential to control the progression and spread of disease among low-income persons and communities. These services are essential because a high proportion of low-income immigrants do not receive health insurance through employment, despite their high rates of labor force participation. Because of their low incomes, they cannot afford to purchase health insurance in the private marketplace. Although uninsured immigrants pay a considerably higher proportion of their incomes out-of-pocket for medical services than do persons with insurance, they often cannot afford an adequate level of medical care without the assistance of public programs and publicly subsidized health services.

S. 1664 and H.R. 2202 would impose such onerous financial requirements on legal immigrants that they effectively exclude millions of legally resident children and adult immigrants from receiving any health services or nutrition supplements. These bills also prohibit undocumented immigrants from receiving all but emergency medical care from any public agency or from community-based health services, such as migrant health centers and community health centers. These bills will reduce access to cost-effective primary care and prevention and force immigrants to use expensive emergency and hospital services—at increased cost to taxpayers and poorer health outcomes for immigrants and the larger community.

Legal immigrants

Legal immigrants would become deportable if they participate in Medicaid, virtually any state health insurance or health care program that is means-tested, or any local means-tested services for more than 12 months during their first five years (seven years in the House bill) in the United States. This provision would strongly deter most legal immigrants from enrolling in Medicaid or otherwise obtaining health services on a sliding fee-scale from a local health department or any community health center, migrant health center, or other community-based health service which receives any federal, state or local government funds. Receiving any combination of such benefits for a total of more than 12 months would make the immigrant ineligible for citizenship.

Furthermore, to determine eligibility for such services or programs, the sponsor's income (and the income of the sponsor's spouse) would be ''deemed'' available to the immigrant. The bills would require that the sponsor's income be combined with the immigrant's income until the immigrant had worked for 40 quarters (at least 10 years) in which he/she earned enough to pay taxes or until he/she became a citizen. This provision would make most sponsored legal immigrants ineligible for such benefits, even if they maintain a separate household with substantial combined expenses or do not have access to their sponsor's income.

These provisions make more stringent the conditions under which legal immigrants may receive these public benefits, lengthening the time during which they are potentially deportable for receiving benefits, reducing the conditions under which they may legitimately receive them, and extending the ''deeming'' process to more programs and for a longer period of time.

Undocumented immigrants

Undocumented immigrant women would be barred from receiving prenatal and postpartum care under Medicaid. States may provide prenatal and postpartum care to undocumented immigrant women who have continuously resided in the United States for at least three years (the House bill excludes pregnancy care altogether). The bills would allow undocumented immigrants to receive immunizations and be tested and treated for serious communicable diseases. Because these provisions apply to any services provided or funded by federal, state or local government, they prohibit most community-based health services, such as migrant health centers and community health centers, from providing primary or preventive care to undocumented immigrants.

Undocumented immigrants currently are not eligible for any means-tested health programs except *emergency* medical services, including childbirth services (funded by Medicaid), immunizations, and nutrition programs for pregnant women and children. These bills extend this prohibition to prenatal and postpartum care, and they extend to nearly all publicly funded programs and services the prohibitions on providing non-emergency care that formerly were restricted to Medicaid.

EFFECTS ON HEALTH

These bills would maek it more difficult for low-income immigrants, whether they are here legally or not, to obtain preventive or porimary health care. By denying access to cost-effective health services that can prevent or limit illness, this legislation would increase the use of emergency rooms and hospitals at greater cost to taxpayers and cause more disability among immigrants.

Prenatal care and birth outcomes

The provisions in these bills will result in an increased number of low birthweight and higher death rates among U.S.-citizen infants. The expanded ''deeming'' provisions would prevent many legal immigrant women who are pregnant and needy from qualifying for Medicaid, and the expanded threats of deportation would discourage other needy legal immigrant women from applying for Medicaid. The bills also would prohibit pregnancy-related health services to most undocumented immigrant women.

Denying inexpensive prenatal care to many pregnant women will increase the health risks to the women and their U.S.-citizen infants, all at great cost to federal and state taxpayers. The National Academy of Sciences' Institute of Medicine estimates that every $1 spent on prenatal care saves $3 that otherwise would be spent on medical care for low birthweight infants. A recent study by the California Department of Health Services found that Medi-Cal hospital

costs for low birthweight babies averaged $32,800, thirteen times higher than those of non-low birthweight babies ($2,560). With no prenatal care, the expected hospital medical costs for a baby born to a Mexican-American woman with no prenatal care are 60% higher than if she had gotten adequate prenatal care, or $1,360 higher per birth. The American-born infants of immigrant mothers automatically would be U.S. citizens, entitling them to medical care paid for by Medicaid. These added medical costs may well exceed any savings due to reduced Medicaid eligibility among immigrant pregnant women.

Management of chronic illness

These bills would prohibit undocumented and many legal immigrants from using local health department clinics or community-based clinics, such as migrant or community health centers, for other than emergency care or diagnosis and treatment for a communicable disease. High blood pressure, diabetes, asthma, and many other chronic illnesses can be managed effectively by regular medical care, which includes monitoring of the condition, teaching the patient appropriate self-management, and provision of necessary medication. When diabetes goes untreated, it results in diabetic foot ulcers, blindness, and many other complications. Uncontrolled high blood pressure causes heart attacks, strokes, and kidney failure, all of which lead to expensive emergency hospital admissions. In the absence of regular care, people with these controllable diseases will present repeatedly to hospitals in severe distress, resulting in emergency and intensive care for a much higher cost than periodic visits and maintenance medication. Primary care and prevention are cost-effective alternatives to use of emergency rooms, specialty clinics, and hospitalization—and they preserve and improve the person's functional status. As with pre- and postnatal care, the costs of increased use of emergency and hospital services are likely to offset any savings due to reduced use of primary and preventive care.

