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Senate

(Legislative day of Wednesday, May 13, and Thursday, May 14, 1998)

The Senate met at 9:30 a.m., on the expiration of the recess and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The guest Chaplain, Rabbi Sidney Guthman, of V.A. Medical Center, Long Beach, CA, offered the following prayer:

Our God and God of our ancestors, we ask Your blessings for our country, for its government, for its leaders and advisors, and for all who exercise just and rightful authority.

Creator of all flesh, bless all the inhabitants of our land with Your Spirit. May citizens of all races and creeds forge a common bond in true harmony to banish all hatred and bigotry and to safeguard the ideals and free institutions which are the pride and glory of our Nation.

May this land under Your Providence be an influence for good throughout the world, uniting all people in peace and freedom and helping to fulfill the vision of Your prophet: ''Nation shall not lift up sword against nation, neither shall they experience war anymore.''—Isaiah 2:4.

Sovereign of the universe, may it be Your will that our land should be a blessing to all the inhabitants of the globe. Cause friendship and freedom to dwell among all peoples. Vouchsafe unto us, O Lord, wisdom equal to our strength and courage equal to our responsibilities, to the end that our Nation may lead the world in the advancement and fulfillment of human welfare.

May all nations become aware of their common unity and may all the peoples of the world be united in the bonds of brotherhood before You, Father of all. ''All those who trust in the Lord will renew their strength.''—Isaiah 40:31.

May this be our will, and let us say Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, for the information of all Senators, this morning the Senate will begin a period of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the Department of Defense authorization bill. It is hoped that Senators will come to the floor to debate this important piece of legislation and offer amendments under short time agreements. Members should expect rollcall votes throughout the day's session in an attempt to make good progress on the defense bill.

Also, the Senate has reached time agreements with respect to the Abraham immigration bill and the WIPO copyright treaty legislation, and those bills could be considered during today's session.

I thank my colleagues for their attention.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. BROWNBACK). Under the previous order, there will now be a period for the transaction of morning business.

The able Senator from Mississippi is recognized.

CONGRATULATIONS THOMAS GERSTLE ABERNETHY

Mr. COCHRAN. Mr. President, often we rise on the floor of the Senate to pay tribute to a former Member of Congress or former Member of the U.S. Senate who has passed away, talking about their career and their contributions to our country.

Today I rise to pay tribute to a former Member of Congress from my State of Mississippi who will reach his 95th birthday on Saturday. Thomas Gerstle Abernethy is the last surviving member of our State's delegation of his generation that was very distinguished, indeed, and included in the House of Representatives: Jamie Whitten, Frank Smith, Arthur Winstead, John Bell Williams, and Bill Colmer. In the Senate at that time, Jim Eastland and John Stennis represented our State.

For 30 years, Thomas Abernethy was viewed as a prominent and influential Member of Congress from our State, and indeed he was. He was a member of the Agriculture Committee. He was not reticent or bashful in any way. He often spoke on the floor of the House on a wide and varied range of subjects, with intelligence, energy, and in a conscientious way to serve the interests of our State. He truly was an influence in national affairs in the Congress.

He was born in Eupora, MS, on May 16, 1903. He attended the University of Alabama and the University of Mississippi and graduated from the Law Department of Cumberland University in Lebanon, TN, in 1924. He was admitted to practice law in the State of Mississippi that same year and began practice in his hometown of Eupora in 1925. He was elected mayor of Eupora in 1927. Then in 1929 he moved to Okolona, MS. He continued to practice law there, was elected district attorney, the prosecuting attorney for several counties in that part of the State of Mississippi, in 1936. He served until he was elected to Congress in 1942. That was the 78th Congress that convened on

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

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January 3, 1943, a turbulent time in the history of our country. For three decades, until his retirement in 1973, Thomas Abernethy served with distinction as a member of our House delegation.

One of the highlights of his career politically came very soon after he was elected to Congress. Our State, during the census of 1950, was reapportioned and lost a Member of Congress. He was put in a congressional district by the State legislature's reapportionment plan, with one of the most senior and best known members of the State's delegation at that time, John Rankin. Many expected that John Rankin would defeat Tom Abernethy in the Democratic primary in 1952. But as it turned out, Tom Abernethy won that race and he served for 20 more years as a member of our House delegation.

