Mr. BYRD. Mr. President, I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ABRAHAM LINCOLN

Mr. DURBIN. Mr. President, no Senator from the State of Illinois could rise on February 12 without noting the birth date of Abraham Lincoln. Abraham Lincoln never served in the Senate, although he did serve in the U.S. House of Representatives. One of his most famous political experiences was in 1858 when he ran against Stephen Douglas for the Senate seat which I am honored to occupy. Lincoln lost that election. Of course, following the course of the lengthy debates with Douglas, which became part of the legend of American politics and an important part of our history, by 1860 Lincoln was elected President. And we all know his leadership was so critical in one of our Nation's greatest hours.

We in Illinois dote on Abraham Lincoln. We have his name on license plates. In my hometown, we are consumed with the Lincoln legend and with all that he has given to the State and to the Nation. I hope that those who are witnessing the events in this Chamber today will reflect for a moment on this great man and the great legacy he left to the United States. Lincoln was known very well for his leadership at the time the Nation was in great peril with the Civil War. He did so many things with vision, and I think it is a perfect lead in to my reason for standing before the Senate today. I hope those of us who are in successor generations to Abraham Lincoln can rise to the challenges and can show the same type of vision and leadership on the challenges now facing Americans across the country.

QUALITY CHILD CARE IN AMERICA

Mr. DURBIN. Mr. President, I just left a meeting, partisan meeting, Democrats, Senators and Congressmen, with the President and Vice President where we discussed our agenda for this year. At the end of the meeting, President Clinton said that he hoped we could reach across the aisle to the Republican side and find common ground, concede honest differences of opinion but move forward on an agenda which is critically important to all of America's population and families.

I know it is ambitious to think that in a year with an abbreviated schedule we will achieve even a majority of the ideas that were propounded at this meeting or that the Democrats stand for—for that matter, that the Republicans stand for—but we would be remiss if we didn't try. I think we were all sent here to use our best efforts to find common ground and to resolve those difficulties that ordinary Americans face.

One of them I have taken a special interest in and over the last month or so have really focused on in the State of Illinois is the issue of child care. I have visited 16 or 18 child care centers in my State from far south in Cairo, as we pronounce it, to Chicago and across the length and breadth of a very diverse State, my home State of Illinois.

What I find in child care for working families in Illinois is extraordinary diversity. Just about every community in which you stop has a little different approach. It seems that some are blessed with the support of larger institutions. Maybe the most modern, up-to-date and impressive facility was at a U.S. Air Force base, Scott Air Force Base near Belleville, IL. But, of course, the Federal Government has made a rather substantial investment so that the children of the men and women who are working on that base have the very best in child care. I then went as well to the Belleville Community College and saw where the community college made the same type of commitment. It makes a difference. You can just feel it in terms of what is being offered.

That is not to diminish the efforts being made in a lot of different settings. When I would go down to Marion, IL, into the back of a church and find a very small and crowded room with the happiest kids I have ever run into, being supervised by a lady who is probably close to 60 years of age but who truly is devoted to these children, it tells you that what is part of the success of child care in America has to do more with the people involved in it than any Government program or any structure or building or any bricks or mortar.

But having said that, I came away from this tour sensitized to the fact that this is a real issue. So many people in America look at the Senate and the House of Representatives and wonder what newspapers we are reading, what people we are talking to, as we are consumed with issues that seem totally irrelevant.

Now, some of those issues are truly important, but for the average working family their concerns are much more down to earth. I have yet to meet a working mother or a working family with small children where I don't find a genuine concern about day care. My wife and I raised three kids, and we were fortunate; my wife was able to stay home until the kids were all off to kindergarten at least. And I think that was the very best that we could give to them. I look back on it as something that really made a positive impression, a positive difference in their life, and yet we know today that so many parents cannot make that choice, that both parents have to work or if it is a single parent that there is just no alternative but to turn the children over to a care giver during the day. And we also know that care giving in day care is occurring at a critical moment in that child's development. Seventy-five percent of the human brain is developed in the first 18 months on Earth. Most of the day care centers I visited would not accept a child until they had reached the age of 2 or until they were out of diapers. And so for the first 2 years of critical brain development in these children it was a gamble. Was there someone nearby that could be counted on, a neighbor or relative, perhaps some other setting where the child would get honest, good, safe care?

What the President has proposed in his State of the Union Address and I hope that Democrats and Republicans can debate is what we can do to help working families provide for quality child care. I honestly believe that the investment in early childhood development is the best investment this Nation can make. You often wonder how a child born in ordinary or even poor circumstances has much of a chance. They usually have a chance if they have loving parents with the skills and the time and the resources to make their living meaningful. I came from a family of modest means but, thank goodness, had a mother and father who cared, and I think that is why I am standing here today.