Communicable diseases

These bills would make it more difficult for undocumented immigrants or legal immigrants to obtain care for communicable diseases. Although they explicitly permit undocumented immigrants to be diagnosed and treated for communicable diseases, public health services throughout the country are being restructured to eliminate dedicated clinics for tuberculosis, sexually transmitted diseases, and other cummunicable diseases. Instead diagnosis, treatment, and management of these health problems are being integrated into primary care, which would be denied to undocumented immigrants and most legal immigrants alike who cannot afford to pay the full cost of these services. Without access to primary care, immigrants would have few options to receive medical attention for persistent illnesses. Coughs that do not go away, fevers that do not subside, and rashes and lesions that do not heal may be due to communicable diseases such as tuberculosis, hepatitis, meningitis, or a sexually transmitted disease.

Tuberculosis is prevalent among legal, as well as undocumented, immigrants from Asia and Latin America. It is easily spread if those who are infected are not diagnosed and treated. In a recent study of tuberculosis patients in Los Angeles, more than 80% learned of their disease when they sought treatment for a symptom or other health condition, not because they sought tuberculosis screening. Yet these bills would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers. The California Department of Health Services estimates that it costs $150 to provide preventive therapy to a tuberculosis-infected patient, but it costs 100 times as much for a tuberculosis patient who must be hospitalized—and more than 600 times as much if the patient has developed a drug-resistant variety of tuberculosis.

Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

ADMINISTRATIVE COSTS

S. 1664 and H.R. 2202 would impose substantial administrative burdens on health care services to check clients' immigration status and obtain information necessary to ''deeming.'' These administrative costs include interviewing clients and obtaining the information from them, verifying the accuracy of information, training of staff, and record keeping and processing. The administrative burden includes obtaining information about the client's immigration status, date on which the person entered the country, whether the immigrant has a sponsor, whether the immigrant has worked for 40 quarters during which they earned enough to have a tax liability, and the income and resources of the immigrant, the sponsor, and the sponsor's spouse. These administrative costs must be borne by the program or service provider, except for anti-fraud investigators in hospitals.

SUMMARY

1664 and H.R. 2202 will:

Reduce access of legal immigrants and undocumented immigrants to primary care and preventive health services and increase immigrants' use of emergency and hospital services;

Result in poorer health outcomes for immigrants and their U.S.-citizen infants;

Increase the larger community's risk of contracting communicable diseases;

Increase expenditures on emergency and hospital services, offsetting savings due to reduced use of preventive and primary care; and

Increase administrative costs for publicly funded health care providers.

Mr. SIMPSON. Mr. President, may we set aside this amendment and go directly to the amendment of Senator FEINSTEIN so she might modify a previous amendment?

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

The pending amendment No. 3764 is set aside.

AMENDMENT NO. 3777, AS MODIFIED

Mrs. FEINSTEIN. I thank the Senator from Wyoming. Mr. President, I send a modification to amendment 3777 to the desk.

The amendment (No. 3777), as modified, is as follows:

Beginning on page 10, strike line 18 and all that follows through line 13 on page 11 and insert the following:

SEC. 108. CONSTRUCTION OF PHYSICAL BARRIERS, DEPLOYMENT OF TECHNOLOGY AND IMPROVEMENTS TO ROADS IN THE BORDER AREA NEAR SAN DIEGO, CALIFORNIA.

There are authorized to be appropriated funds of $12 million for the construction, expansion, improvement or deployment of triple-fencing in addition to that currently under construction, where such triple-fencing is determined by the Immigration & Naturalization Service (INS) to be safe and effective, and in addition, bollard style concrete columns, all weather roads, low light television systems, lighting, sensors and other technologies along the international land border between the United States and Mexico south of San Diego, California, for the purpose of detecting and deterring unlawful entry across the border. Amounts appropriated under this section are authorized to remain available until expended. The INS, while constructing the additional fencing, shall incorporate the necessary safety features into the design of the fence system to insure the well-being of Border Patrol agents deployed within or in near proximity to these additional barriers.

Mrs. FEINSTEIN. Mr. President, earlier I sent an amendment to the desk on behalf of Senator BOXER and myself which relates to the triple fencing of the Southwest border, particularly in the vicinity of San Diego and Mexico. This is an amendment to that amendment which has been worked out with Senator KYL and which I believe, hopefully will be acceptable to both sides. Senator KYL and I have discussed this. We have also discussed it with Doris Meissner, the INS Commissioner. We have worked out language to which INS now agrees.

Essentially, the language would authorize the appropriation of $12 million for the construction, expansion, improvement, and deployment of triple fencing. In addition, that currently under construction where such triple fencing is determined by the INS to be safe and effective, and in addition, bollard-style concrete columns, all weather roads, low-light television systems, lighting sensors and other technologies along the international land border between the United States and Mexico south of San Diego, CA, for the purpose of detecting and deterring unlawful entry across the border.

I believe this amendment in full is acceptable to both sides. Commissioner Meissner has also agreed to send a letter to Representative HUNTER which would State that the INS is in the process of testing triple fencing, will continue that testing, and is prepared to add to it where it has proven to be effective and safe.

Mr. President, I ask unanimous consent to vitiate the yeas and nays.

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

Mr. SIMPSON. Mr. President, let me commend the Senator from California for the fine work that she has done here in conjunction with the Senator from Arizona, Senator KYL. Both of you committed to the same objective, both of you from States heavily affected, both of you more aware of these things than any of us in this Chamber.

I insist in these remarks of all these past months that if there are people

that understand illegal immigration any better than the people of Texas, California, Florida, and Illinois—although not on the border of our country but yet one of the large States with a large number of formally undocumented persons; that I think has been corrected; but a large and sometimes vexing population. I think you have resolved that to the betterment of all.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3777), as modified, was agreed to.

Mr. SIMPSON. Mr. President, I believe now that the status of matters is that we have two Simon amendments that we will deal with.

Mr. SIMON. We have dealt with them.

AMENDMENT NO. 3764

Mr. SIMPSON. We have not quite finished dealing with them. I had a comment or two to make.