He retired the same year that I was elected to the House with two other new Members of our House delegation—David Bowen, who replaced Tom Abernethy; and TRENT LOTT, who replaced the retiring Bill Colmer.

Interestingly enough, Tom Abernethy became a close friend and advisor to me. I sought his advice on matters involving agriculture, the Natchez Trace Parkway, and other issues of importance to me and to our State. I always found his advice and counsel very valuable and helpful.

When I became a candidate in 1978 for the Senate, Tom Abernethy continued to be my friend and advisor, for which I was very grateful. I will always recall accompanying him to his hometown of Okolona during that campaign, meeting with friends of mine and his who had decided to become active in my campaign for the Senate. I could tell that he enjoyed that occasion. I enjoyed it very much too and benefited greatly from his support throughout that campaign.

Today, I'm pleased to advise the U.S. Senate that Tom Abernethy is going to be celebrating his 95th birthday on Saturday. I encourage those who remember him as I do and appreciate him as I do to wish him well on his birthday on Saturday. I congratulate him for his conscientious and effective service to our State and our Nation as a distinguished Member of Congress and as a wise and valued citizen in his role as a former Member of Congress.

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. ALLARD. 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. ALLARD. Mr. President, it is my understanding that I have been allocated 15 minutes this morning for comments under morning business.

The PRESIDING OFFICER. Under the previous order, the Senator from Colorado, Mr. ALLARD, is recognized to speak for up to 15 minutes.

REDUCTION IN THE CAPITAL GAINS TAX

Mr. ALLARD. Mr. President, earlier this year, I introduced S. 1635, legislation to reduce the capital gains tax to 14 percent and to provide indexing of capital gains.

This legislation builds on last year's tax bill, which moved the capital gains rate down from 28 percent to 20 percent. Last year's tax change was a good first step, but I favor a more aggressive approach to tax reform.

The U.S. level of tax on capital has been among the highest in the world. I am dedicated to seeing that it becomes one of the lowest in the world. A low rate of tax will encourage capital investment, economic growth, and job creation.

This is no time for the United States to sit on its lead; We must continue to ensure that America is the premier location in the world to do business. A low capital gains tax will help our economy, but it will also help America's families by reducing their tax burden.

Mr. President, the profile of the average stock market investor is changing rapidly. To make this point, I would like to refer now to a chart that outlines the tremendous growth in stock ownership among middle class Americans. This reflects a recent study commissioned by the NASDAQ stock market, which determined that 43 percent of adult Americans now invest in the stock market. This is double the level of just 7 years ago.

Investing is no longer the exclusive province of the elderly, affluent, or male. A majority of the investors are under 50 years of age, 47 percent of the investors are women, and half of the investors are not even college graduates. Most working-age investors describe themselves as blue- or white-collar workers rather than managers or professionals. I think that this rather dramatically reflects the change in the makeup of the investor on the stock market.

In addition to investing in the stock market, millions of Americans own small businesses and farms, and they certainly feel the impact of any tax on capital assets.

Mr. President, while a cut in the capital gains tax rate would help investors and their families, it is also likely to increase tax revenues. At first, this may seem odd, but there are two principal reasons that a cut in capital gains taxes increases revenues. First, there is the short-term incentive to sell more capital assets. Second is the long-term progrowth benefit from a capital-friendly tax policy.

Let me first discuss the short-term incentive to sell more assets. In order to understand this concept, one has to first recognize that the capital gains tax is largely a voluntary tax; the tax is only paid if the investor chooses to sell the asset. If taxes are high, the investor can hold on to the asset for years. But when taxes are dropped down, lowered, investors will often decide to sell the assets and realize the capital gain.

History confirms this pattern. In 1978, when the capital gains tax rate was reduced from 40 percent to 28 percent, capital realizations increased by 50 percent and tax receipts increased. In fact, it was done at that particular point in our country's history to stimulate the economy.

In 1981, Congress and President Reagan further reduced the capital gains tax rate to 20 percent. Once again, capital realizations increased dramatically. And by 1983, they were again up by 50 percent. In fact, during the period from 1978 to 1983, capital gains tax rates were cut in half. But by the end of the period, the Federal Government was receiving twice as much revenue from capital gains taxes.

I would like to emphasize that point by turning to a chart which compares the level of capital gains tax with tax revenue over a 20-year period, running from 1976 and projecting out to the end of 1997. As the chart clearly shows, the tax rate was cut in half between 1997 and 1983, right in this time period here, and the revenues more than doubled, from $9 billion in 1978 to nearly $19 billion by 1983. This was not a temporary blip. As the chart shows, revenues continued to rise through the 1980s.