But for a lot of kids that option is strained because a lot of parents do not have resources, and as a consequence they look around in the system and find precious few alternatives. First, most child care is expensive. It is expensive for families that are trying to get by and trying to pay the bills.

What the President has suggested is that we, through money raised in the tobacco bill, send those revenues back to States to make available to working families. So that those families that are out struggling, trying to get by will have a helping hand from the Government to pay for child care. I think that is money well spent, and there is no two ways about it.

Secondly, we have to ask who will work in these child care centers. It is a fact of life that most of the people working there receive precious more than the minimum wage, and they look for alternatives. The turnover rate nationally is 40 percent and in some communities even higher each year as child care workers move on to another job.

In Illinois, we demand of these workers 2 years of college education and then give them a minimum wage. High school dropouts are paid a minimum wage. These students who stayed in school and worked hard to pass the courses are basically being asked to work for the same. Then, of course, we know that businesses that invest in child care really do bond with their employees. Employees value this as one of the most important benefits of work.

So the President has said not only money to help families pay for child

care, also some resources to make certain we can help the students who want to get the education, qualify to be child care assistants but encouragement as well in the Tax Code to businesses to set up child care centers.

Each day, three out of five children under the age of 6 in America including almost half of the babies and toddlers spend some or all of their day being cared for by someone other than their parents. In my home State, we estimate about 600,000 children each day under the age of 6 are in child care. The cost—$4,000 to $10,000 a year. Think about a person struggling by on a low-wage job and facing $4,000—$80 a week—that has to be out of pocket and paid for child care.

In our agenda, the Democratic agenda, we set out to change this, to try to make certain that working families are given a helping hand.

I have tried to reflect about the course of history when it comes to caring for children in America. We all remember child labor laws and things that have been done to help kids, but in the 19th century we made the most significant decision when we said in America that we would embark on creating a system of public education so that if you happened to be a child from a family of modest means you still had a fighting chance. America cared and America made a commitment through the State and local units of Government to make certain that public education would be there starting at the age of 6 and it was a sensible commitment, not only for the good of the child but the good of the Nation.

Here today as we embark on the 21st century we know so much more. We know that by the age of 6 many children have gone through important formative years, many children have been trained, for good or bad, and that that training is going to be part of that child for years to come.

So what more can we do? What more should we do? We have created a Head Start program which is designed to give these kids, at least those from 3 to 5, a chance to have a structured, positive learning environment. It is a very good program and one that needs to be funded at higher levels. But now we know even more is needed. Are we ready in this Chamber, Democrats and Republicans alike, to really engage in a national debate about whether the model for the 19th century of public education is adequate for the 21st century for America?

Most educators, if they give you an honest appraisal, will say, if they were given the option of one additional year of mandatory education, they would not put it after high school, they would put it before kindergarten. Bring the children in earlier.

Talk to teachers, if you will, who are in classrooms every day. They can identify kids who come from a good family and home, where one parent stayed home to help raise the child or they went through some good child care and received the right training, and they can identify those kids who did not. Some of them fall behind, never to catch up. So one of the things we are striving for this year is to follow the President's lead and make sure we make a commitment here in the Senate and the House of Representatives to help these families.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is now recognized.

Mr. DURBIN. Mr. President, if I might ask unanimous consent to have 5 additional minutes?

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

Mr. DURBIN. I thank the Senator from West Virginia for yielding this time.

Crucial to this question of providing help for child care is providing the revenue. I find it curious that a year ago, in my first year in the Senate, if you would have come to this Chamber about this time, you would have seen Senator ORRIN HATCH, our colleague from Utah, standing at that desk with a stack of budget books almost up over his head, saying this is the legacy of deficits, these are the unbalanced budgets that we cannot come to grips with, and arguing for the passage of a new constitutional amendment to force us to come to balance in our budget. That was a year ago. That amendment did not pass.

A year later, where are we? We are at a point where the Congressional Budget Office gave us their forecast yesterday that, indeed, we would balance the budget. We have reached the point where the budget is in balance. Ironically, instead of talking about a constitutional amendment to force a balanced budget, we are now engaged in a debate about spending a surplus. Imagine, 12 months later we have gone from deficit talk to surplus talk. The President counsels us to be patient, to make sure the surplus is true and honest and to first dedicate it to Social Security.

So, of course, you are going to say, ''Senator DURBIN, having said that, how are you going to pay for child care? How will the President pay for it? These are good ideas, but they have to be paid for.''