Mr. President, with regard to Senator GRAHAM's remarks and his amendment, I hope—and I will not be long—we have heard in that amendment the revisitation of an old theme. The issue is very simple. As we hear the continual discussion about taxpayers and what is going to happen to taxpayers—taxpayers this, taxpayers that—I have a thought for you. I will tell you who should pay for the legal immigrant: the sponsor who promised to pay for the legal immigrant.

This is not mystery land. This is extraordinary. How can we keep coming back to the same theme when the issue is so basic?

If you are a legal immigrant to the United States, this is such a basic theme that I do not know why it needs to be repeated again and again and again. But I hope it will be dealt with in the same fashion again and again and again, because it is this: When the legal immigrant comes to the United States, the consular officer, the people involved in the decision, and the sponsor agrees that that person will not become a public charge. That was the law in 1882. We have made a mockery of that law through administrative law judge decisions and court decisions through the years, where it is not just the ''steak and the tooth,'' as my friend from Illinois referred to, there is no steak and no teeth in it.

And so, one of the most expensive welfare programs for the United States taxpayers is Medicaid. Everybody knows it. The figures are huge. Senator DOMENICI knows it. He covered it the other day. They are huge, and we all know that. We know the burden on the States.

So all we are saying is the sponsor, the person who made the move to bring in the legal immigrant, is going to be responsible, and all of that person's assets are going to be deemed for the assets of the legal immigrant. So it does not matter what type of extraordinary situation you want to describe to us all, and all of them will be genuinely and authentically touching, they will move us, maybe to tears. I am not being sarcastic. Those things are real. They will be veterans, they will be children, they will be disabled, they will be sick, and all we are saying is that the sponsor will pay first, which is exactly what they promised to do. And so, if the sponsor, having been hit too hard, is pressed to bankruptcy, is pressed to destruction, is pressed wherever one would be pressed, then we step in, the U.S.A., the old taxpayers step into the game —but not until the sponsor has suffered to a degree where they cannot pony up the bucks that they promised to pay.

If the sponsor has the financial resources to pay for the medical care needed by an immigrant, why on God's earth should the U.S. taxpayers pay for it? That is the real question. That is one that is easy to debate.

Does any Senator in this Chamber believe that the taxpayers of this country would agree to admit to our country an immigrant if they believed that the immigrant would impose major medical costs on the taxpayers, and that the immigrant sponsor would not be providing the support that they promised to pay? Now, that is where we are. That is where we have been. We can argue on into the night and get the same result, I think, that we got last night and will get tomorrow—the issue being, regardless of the tragic nature of this situation, whatever it is, the sponsor pays.

Then if you are saying, ''But if the sponsor cannot pay,'' we have already taken care of that. If the sponsor cannot pay—goes bankrupt, dies, or whatever—the Government of the United States of America, the taxpayers, will pick up the slack; but not until the sponsor has had the slack drawn out of them—not to the point so they cannot live or become public charges themselves, but that is what this is about.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I wish to slightly, again, correct the RECORD. I know the Senator from Wyoming feels passionately about his position. His position just happens to be at variance with the facts.

I will cite and read this and ask if the Senator would disagree that these are the words in the United States Code 42, section 1382(j). This happens to be one of the three areas in which this Congress, at its election, has decided to specifically require that the income of the sponsor be added to that of the income of the legal alien for the purposes of determining eligibility for benefits. This happens to be the program of Supplemental Security Income. Here is what the law says:

> For the purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who, as a sponsor of such individual's entry into the United States, executed an affidavit of support, or similar agreement, with respect to such individual, and the income and resources of the sponsor spouse shall be deemed to be the income and resources of the individual for a period of 3 years after the individual's entry into the United States.

That is quite clear. That is what the obligation of the sponsor was. There is similar clarity of language to be found under the provisions relating to Aid to Families with Dependent Children and food stamps. So if a person wanted to know, what is my legal obligation when I sign a sponsorship affidavit, they could go to the law books of the United States and read, with clarity, what those programs happen to be.

My friend from Wyoming, the reality is that this Congress, until tonight, has not chosen to place Medicaid as one of those programs for which such deeming is required. By failing to do so, and by doing so for these three distinct programs, I think a very clear implication has been created that we did not intend, that there be deeming of the sponsor's income for the purposes of eligibility for Medicaid.

I believe that the kinds of arguments that are made by responsible organizations, such as the Association of Public Hospitals, is why this Congress, up until tonight, has not deemed it appropriate to deem the income of the sponsor to the legal alien for the purposes of Medicaid.

If that argument was so persuasive in the past, why have we not added Medicaid to the list of responsibilities in the past?

Mr. President, I believe—the rhetoric aside—that the facts are that there is clarity as to what the sponsor's obligation is today. No. 2, that we are about to change that responsibility and make those changes retroactive, applying to literally hundreds of thousands of people. And, in the case of Medicaid, in my judgment, we are about to adopt legislation that would have a range of negative effects, from increasing the threat to the public health of communicable diseases, to endangering the already fragile financial status of some of our most important American hospitals, to increasing the likelihood that a poor, pregnant woman would choose abortion rather than deliver a full-term child.

And so, Mr. President, I believe that both the amendment offered by the Senator from Illinois and, immodestly, the amendment I have presented to the Senate represent the kind of public policy that is consistent with the reality of our history of the treatment of legal aliens—again, I underscore legal aliens—and should be continued by the adoption of the amendments that will be before the Senate shortly.

Thank you.

The PRESIDING OFFICER. Is there further debate?

MODIFICATION TO AMENDMENT NO. 3866

Mr. SIMPSON. Mr. President, I have a unanimous-consent request cleared with the minority.

Mr. President, I ask unanimous consent to make two minor technical corrections to two provisions of amendment No. 3866 to the bill, S. 1664.

The first correction corrects a printing error, by which a provision belonging in one section of the amendment No. 3866 was inadvertently placed in a different section.

The second correction is a minor change in the wording.

These two corrections have been cleared on both sides, and I ask unanimous consent that they be accepted.