The underlying point is proven dramatically, I think, in 1986. What happened in 1986 is this: Congress voted to increase the capital gains tax to 28 percent. This was a 40 percent increase in the tax rate then in place. But the new, higher rate was delayed until January 1 of 1987. What we saw then was a massive sale of assets through 1986, while the rate was still 20 percent. Investors rushed to sell their assets before the higher 28 percent went into effect.

If we look again at the chart, we find that capital gains revenues, after 1986, began a nearly 5-year decline. In fact, despite the much higher tax rate, by 1991, capital gains revenues were actually at their lowest level since 1984.

Mr. President, the pattern should be clear by now. But I would like us to take one more look at this issue by reviewing the revenue estimates associated with last year's cut in the capital gains tax rate. Any time Congress considers tax changes, it is required to estimate the revenue impact of those changes. This task falls principally on the Joint Committee on Taxation, which relies on data compiled by the Congressional Budget Office. Current law requires revenue estimates to stretch 10 years into the future.

Last year, when Congress proposed to cut the capital gains rate from 28 to 20 percent, the Joint Committee on Taxation submitted its revenue estimate.

Despite forecasting an initial pick up in revenue due to greater realizations, JCT forecast a 10 year revenue loss from the rate cut of $21 billion.

The JCT and CBO estimates now appear to have dramatically underestimated the strength of the economy and the positive response to the tax rate cut.

The JCT forecast last July that capital gains revenue for 1998 would be $57 billion after the rate cut.

Again, this is reflected here on the chart projecting a much lower impact, actually a loss that we will end up with. In the shaded area over here with the lines drawn we see a dramatic increase in revenue that happened to the Federal Government, just contrary to what our ''budgeteers'' were projecting when we initiated the capital gains reduction in rate.

Recently, I contacted the CBO and JCT to determine how the forecast was holding up.

The Congressional Budget Office is now anticipating that both the 1997 and 1998 capital gains realizations will be much higher than previously thought.

It is therefore reasonable to assume that even with a lower tax rate, capital gains tax revenues for 1997 and 1998 will be a good deal higher than previously forecast.

The irony here is that the entire 10 year revenue loss that was forecast may be made up for in the first several years of the rate cut.

Once again, we will have a situation where a tax rate cut leads to greater revenues.

Mr. President, what does all this tell us?

In my view, a review of the last twenty years of capital gains tax rates and the associated revenues suggests that the model used by JCT and CBO to estimate capital gains revenues is flawed.

At minimum, it would appear that when tax rates are lowered the model significantly exaggerates the revenues losses.

In fact, in no single year after a rate cut has there ever been a loss of revenue.

Conversely, when tax rates are increased, the model significantly exaggerates the level of revenue gains.

Not only do the Congressional models fail to accurately measure the response of taxpayers to changes in tax rates, they completely exclude any estimate of the impact of tax changes on economic performance.

Mr. President, up to this point we have only been discussing the short term behavioral changes that come from changes in the capital gains tax rate.

What about the longer term impact on economic growth? Congress is largely in the dark when it comes to any estimate of this benefit.

It is logical to assume that a lower tax rate on capital encourages capital formation. A higher rate of capital formation clearly benefits the economy. As a consequence the federal government will realize greater income, payroll, and excise taxes. In addition, state and local tax revenues will also rise.

Admittedly, all of this is difficult to measure. However, I would like to see some attempt made to include these factors in revenue models.

At a minimum they should be appended to the official revenue estimates. This would give Congress a more complete picture of the impact of tax changes on revenues.

As I review the issue of capital gains tax revenues I am struck by several things.

First, capital gains tax rate cuts do not appear to cost the government revenue, and may in fact increase revenue rather dramatically.

Second, the current revenue estimating model should be updated to reflect evidence that the model exaggerates losses from rate cuts, and also exaggerates the gains from tax rate hikes.

In addition, some attempt should be made to measure the impact of tax changes on the level of economic performance.

Third, less emphasis should be placed on the revenue models.

Instead, greater emphasis should be placed on the impact that changes in the tax treatment of capital gains will have on the private economy.

Economic growth, job creation, and international competitiveness should be our focus, not projections of government revenue.