The money is to come from the tobacco bill. This is a bill I have supported both as introduced by Senator KENNEDY and yesterday by Senator CONRAD, because it is a bill which addresses the reality of what we face today with tobacco. This bill imposes a $1.50 health fee on each package of cigarettes. We know that discourages kids from buying them. They are too expensive. It takes the revenues from that to not only educate young people about the dangers of smoking but also to use it for other good purposes: for example, to increase the number of public school teachers across America to 100,000 so that no child in the first, second or third grade will have a classroom with more than 18 students, or to put money into medical research.

Let me tell you that has to be the most widely popular Federal expenditure there is. Not a family touched by cancer, heart disease, diabetes, HIV, would ever suggest that that is not a good investment, to put the money into medical research. But, also, a portion of it for child care.

So, in order to make this work, it is not enough for us, as Democrats and Republicans, to make speeches about child care. We have to roll up our sleeves and pass this tobacco legislation, and we have to do it on a bipartisan basis. The tobacco companies will resist us every step of the way. They have. They will continue to. But I think the American people have decided they have had enough of the tobacco companies and the fact that they have had unreasonable sway over Washington for too long a period of time.

This year, 1998, is a year of political testing for Senators and Congressmen as to whether they will rise to the challenge and join in passing tobacco legislation, reducing the scourge of children who are taking up smoking, and raising revenues for things that are critically important for America's future—like child care.

I am happy to support the legislation that has been introduced, and I hope that we come up with bipartisan approval to make sure that it is passed. It is not just a question of raising this revenue, but the core reason for the tobacco legislation is to discourage the young Americans each day who take up smoking. Today in the United States of America, and every single day this year, 3,000 children will start smoking cigarettes for the first time. I have never, repeat never, met a parent who has said to me, ''I got the best news last night. My son came home and announced he started smoking.'' I have never heard that. In fact, just the opposite. Parents are concerned because they know this is a health concern.

Tobacco companies have deceived the public. They have deceived Congress. They have gone after kids for decades. Now we have a chance to call an end to that and to hold these companies accountable to reduce sales to minors and to make certain that our kids have a fighting chance for a bright future.

So, I will conclude by saying our agenda is filled this year. We may have more items on the agenda than they have days in session. But we need to pick and choose those that are critically important. I hope my colleagues, Democrats and Republicans alike, will agree that passing the tobacco bill is the first important step, then taking the revenues from that to help working families bring their children up under the best circumstances and to give these children a fighting chance to enter school ready to learn and to have a bright future.

I yield the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. MOYNIHAN and I may speak for not to exceed 30 minutes. I do not think we will use all that time, but I make that request.

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

LINE ITEM VETO ACT FOUND UNCONSTITUTIONAL

Mr. BYRD. Mr. President, as many of my colleagues may already be aware, in a decision announced today by Judge Thomas F. Hogan of the United States District Court for the District of Columbia, the Line Item Veto Act has been found to be unconstitutional, an unconstitutional delegation of the Congress' power over the purse. While I congratulate each of the plaintiffs and their attorneys, this victory does not belong to them alone. This is a victory for the American people. It is their Constitution, it is their Republic, and their liberties that have been made more secure.

Judge Hogan's opinion parallels a previous decision by Judge Thomas Penfield Jackson, also for the U.S. District Court for the District of Columbia, in Byrd v. Raines, as well as the opinions expressed by Supreme Court Justice John Paul Stevens in that same earlier case. While I fully expect this decision today to be appealed and I, therefore, recognize this as a first step, I nevertheless regard it as an important step.

For the benefit of my colleagues, I would like to take just a few moments to read pertinent excerpts from Judge Hogan's decision. I read now, beginning with that section titled ''Procedural Requirements of Article I.''

I continue to read from Judge Hogan's opinion:

> The Constitution carefully prescribes certain formal procedures that must be observed in the enactment of laws. The Line Item Veto Act impermissibly attempts to alter these constitutional requirements through mere legislative action. Because the act violates Article I's ''single, finely wrought and exhaustively considered, procedure,'' . . . it is unconstitutional.
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> Both Houses of Congress, through a process of discussion and compromise, had agreed upon the exact content of the Balanced Budget Act and the Taxpayer Relief Act. These laws reflected the best judgment of both Houses. The laws that resulted after the President's line item veto were different from those consented to by both Houses of Congress. There is no way of knowing whether these laws, in their truncated form, would have received the requisite support from both the House and the Senate. Because the laws that emerged after the Line Item Veto are not the same laws that proceeded through the legislative process, as required, the resulting laws are not valid.
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> Furthermore, the President violated the requirements of Article I when he unilaterally canceled provisions of duly enacted statutes. Unilateral action by any single participant in the law-making process is precisely what the Bicameralism and Presentment Clauses were designed to prevent. Once a bill becomes law, it can only be repealed or amended through another, independent legislative enactment, which itself must conform with the requirements of Article I. Any rescissions must be agreed upon by a majority of both Houses of Congress. The President cannot single-handedly revise the work of the other two participants in the lawmaking process, as he did here when he vetoed certain provisions of these statutes.
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> Whatever defendants wish to call the President's action, it has every mark of a veto.
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> Finally, Congress' ''indirect attempt[] to accomplish what the Constitution prohibits . . . accomplishing directly'' cannot stand. . . . ''To argue otherwise is to suggest that the Framers spent significant time and energy in debating and crafting Clauses that could be easily evaded.'' Congress knew that a single Line Item Veto, performed prior to the President's signature, would violate Article I's requirement that the president sign or return the bills *in toto*. This limitation on the President has been clear since George Washington's tenure.