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

The modification follows:

(1) Subsection (c) of section 201 of S. 1664, (relating to social security benefits), as amended by amendment no. 3866, is further amended to read as follows:

(c) SOCIAL SECURITY BENEFITS.—(1) Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

''Limitation on Payments to Aliens

''(y)(1) Notwithstanding any other provision of law and except as provided in paragraph (2), no monthly benefit under this title shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

''(2) Paragraph (1) shall not apply in any case where entitlement to such benefit is based on an application filed before the date of the enactment of this subsection.''.

(2) Nothing in this subsection (c) shall affect any obligation or liability of any individual or employer under title 21 of subtitle C of the Internal Revenue Code.

(3) No more than 18 months following enactment of this Act, the Comptroller General is directed to conduct and complete a study of whether, and to what extent, individuals who are not authorized to work in the United States are qualifying for Old Age, Survivors, and Disability Insurance (OASDI) benefits based on their earnings record.

(2) In section 214(b)(2) of the Housing and Community Development Act of 1980, as added by section 222 of S. 1664 (relating to prorating of financial assistance), as added by amendment no. 3866—

(A) strike ''eligibility of one or more'' and insert ''ineligibility of one or more''; and

(B) strike ''has not been affirmatively'' and insert ''has been affirmatively''.

(3) In the last sentence of section 214(d)(1)(A) of the Housing and Community Development Act of 1980, as added by section 224 of S. 1664 (relating to verification of immigration status and eligibility for financial assistance), as added by amendment no. 3866, insert after ''Housing and Urban Development'' the following: ''or the agency administering assistance covered by this section''.

Mr. SIMPSON. Mr. President, I think we can go forward. We now, so that our colleagues will be aware, are in a position to vote on three amendments. We will likely do that in a short period of time.

The Feinstein amendment has been resolved.

There is a Simon amendment on disability deeming, a Simon amendment on retroactivity deeming, and the Graham amendment that we have just been debating with regard to 2-year deeming.

We have many of our colleagues who apparently are involved with the Olympic activities tonight passing on the torch, and some other activity.

There is a Gramm amendment on the Border Patrol and a Hutchison amendment on Border Patrol. Those will be accepted. There is a Robb amendment which will be accepted.

I inquire of the Senator from Florida if he has any further amendments. At one time there was a list. I wonder if there is any further amendment other than the pending amendment from the Senator from Florida.

Mr. GRAHAM. Yes. I have one other amendment that relates to the impact on State and local communities of unfunded mandates. I understand that there may be a desire to withhold further votes after the three that are currently stacked. If that is the case, I would be pleased to offer my next amendment tomorrow morning.

Mr. SIMPSON. Mr. President, I thank our remarkable staff. And Elizabeth certainly is one of the most remarkable. I think we can get a vote here in the next few minutes on three amendments which are 15 minutes in original time and 10 on the second two with a lock-in of tomorrow to take care of the rest of the amendments on this bill. We may proceed a bit tonight with the debate. That will be resolved shortly.

But the Senator from Florida has one rather sweeping amendment on which we will need further debate, will we not; more than 15 minutes perhaps?

Mr. GRAHAM. I anticipate it will require more than 15 minutes.

Mr. SIMPSON. I see. I would probably have that much on the other side.

Then I have one with Senator KENNEDY and share with my colleagues that I do have a place holder amendment. It is my intention, unless anyone responds to this, not at this time but tomorrow—you will recall that Senator MOYNIHAN placed an amendment at the time of the welfare bill with regard to the Social Security system having a study, that they should begin to do something in that agency to determine how to make that card more tamper resistant. It was cosponsored by Senator DOLE. It passed unanimously here. That would be an amendment that I have the ability to enter unless it is exceedingly contentious. I intend to do so because it certainly is one that is not strange to us, and the date of its original passage was—so that the staff may be aware of the measure, that was in the CONGRESSIONAL RECORD of September 8, 1995, page S12915, directing the Commissioner to develop—this is not something that is immediate—to be done in a year, and a study and a report will come back. There is nothing sinister with regard to it, but it is important to consider that.

We have an amendment of Senator ROBB, and apparently an objection to that amendment from that side of the aisle. I hope that might be resolved.

Let me go forward and accept the Gramm amendment, the Hutchison amendment, and if you have those, I will send them to the desk.

AMENDMENT NO. 3948 TO AMENDMENT NO. 3743

(Purpose: To express the sense of the Congress regarding the critical role of interior Border Patrol stations in the agency's enforcement mission)

On behalf of Senators GRAMM and HUTCHISON, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside, and the clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. GRAMM, for himself, Mrs. HUTCHISON, and Mr. DOMENICI, proposes an amendment numbered 3948 to amendment No. 3743.

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

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

The amendment is as follows:

At the end, insert the following:

SEC. . FINDINGS RELATED TO THE ROLE OF INTERIOR BORDER PATROL STATIONS.

The Congress makes the following findings:

(1) The Immigration and Naturalization Service has drafted a preliminary plan for the removal of 200 Border Patrol agents from interior stations and the transfer of these agents to the Southwest border.

(2) The INS has stated that it intends to carry out this transfer without disrupting service and support to the communities in which interior stations are located.

(3) Briefings conducted by INS personnel in communities with interior Border Patrol stations have revealed that Border Patrol agents at interior stations, particularly those located in Southwest border States, perform valuable law enforcement functions that cannot be performed by other INS personnel.

(4) The transfer of 200 Border Patrol agents from interior stations to the Southwest border, which would not increase the total number of law enforcement personnel at INS, would cost the federal government approximately $12,000,000.

(5) The cost to the federal government of hiring new criminal investigators and other personnel for interior stations is likely to be greater than the cost of retaining Border Patrol agents at interior stations.

(6) The first recommendation of the report by the National Task Force on Immigration was to increase the number of Border Patrol agents at the interior stations.