This is particularly true when we know that the revenue projections are not likely to be terribly accurate.

This is not intended as a criticism of those whose job it is to make the estimates. This is difficult work. I certainly recognize this having served on the House Budget Committee for several years. And those who do the work are professionals who work hard at getting it right.

Unfortunately, this business is a bit like gazing into a crystal ball. There are just too many factors at work to think we can accurately project the revenue impact of changes in capital gains tax policy.

Mr. President, when it comes to capital gains taxes I suggest that Congress spend less time gazing into the crystal ball of revenue forecasting, and more time focusing on the real world impact of taxes on capital formation, job creation, and economic growth.

I think it will then be abundantly clear that we should continue to reduce the tax on capital to 14 percent. This will continue the good work that we began last year.

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

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

PRIVILEGE OF THE FLOOR

Mr. SMITH of Oregon. I also ask unanimous consent that my assistant, Lourdes Agosto, be allowed floor privileges while I give this speech.

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

Mr. SMITH of Oregon. I thank the Chair.

(The remarks of Mr. SMITH of Oregon pertaining to the introduction of S. 2079 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. SMITH of Oregon. Mr. President, I thank you for the time and yield back the floor.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. Under the previous order, the Senator from Ohio is recognized to speak for up to 15 minutes.

10TH ANNIVERSARY OF DUI CRASH IN KENTUCKY

Mr. DEWINE. Mr. President, today marks the 10th anniversary of the most tragic drunk driving case in our Nation's history. Ten years ago today, on Saturday, May 14, 1988, a school bus filled with children heading home to Radcliff, KY, after having spent a day at King's Island Amusement Park in Ohio—that school bus was hit head-on by a drunk driver heading the wrong way on Interstate 71 near Carrollton, KY, 10 years ago today. The collision caused the front gas tank of the bus to explode in flames. The crash caused the death of 24 children and three adults, and left many of the 36 survivors burned and disfigured.

This crash did not just affect the 63 innocent victims who were on the bus that day. It had significant impact and changed forever many of the victims' families, friends and their community. This horrible tragedy helped fuel a nationwide movement which has helped to change our Nation's attitudes towards drinking and driving. This horrible tragedy helped spur State legislatures to enact more stronger drunk driving laws. It led to tougher enforcement and has caused people to think twice before drinking and driving. In short, it is no longer ''cool'' or ''neat'' in our society to drink and drive. And this horrible, horrible tragedy did impact people and has helped to galvanize public opinion in regard to drunken driving.

The effects of this attitude change are well documented. In 1986, 24,050 people lost their lives in alcohol-related traffic crashes. A decade later that number had dropped by 28 percent; 17,274 people lost their lives in 1995 in

alcohol-related accidents, a drop of 28 percent. This reduction is not attributable to one single event. It is not attributable just to this horrible accident, this horrible tragedy we are commemorating and thinking about today. It was a whole series of actions taken by people across this country—Mothers Against Drunk Driving, SADD chapters, grassroots efforts of survivors, grassroots efforts of victims and members of victims' families.

We have begun, over that decade, to significantly change public attitudes. Unfortunately, after 10 years of improvement, after 10 years of fewer people dying every year due to drunken driving, these trends have now been reversed. I think our Nation has lost its focus. We no longer focus on this as a national issue. From 1994 to 1995, fatalities in alcohol-related crashes rose—did not decline—rose, and they rose by 4 percent. That was the first increase in over a decade. In 1995, 41 percent of the 41,798 motor vehicle crash deaths were attributable to alcohol use. Alcohol involvement is the single greatest factor in traffic-related deaths and injuries. In short, the trend is now moving in the wrong direction. We have not done enough. We must move to reverse this trend.

I think what we have to do is to refocus and to put the emphasis back, again, and public debate, on this horrible, horrible problem. This year, Congress has the opportunity to help renew our Nation's focus on the evils of drinking and driving. During the Senate's consideration of ISTEA, we took the lead in helping our Nation refocus on the consequences of drinking and driving.

Mr. President, there is no one single thing in the Senate's version of ISTEA reauthorization which will change attitudes by itself. Rather, the Senate did a number of things which, when taken together, will help renew our Nation's focus on this effort.