Let me quote the words of George Washington as they are quoted in Judge Hogan's opinion:

> (''From the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto.'') Congress cannot evade this long-accepted requirement by merely changing the timing of the President's cancellation.
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> Because the Line Item Veto Act produced laws in violation of the requirement of bicameral passage, because it permitted the President unilaterally to repeal or amend duly enacted laws, and because it impermissibly attempts to evade the requirement that the President sign or reject a bill *in toto*, the Act violates the requirements of Article I. For that reason alone, the Line Item Veto Act is unconstitutional.

Now, under the heading ''Separation of Powers,'' in Judge Hogan's opinion, I find these words, and I quote from his opinion:

> Furthermore, the Line Item Veto Act is unconstitutional because it impermissibly disrupts the balance of powers among the three branches of government. The separation of powers into three coordinate branches is central to the principles on which this country was founded. . . . The declared purpose of separating and dividing the powers of government was to ''diffuse power the better to secure liberty.''
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> Pursuant to the doctrine of separated powers, certain functions are divided between the legislative and executive branches. Article I, section I vests all legislative authority in Congress. Legislative power is the authority to make laws[,]

Says Judge Hogan.

> Executive power, on the other hand, is to ''take Care that the Laws be faithfully executed.''
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> With regard to lawmaking, the President's function is strictly a negative one: to veto a bill in its entirety.
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> While it is Congress' duty to make laws, Congress can delegate certain rulemaking authority to other branches, as long as that delegation is appropriate to the duties of that branch. (''[T]he lawmaking function belongs to Congress . . . and may not be conveyed to another branch or entity.'');
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> The Line Item Veto Act impermissibly crosses the line between acceptable delegations of rulemaking authority and unauthorized surrender to the President of an inherently legislative function, namely, the authority to permanently shape laws and package legislation. The Act——

Writes Judge Hogan,

> enables the President, in his discretion, to pick and choose among portions of an enacted law to determine which ones will remain valid. The Constitution, however, dictates that once a bill becomes law, the President's sole duty is to ''take care that the laws be faithfully executed.'' His power

Writes Judge Hogan,

> cannot expand to that of ''co-designer'' of the law—that is Congress' domain. Any subsequent amendment of a statute falls under Congress' responsibility to legislate. The President cannot take this duty upon himself; nor can Congress relinquish that power to the Executive Branch.

I shall not quote further excerpts from the opinion of Judge Hogan, but I ask unanimous consent to have printed in the RECORD the entire opinion, following the remarks of Mr. MOYNIHAN and my remarks. I understand the Government Printing Office estimates it will cost $1,532 to print this opinion in the RECORD.

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

(See exhibit 1.)

Mr. BYRD. Mr. President, next Monday is the official observance of the birthday of our first President, George Washington, who so wisely observed, as did Judge Hogan, ''From the nature of the Constitution, I must approve all the parts of a bill or reject it in toto.'' How right George Washington was! I can think of no greater tribute to his wisdom than this decision today.

Mr. President, I yield to my distinguished colleague who joined in preparing the amicus and who has, all the way from the beginning of these debates, which have gone on for years now, stood like the Irish oak in opposition to giving the President of the United States—any President, Republican or Democrat—a line-item veto.

I salute my friend, and I am very grateful to him for the work that he has done and for his constant support and leadership as we have stood together with Senator CARL LEVIN, who cannot be here today because he is in Europe. If Senator MOYNIHAN had been at the Constitutional Convention, even though Judge Yates and Mr. Lansing left the Convention early, leaving only Alexander Hamilton to sign that great document, Senator MOYNIHAN would have been there to attach his signature. And not only that, he would have joined with Hamilton and Madison and Jay in writing one of the greatest documents of all time, the Federalist Papers. I yield to my friend.

Mr. MOYNIHAN. Mr. President, it is an honor to speak following the statement by our revered, sometime President pro tempore, ROBERT C. BYRD of West Virginia, a man who has brought to our Chamber a sensibility concerning the Constitution that, I would argue, is unequaled since those awful days that led to the Civil War, days in