(7) Therefore, it is the sense of the Congress that—

(A) the U.S. Border Patrol plays a key role in apprehending and deporting undocumented aliens throughout the United States;

(B) interior Border Patrol stations play a unique and critical role in the agency's enforcement mission and serve as an invaluable second line of defense in controlling illegal immigration and its penetration to the interior of our country;

(C) a permanent redeployment of Border Patrol agents from interior stations is not the most cost-effective way to meet enforcement needs along the Southwest border, and should only be done where new Border Patrol agents cannot practicably be assigned to meet enforcement needs along the Southwest border; and

(D) the INS should hire, train and assign new staff based on a strong Border Patrol presence both on the Southwest border and in interior stations that support border enforcement.

Mr. SIMPSON. This amendment has been cleared by both sides of the aisle.

It has to do with the Border Patrol, and I urge its adoption.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. May I make an inquiry? Is this the amendment that says, in effect, that if Border Patrol personnel are relocated from the interior assignment to the assignment in a border position, that there has to be some coordination with the law enforcement agencies in the communities from which the personnel are being relocated?

Mr. SIMPSON. Mr. President, that would be the Hutchison amendment, not this amendment.

Mr. GRAHAM. That will be next, the Hutchison amendment?

Mr. SIMPSON. Yes. The one that is before the body is the sense of the Congress regarding the critical role of the interior Border Patrol saying that it plays a key role in apprehending and deporting undocumented aliens and plays a critical role in the agency's enforcement mission and serves as a valuable second line of defense. Redeployment of Border Patrol agents at interior stations would not be cost-effective, and it is unnecessary in view of plans to nearly double the Border Patrol agents over the next 5 years, and INS should hire, train, and assign new staff based on a strong Border Patrol presence, both on the Southwest border and interior stations that support border enforcement.

Mr. GRAHAM. Mr. President, I am not going to object to either of these amendments, but I would like to raise the concern that currently there is a great deal of apprehension by interior law enforcement, that is, law enforcement that is not directly on the Nation's border, at the level of support being provided by INS and the Border Patrol.

I might state that I recently met with a group of law enforcement leaders from the central part of my State who stated that the common practice was that for the first 6 to 9 months of the year, if they had an illegal alien in detention, the Border Patrol or appropriate other INS officials would come and take custody of that individual. During the last 3 to 6 months of the fiscal year depending on the status of the budget of the INS, nobody would show up, and therefore the law enforcement officials were in the position of either making a judgment to release the individual or to continue them in detention at their expense and oftentimes on a questionable legal basis for continued detention.

I raise this phenomenon to say I hope that as the INS and the Border Patrol look at the redeployment of resources that this legislation is going to call for it is more than just a coordination with local law enforcement but, rather, that there is an affirmative effort made to assure that the capability to assume responsibility for and detain illegal aliens wherever they are determined in the United States is a high priority of the agencies.

I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. SIMPSON. Mr. President, perhaps we could go ahead—since there was no objection to that amendment, I certainly withhold the other one because it does address what the Senator from Florida is saying. So I urge adoption of the pending amendment.

The PRESIDING OFFICER. Without objection the amendment is agreed to.

The amendment (No. 3948) was agreed to.

NUTRITION PROGRAMS AND IMMIGRATION

Mr. LEAHY. Mr. President, yesterday the Senate agreed to include an amendment which I submitted to the immigration bill. This amendment addresses the serious problem of adding to the administrative load of the already overburdened nutrition programs.

I met a couple of weeks ago with the Vermont School Food Service Association and they expressed tremendous concern over the additional workload this bill would add to their schools. Marlene Senecal, Connie Bellevance, and Sue Steinhurst of the American School Food Service Association urged me to take action as did Jo Busha, the State director of child nutrition programs.

For the school lunch and breakfast programs the ASFSA estimated that 14,881 new staff would have to be hired nationwide to handle the additional paperwork of verifying citizenship status for each child and working with the INS.

If the average salary of new staff is $25,000 to $30,000 a year we are talking about a huge burden for schools—at least $370 million per year.

The magnitude of this unfunded mandate imposed on schools could drive thousands of schools off the school lunch and breakfast program.

The National Conference of State Legislatures are also concerned that the bill, as written, places a huge unfunded mandate on local schools, local governments, and State agencies.

This bill also inflicts complex sponsor deeming procedures regarding legal immigrants in most Federal programs, including child nutrition programs, and WIC.

''Deeming'', the practice of counting a sponsor's income as that of an immigrant's when calculating eligibility for Federal programs, would add unnecessary bureaucratic burdens on local and State administrators, schools, child care providers, and WIC clinics.

Those already burdened will be forced to spend more time filling out forms and less time providing for the poor and disadvantaged.

States like Vermont, with very few immigrants, will still be affected by the additional administrative burden.

Also, denying these benefits to pregnant immigrant women will lead to increased costs for taxpayers. It is estimated that for every dollar WIC spends on pregnant women $3 is saved in future Medicaid costs. We will end up paying far more through Medicaid to take care of children with low birth rates.

Regardless of the citizenship status of these mothers, their children will be U.S. citizens and eligible for means tested programs.

And, ironically, States with large native American populations who benefit from the food distribution program on Indian reservations would have been forced to verify the citizenship of their native American citizens.

The American School Food Service Association, the National Conference of State Legislatures, and others, are very concerned about the additional mandates and administrative duties that would have been imposed upon schools and States by the ''deeming'' requirements and the immigrant determination process as they affect child nutrition programs.

Most soup kitchen and food bank programs are run by volunteers. Requiring volunteers to do alien status checks and income verification with sponsoring families would be nearly impossible, but hiring staff for this purpose would use donated funds in ways not intended by those making the donations.

School lunch and breakfast programs are run by local schools who struggle with increasing administrative and overhead costs. Requiring them to closely monitor immigrant status and sponsor incomes would have burdened them greatly according to the American School Food Service Association. Fifty million children attend school each school day in the United States.

Similar arguments can be raised for other child nutrition programs such as the WIC Program.

My amendment also corrected what I believe are some drafting errors in the bill and makes additional improvements.

First, on page 180, ineligible aliens are disqualified from receiving public assistance except for certain programs such as those under the National School Lunch Act, the Child Nutrition Act, and other assistance such as soup kitchens if they are not means tested.