First, the Senate voted to adopt an amendment which would encourage States to enact a statute that would make it illegal, in and of itself, to operate a motor vehicle with a blood alcohol concentration of .08 or higher. This amendment was adopted by a 2-to-1 margin in this Senate Chamber. This was one of the few times I stated on the floor that day that Members of the Senate could come to the Senate floor and cast their vote and know that a ''yes'' vote would, in fact, clearly save lives. The individuals we will never know, but it is clear this legislation, if enacted into law, will save hundreds and ultimately thousands of lives over the next few years. Sixty-one of our colleagues chose to take advantage of that opportunity.

Further, in the same bill, the Senate voted to adopt an amendment which would make it illegal to drive with one hand on the steering wheel and the other wrapped around a bottle of whiskey or beer. That is still legal in many places in this country. Under this legislation, it no longer would be tolerated.

Finally, we included a provision which would establish mandatory minimum penalties for repeat drunk drivers—the worst of the worst of the worst.

I can think of no better way to honor the memories of the victims of the deadliest alcohol-related traffic crash in our Nation's history, as well as the memories of all victims of drunk drivers, than to include these reasonable provisions aimed at renewing our Nation's focus on the tragedy resulting from drinking and driving in the final bill to reauthorize the Intermodal Surface Transportation Efficiency Act.

This matter is in conference committee right now. The conferees are dealing with a number of very contentious and very difficult funding issues. We all have our own opinions about those issues. They are very contentious. But there is one issue where the overwhelming majority of the American people have spoken in public opinion poll after public opinion poll, and that has to do with the .08. There is one issue where the members of the conference committee can know that their vote to include the .08 provision will, in fact, save lives.

Let me repeat, this Senate has spoken. Sixty-one of the Members of this Senate voted ''yes'' for a nationwide .08 standard. The House of Representatives did not have the opportunity to vote; they were blocked from voting on this measure. But I think anyone who has looked at this clearly understands that the House of Representatives also, if they had been permitted to vote on this, would have approved the .08.

What we are asking the conference committee to do is very simple: Include this provision, which passed so overwhelmingly in the U.S. Senate, in the final version of ISTEA. If the members of the conference committee will do that, they will save lives. It has been estimated that between 500 to 1,000 lives in this country will be saved every year by going to a .08 standard.

Mr. President, the statistics and facts are clear. The evidence is overwhelming. No one who tests .08 has any business being behind the wheel of a car. Think about it. If you were at a party at a neighbor's house or your own house, and you saw someone, an adult male weighing 160 to 165 pounds, and you watched him drink over an hour period of time—you timed it—four beers or four shots of liquor or four big glasses of wine on an empty stomach, then that person looked at you and said, ''I want to take your little girl Anna to get an ice cream cone,'' would you let your daughter get in the car with that person? We all know the answer. The answer is absolutely not—''Don't get near her; she can't go with you.''

That is all we are saying. Mr. President, it takes that much alcohol consumption to reach .08. What we are saying is, we set a nationwide standard so that, no matter where we go in this country, we have some level of assurance that the laws of whatever State we are in—in my case, whether I drive out of Ohio into Kentucky or Indiana or Michigan or West Virginia, wherever I go, when I put my family in a car, I will have an assurance there is a national .08 standard, a bare minimum standard to protect our families.

That is what we are asking for in the conference committee. I again urge the members of the conference committee to do what is right: Follow what the Senate has said, follow the vote in the Senate, and include this very reasonable measure.

For my friends, my conservative friends, such as myself—we consider ourselves conservatives—I simply point out, this is the same type legislation that Ronald Reagan approved and supported and pushed through the U.S. Congress, when he was President of the United States, to go to a nationwide standard of 21 as being the age for drinking. It is the same mechanism, the same procedure, and the same basic principle.

What Ronald Reagan said then, and I will paraphrase, is very simple: That in some areas of national importance, national concern, we can make small intrusions into States rights, small changes that will have monumental effects to save lives across the country, and in some areas we do need a national minimum standard. I urge the conferees to include this in the legislation.

I see my friend, Senator LAUTENBERG, who has been a tremendous advocate over the years for highway safety, who sponsored the bill I just referenced that Ronald Reagan pushed through and Senator LAUTENBERG pushed through. Senator LAUTENBERG was the author of that bill in the 1980s. He and I were at the White House yesterday with the Vice President. We have been there with the President to support this. This is a bipartisan effort to save lives in this country.

I yield to my colleague.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized to speak for up to 15 minutes.