This language omits several programs such as the commodity supplemental food program which is an alternative to WIC in many areas of the country.

There is no reason I can think of for pregnant women getting WIC benefits to be treated differently from pregnant women getting the same benefits under the Commodity Supplemental Food Program which was the precursor to WIC, and is still operated in about 30 areas around the Nation.

Also, the soup kitchen program, the food bank program and the emergency food assistance program could be considered to be means tested so they would not be exempt either.

These programs provide emergency food assistance to families and I doubt if anyone intended to treat them differently from the nutrition programs already exempted.

HARKIN-BYRD-DASCHLE AMENDMENT

Mr. BYRD. Mr. President, I am pleased to have joined with my colleagues, Senators HARKIN and DASCHLE, in sponsoring an amendment to this bill which requires the Attorney General to ensure that every State has at least 10 full-time active duty agents from the Immigration and Naturalization Service. Currently, West Virginia is one of only three States that does not have a permanent INS presence. Our amendment rectifies that problem.

As the debate on this bill has shown, the Senate is determined to strengthen our current laws with respect to immigration, particularly illegal immigration. But whatever we pass, whatever new laws we fashion to combat the serious problem of illegal immigration, they will mean little if we are not also willing to provide the tools and support to enforce those laws.

Mr. President, In America today, illegal immigration is not simply a California problem, or a Texas problem, or a New York problem. On the contrary, it is a national problem that impacts on every one of the 50 States. Obviously, my State of West Virginia does not suffer the consequences associated with illegal immigration to the same degree as do other States. But I believe that if we are to have a coherent national policy, a policy based on stopping the hiring of illegal aliens and swiftly deporting those who are here illegally, then every State must be brought into our enforcement efforts. And that means providing every State, not just some States, with the law enforcement tools they need.

Clearly, every State needs a minimum INS presence to meet basic needs. By providing each State with its own INS office, the Justice Department will, I believe, save taxpayer dollars by reducing not only travel time for those agents who must now come from other areas, but also jail time per illegal alien, since a permanent INS presence would substantially speed up deportation proceedings.

Moreover, there is a growing need to assist legal immigrants and to speed up document processing. How are employers—who will be mandated under this bill to aggressively work to deter the hiring of illegal aliens—going to receive the administrative help they need without the assistance of local INS personnel?

Mr. President, this amendment makes sense, good common sense. It is a modest proposal that I believe will send a clear message that we are serious in our commitment to enforcing our immigration laws. Consequently, I am pleased to have sponsored the amendment, and equally pleased that the Senate has included it in the current bill.

Mr. SIMPSON. And now I have a unanimous-consent request to propose.

I ask unanimous consent that votes occur on or in relation to the following amendments at 7:15 p.m., with 2 minutes equally divided for debate between each vote: Simon amendment No. 3810, Simon amendment No. 3813, Graham amendment No. 3764.

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

Mr. SIMPSON. Now, with that having been accomplished, we will I think be able to accommodate you, all of our colleagues, by finding out tonight and wrapping up everything so that we will finish this measure tomorrow. That will be I think attainable from what I see at the table, and I think my colleague from Massachusetts will agree. And we will then proceed at 7:15.

Mr. President, I ask unanimous consent that 60 minutes of Senator DASCHLE's time be allotted for Senator GRAHAM and 60 minutes of Senator DOLE's time be allotted to myself.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. If I may ask the Senator from Wyoming, as I understand it, that would leave the Graham, Chafee and SIMPSON amendments remaining for consideration on tomorrow. Is that the Senator's understanding? That would be at least my understanding. If we are missing something, some Member out there has a measure that we have not mentioned, we hope at the time of the vote they will mention it. We are not urging other Senators to add more to the list. But that is at least my understanding. I will be glad to hear from others if that is not correct.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I might have more than one amendment tomorrow.

Mr. SIMPSON. Mr. President, we can all have more than one amendment. I hope the Senator from Florida will assist us in buttoning this down. If there is another amendment or two other amendments, let us button it down and get it to rest. We do have a Robb amendment, I say to the Senator from Massachusetts, which has an objection on that side of the aisle.

Mr. KENNEDY. I understand the Robb amendment has been withdrawn.

Mr. SIMPSON. Withdrawn?

Mr. KENNEDY. Withdrawn.

Mr. SIMPSON. There is a Hutchison amendment which has been questioned by the Senator from Florida. There is a Simpson-Kennedy amendment with regard to verification. And then there is a place holder amendment which I intend to present, the Moynihan-Dole amendment, which passed unanimously in September, to allow the Social Security Administration to begin, nothing more, a study to determine how in the future we are to make that system more tamper resistant. It is not anything that goes into place. It is a report. And those who were involved at the time will recall.

That is what I have. That is the extent of it.

Mr. KENNEDY. Since we have another moment then, is it the intention, after we dispose of this, to at least make a request that only those amendments which have been outlined now be in order for tomorrow? And that it would at least be our attempt during the evening time to try and get some time understandings with those——

Mr. SIMPSON. That is being done at the present time, all of that.

Mr. KENNEDY. The leader will be out here, I am sure, shortly, but we would start then early and try and move this through in the course of the day.

Mr. SIMPSON. This matter will be concluded. The staffs on both sides of the aisle are working to present that to us in a few moments, to tighten and button down a complete agreement on time agreements and unanimous consent.

Mr. KENNEDY. The leader will outline the plan for the rest of the evening. Is it the Senator's understanding that those three amendments will be the final voting amendments for the evening?

Mr. SIMPSON. I think that would be the case. The leader is not here, but I think conjecture would have it be so.

Mr. KENNEDY. We will wait on that issue until the leader makes a final definitive decision. I thank the Chair.

Mr. SIMPSON. I thank my colleagues.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMPSON. 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. SIMPSON. Mr. President, let me ask unanimous consent, in the voting to take place at 7:15, that the first vote at 7:15 be 15 minutes and the subsequent votes 10 minutes each.

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

Mr. SIMPSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT 3810

The PRESIDING OFFICER. The question is on agreeing to the amendment, No. 3810. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mr. KASSEBAUM] is necessarily absent.

The result was announced, yeas 30, nays 69, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—30

Akaka	Hollings	Mikulski
Breaux	Inouye	Moseley-Braun
Bumpers	Jeffords	Moynihan
Conrad	Kennedy	Murray
Daschle	Kerrey	Pell
Dodd	Kerry	Rockefeller
Dorgan	Lautenberg	Sarbanes
Feingold	Leahy	Simon
Graham	Levin	Wellstone
Harkin	Lieberman	Wyden

NAYS—69

Abraham	Domenici	Lugar
Ashcroft	Exon	Mack
Baucus	Faircloth	McCain
Bennett	Feinstein	McConnell
Biden	Ford	Murkowski
Bingaman	Frist	Nickles
Bond	Glenn	Nunn
Boxer	Gorton	Pressler
Bradley	Gramm	Pryor
Brown	Grams	Reid
Bryan	Grassley	Robb
Burns	Gregg	Roth
Byrd	Hatch	Santorum
Campbell	Hatfield	Shelby
Chafee	Heflin	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Johnston	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kohl	Thompson
DeWine	Kyl	Thurmond
Dole	Lott	Warner

NOT VOTING—1

Kassebaum

The amendment (No. 3810) was rejected.

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

Mr. KEMPTHORNE. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3813

The PRESIDING OFFICER. The question before the Senate now is Simon amendment No. 3813. There are 2 minutes to be divided equally between the sides.

Mr. SIMON. Mr. President, this is a relatively simple amendment. If anything, this area is simple. If you are a sponsor of someone coming in, you sign up for 3 years. The Simpson bill says we go to 5 years. I am for that prospectively. I do not believe it is right for Uncle Sam to rewrite the contract and say, ''You signed up for 3 years, now you are responsible for 5 years.'' That is what happens without my amendment.

I favor the 5 years prospectively, but I think if Uncle Sam signs a deal, Uncle Sam should be responsible. He should not change a contract. That is true for a used car dealer. It certainly ought to be true for Uncle Sam.

Mr. SIMPSON. It is true that individuals already in the country will not be the beneficiaries of new legally enforceable sponsor agreements that will be required after enactment. It is also true that some of those, those who have been here less than 5 years, will nevertheless be subject to at least a portion of the minimum 5-year deeming period.

I remind my colleagues, however, that no immigrant is admitted to the United States if the immigrant does not provide adequate assurance to the consular officer and commissioner and the immigration inspector that he or she is not likely to become a public charge. In effect, that is a promise to the American people that they will not become a burden to the taxpayers, under any circumstance.

Mr. SIMON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. SANTORUM). The question occurs on agreeing to amendment No. 3813. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—36

Akaka	Heflin	Mikulski
Boxer	Hollings	Moseley-Braun
Breaux	Inouye	Moynihan
Chafee	Johnston	Murray
Conrad	Kennedy	Pell
Daschle	Kerrey	Pryor
DeWine	Kerry	Rockefeller
Dodd	Lautenberg	Sarbanes
Feinstein	Leahy	Simon
Glenn	Levin	Specter
Graham	Lieberman	Wellstone
Hatfield	Mack	Wyden

NAYS—63

Abraham	Domenici	Lott
Ashcroft	Dorgan	Lugar
Baucus	Exon	McCain
Bennett	Faircloth	McConnell
Biden	Feingold	Murkowski
Bingaman	Ford	Nickles
Bond	Frist	Nunn
Bradley	Gorton	Pressler
Brown	Gramm	Reid
Bryan	Grams	Robb
Bumpers	Grassley	Roth
Burns	Gregg	Santorum
Byrd	Harkin	Shelby
Campbell	Hatch	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kempthorne	Thompson
D'Amato	Kohl	Thurmond
Dole	Kyl	Warner

NOT VOTING—1

Kassebaum

So the amendment (No. 3813) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3764

The PRESIDING OFFICER (Mr. SANTORUM). Under the previous order, the question occurs on amendment No. 3764 offered by the Senator from Florida, Senator GRAHAM.

Mr. KENNEDY. Mr. President, the Senator would like to speak.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, the amendment, which will next be voted on, would do three things: One, it will say that the application of deeming to Medicaid will be only for a period of 2 years. Second, it will exempt emergency care and public health services. Third, it will apply prospectively.

Mr. President, this amendment is supported by groups, which range from the Catholic Conference to the League of Cities. They support it for a set of common reasons. They understand that the public health will be at risk if we deny Medicaid to this population of legal aliens, and that there will be a massive cost shift to the communities in which hospitals, which are obligated to provide medical services that will now no longer be reimbursed in part by Medicaid, are located. Catholic Charities is concerned about an increase in abortion, as poor pregnant women would find it economically necessary to seek an abortion rather than pay the cost of a delivery.

For all of those reasons, I urge adoption of this amendment.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, this amendment, like so many others before, would reduce the sponsor's responsibility for their immigrant relatives they bring to the United States on the basis that they will not become a public charge. This amendment would nearly eliminate deeming for Medicaid, the most costly and expensive of all of the welfare programs. Medicaid deeming would be limited to 2 years.

The sponsors who promised to provide the needed assistance should pay the health care assistance, as long as they have the assets to do so. Otherwise, the taxpayers pick up the tab.

The PRESIDING OFFICER. Does the Senator request the yeas and nays?