Mr. LAUTENBERG. I thank the Chair. I thank my colleague from Ohio, Senator DEWINE.

Senator DEWINE has experience as a prosecutor. He has seen what happens when alcohol and driving try to mix. The result is terrible tragedy so often. His work here, together with mine, has enabled us to assemble a bipartisan group to support our effort to reduce the blood alcohol content to .08 at which point someone can be declared driving while impaired.

Today marks the 10th anniversary of the Nation's most deadly drunk driving crash. On the night of May 14, 1988, a bus packed with sleeping children was driving south on Interstate 71 to the First Assembly of God Church in Radcliff, KY. Thirty-five girls, twenty-eight boys, and four adults were returning from a day at the King's Island amusement park near Cincinnati.

According to newspaper accounts, the group said a short prayer before they began their return trip. I quote him. He said, ''Please grant us a safe trip. May God have his hand on this bus.'' That is what he prayed.

But prayers were not enough that day. At 10:55 p.m., as the bus neared the northern Kentucky town of Carrollton, the driver of the bus spotted a pickup truck barreling north in his southbound lane. Moments later a collision and the bus burst into flames.

Twenty-four children and 3 adults were killed in that devastating school-bus crash, and 30 more were injured. The lives of so many families and friends were destroyed.

The current president of Mothers Against Drunk Driving, Karolyn Nunnallee, lost her daughter Patty in that terrible crash. She was on television this morning trying to explain the impact of losing that child. This day across the Nation thousands of mothers, fathers, brothers, and sisters will join in a moment of silence to honor those thousands of victims who die on our highways each year at the hands of drunk drivers.

We will honor Patty and the others who died that night and those who were injured during this moment of silence.

Sadly, the death toll visited upon us by drunk driving mounts up each year with an appalling clock-like efficiency. Every 30 minutes a family loses a loved one to a drunk driver. That means in the decade since the Carrollton crash 175,000 people have died. That is almost twice the population of the capital of my home State of New Jersey, Trenton, NJ. These deaths need not have happened.

If we also take into consideration that each of these victims had family and friends, we are talking about more than—more than—a million people grief stricken, which is more people than who live in Washington, DC. And this grieving should never have occurred.

Drunk driving also takes an enormous economic toll, as well, on our Nation. Alcohol-related crashes cost society over $45 billion each year. One alcohol-related fatality is estimated to cost society about $950,000; and an injury averages about $20,000 in emergency and acute health care costs, long-term care and rehabilitation, police and court services, insurance, lost productivity, and social services.

Just look at this toll of needless death, needless grief, and needless spending. These facts should move us to rage. And our rage should move us to action.

Mr. President, we can act. Right now, the House-Senate conference committee is meeting to resolve the competing ISTEA reauthorization bills. I sit on that conference committee. As part of this process, the Congress is going to make one decision—will we get tougher on drunk driving and enact laws that will save lives or will we fall prey to the liquor and restaurant lobbyists?

Mr. President, this body has spoken about this issue. Two months ago, the Senate passed an amendment to prohibit open containers of alcohol in motor vehicles. It adopted a tough program to combat repeat offenders of drinking and driving. And by a 2 to 1 margin, the Senate voted to set a strict national drunk driving standard at .08 blood alcohol content. The Senate voted 62 to 32 for this life-saving measure. The House was not even able to vote on this issue. They were prevented from it.

We can ask the question, Why? But we must carry the will of the Senate—of the people—through to completion. We want ''.08 in '98.'' We are now at the crossroads, and it is time to decide. The question comes up, Why? Why aren't the House Members permitted to vote on this issue? Well, it stops at a committee over there. The process is different than it is over here, and they do not even have to let a piece of legislation come up on the floor.

And why? Why would they say no to a vote on this issue when parents lose children and children lose parents across this country in numbers that compare to our worst year in Vietnam? In full combat we lost about 17,000 of our soldiers. In our country every year we lose more than 17,000 people to drunk driving, and it does not have the same impact on our society. So we have to say, Why is it that it does not?

If after coming so close we fail to enact .08 this year, the American people should charge this Congress with something I will call ''VUI,'' voting under the influence of the liquor lobby. That is where it stops. They say, ''You're going to kill our business,'' that ''You're going to arrest social drinkers.'' No, no, no. We are not saying anybody can't drink. They can drink as much as they want. They can fall off the bar stools, as long as they don't fall on me or my kids.