Mr. SIMPSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 22, nays 77, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—22

Akaka	Ford	Kohl
Boxer	Graham	Lautenberg
Daschle	Hatfield	Lieberman
Dodd	Hollings	Mikulski
Feingold	Kennedy	Moseley-Braun

Moynihan	Rockefeller	Wyden
Murray	Sarbanes	
Pell	Simon	

NAYS—77

Abraham	Dorgan	Lott
Ashcroft	Exon	Lugar
Baucus	Faircloth	Mack
Bennett	Feinstein	McCain
Biden	Frist	McConnell
Bingaman	Glenn	Murkowski
Bond	Gorton	Nickles
Bradley	Gramm	Nunn
Breaux	Grams	Pressler
Brown	Grassley	Pryor
Bryan	Gregg	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roth
Byrd	Heflin	Santorum
Campbell	Helms	Shelby
Chafee	Hutchison	Simpson
Coats	Inhofe	Smith
Cochran	Inouye	Snowe
Cohen	Jeffords	Specter
Conrad	Johnston	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kerrey	Thompson
D'Amato	Kerry	Thurmond
DeWine	Kyl	Warner
Dole	Leahy	Wellstone
Domenici	Levin	

NOT VOTING—1

Kassebaum

The amendment (No. 3764) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate resumes S. 1664 on Thursday, May 2, the following amendments be the only amendments remaining in order: Senator GRAHAM of Florida, Senator GRAHAM of Florida, Senator CHAFEE, Senator SIMPSON, and Senator DEWINE.

I further ask that following the debate on the above-listed amendments, the Senate proceed to vote on in relation to those amendments, with the votes occurring in the order in which they were debated, and there be 2 minutes equally divided for debate between each vote.

I further ask that following the disposition of the amendments or points of order, the Senate proceed for 30 minutes of debate only to be equally divided between Senator SIMPSON and Senator KENNEDY, and following that time the Senate proceed to vote on Simpson Amendment No. 3743, as amended, to be followed by a cloture vote on the bill; and if cloture is invoked, the Senate proceed immediately to advance S. 1644 to third reading and proceed to the House companion bill, H.R. 2022; that all after the enacting clause be stricken, the text of S. 1644 be inserted, the bill be advanced to third reading and final passage occur, all without further action or debate.

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

Mr. KENNEDY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Senator BYRD evidently notified the leadership that he wanted to be able to address the Senate before the final vote on the bill.

Mr. DOLE. Mr. President, I also ask that Senator BYRD have whatever time he wishes under his control prior to the vote.

Mr. GRAHAM. Mr. President, reserving the right to object, it is my intention to offer a point of order prior to the vote on the Dole-Simpson amendment. Is that provided for?

Mr. DOLE. Yes. In fact, I said, ''or points of order.''

Mr. GRAHAM. All right.

Mr. DOLE. There could be more than one, so we did not designate any names.

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

Mr. DOLE. I might also indicate to my colleagues and perhaps the managers that between 10 and 12 they could sort of stack the votes, whatever works out. We could have a series of votes at noon. Otherwise, whatever the managers desire.

PRESIDIO PROPERTIES ADMINISTRATION ACT

The Senate resumed consideration of the bill.

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate turn to the consideration of Calendar No. 300, H.R. 1296, regarding Presidio properties, and the bill be considered in the following fashion:

That amendments numbered 3571 and 3572 be withdrawn and all other amendments and motions other than the Murkowski substitute and the committee substitute be withdrawn, and the committee-reported substitute be modified to reflect the adoption of the Murkowski substitute, as modified, to reflect the deletion of title XVI, Sterling Forest, and title XX, Utah Wilderness, and containing the text of amendment numbered 3572, with Lost Creek land exchange modified to reflect the text I now send to the desk, and the committee substitute, as amended, be immediately agreed to, the bill be advanced to third reading and passed, and the motion to reconsider be laid upon the table, all without any intervening action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The modification to the Murkowski substitute amendment No. 3564 is as follows:

Delete title XVI and title XX of amendment No. 3564 and insert the following new title:

TITLE I—MISCELLANEOUS

SECTION 101. LOST CREEK LAND EXCHANGE.

The Secretary of Agriculture shall submit a plan to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives detailing the terms and conditions for the exchange of certain lands and interests in land owned by the R–Y Timber, Inc., its successors and assigns or affiliates located in the Lost Creek area and other areas of the Deerlodge National Forest, Montana.

TITLE —VANCOUVER NATIONAL HISTORIC RESERVE

SEC. 01. VANCOUVER NATIONAL HISTORIC RESERVE.

(a) ESTABLISHMENT.—There is established the Vancouver National Historic Reserve in the State of Washington (referred to in this section as the ''Reserve'', consisting of the area described in the report entitled ''Vancouver National Historic Reserve Feasibility Study and Environmental Assessment'' published by the Vancouver Historical Study Commission and dated April 1993 as authorized by Public Law 101–523 (referred to in this section as the Vancouver Historic Reserve Report'').

(b) ADMINISTRATION.—The Reserve shall be administered in accordance with;

(1) the Vancouver Historic Reserve Report (including the specific findings and recommendations contained in the report); and

(2) the Memorandum of Agreement between the Secretary of Interior, acting through the Director of the National Park Service, and the City of Vancouver, Washington, dated November 14, 1994.

(c) NO LIMITATION ON FAA AUTHORITY.—The establishment of the Reserve shall not limit;

(1) the authority of the Federal Aviation Administration over air traffic control, or aviation activities at Pearson Airpark; or

(2) limit operations and airspace in the vicinity of Portland International Airport.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

The bill (H.R. 1296), as amended, was passed.

Mr. MURKOWSKI. Mr. President, I strongly support the passage of this important environmental legislation. Taken together, these measures represent the most significant and important conservation package to come before the Senate in over a decade. They will preserve and protect for future generations important natural resource and historic treasures of this country as well as providing critically needed management authorities.

For the most part, the measures contained in this package have languished on the Senate floor due to holds and delaying tactics from Senators. I want to congratulate the majority leader, Senator DOLE, for his successful efforts to end the seemingly endless parade of obstacles to the passage of this legislation. Had we less rhetoric and a modicum of rational assistance from the administration, we might have accomplished this far earlier. We all observed the administration's game plan and the willingness of the media to cater to it, including attaching the minimum wage package to the parks legislation.

Mr. President. I will not go into lengthy detail on the various measures that are finally being released, but I do want to highlight some of them at this time.

Title I of this measure deals with the Presidio of San Francisco. By itself, this title is an important and critically needed measure that should have been enacted months ago. With the closure