The issue is whether, after having had a blood alcohol content level of .08, they ought to get behind a wheel. And we say no. I think the Senator from Ohio made it very clear. He said if he watched someone at a party or someone at a dinner, or something like that, have four drinks in an hour—a man my size would have five—on an empty stomach, to have your child get in the back seat of a car with that driver, I would say never, never. That is what we want to say across this country. Because every family is entitled to that kind of safety and security.

In 1984, President Reagan signed a bill that I wrote over here to make the national drinking age 21 and eliminate blood borders. Those are the borders between States with different drinking ages. Since then, more than 10,000 lives have been saved, enough to fill a small town. That is 10,000 families that did not have to mourn or grieve the loss of a child or a parent or a brother or a sister—10,000 people. That is a lot of people.

Now we have a different kind of blood border—the blood alcohol border. Right now a driver legally drunk in one of 16 .08 States merely has to drive over the border and—poof—he is legally sober again. We know that is wrong. And we know once you are over .08 you are too drunk to drive in any State.

Consider this: Someone, again, of my height having had four glasses of wine in an hour—five glasses of wine; again, I am a little heavier than the average; five glasses of wine in an hour —on an empty stomach. That is too much. We are not saying, again, that people cannot drink. We are saying they cannot drink and drive.

Think about the 6,000 families who will be spared the devastating loss of a loved one to a drunk driver over the course of a decade if we pass .08. Think of what it means. Thousands of parents now destined to lose a child will be able to read their little ones to sleep instead of looking at an empty bed; children now destined to lose a parent will wake up in a full and loving home.

One year ago, Randy Frazier called the Congress to action. Randy's daughter, Ashley—people from Maryland—was killed by a .08 drunk driver. Randy said, ''It is time for the leadership and action here in Congress to draw a safer, saner, and more sensible line against impaired driving at .08. If we truly believe in family values, then .08 ought to become the law of the land. Four beers in an hour''—four glasses of wine in an hour, on an empty stomach—''and getting behind the wheel of a car, in our estimation, is one definition of family violence.''

Mr. President, it is decision time. The question is whether we are going to vote with our conscience. Are we going to vote under ''VUI,'' voting under the influence of the alcohol lobby? They poured people into this town. The Restaurant Association had 130 as reported by a newspaper, 130 lobbyists come in. They swarmed all over the House, and they got people to change their minds. Then they got people, as I said earlier, to be able to hold that bill from getting consideration. That is not the way law ought to be decided when it comes to American families. And we hope we are going to stand up to our responsibility as we pause to honor the victims of drunk driving.

Let us be moved to action. We must enact tough drunk driving laws this year. It has to be ''.08 in '98.''

I yield the floor.

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

EXTENSION OF MORNING BUSINESS

Mr. TORRICELLI. Mr. President, I ask unanimous consent to extend morning business for 5 minutes.

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

Mr. TORRICELLI. Mr. President, let me first thank Senator THURMOND and Senator LEVIN for their consideration.

I will not use all the time I have yielded myself.

THE IMPORTANCE OF THE U.S. RELATIONSHIP WITH KUWAIT

Mr. TORRICELLI. Mr. President, I rise on an issue of great importance to me, personally, and I believe many other Members of the Senate.

Winston Churchill once noted that nations whose sons fight and die together forever change their relationship. Seven years ago, the United States and Kuwait tragically shared this experience. The liberation of Kuwait forever changed the relationships between our two peoples. Though our cultures and the faiths of many are different, we share a sense of national independence and, I believe, a growing awareness of a burgeoning potential for democracy in Kuwait.

It was, therefore, extremely disturbing on November 19, 1997, when several members of the Islamic faction in Parliament in Kuwait sought the ouster of the Minister of Information, Sheikh Saud Al-Nasir Al-Sabah. It did so because of an allegation that he permitted books to be displayed at a book fair which fundamentalists deemed to be offensive. Members of this Senate—indeed, many people in the administration—not only know Sheikh Saud Al-Nasir Al-Sabah well, they consider him a friend. During the darkest days of the invasion and occupation of Kuwait, he was the voice of that Nation in the United States. We trusted him. More, perhaps, than anyone we know in Kuwaiti society, he rallied support to the liberation of his country.

These allegations against him we now recognize were little more than an effort by Islamic fundamentalists to extend their control over the Ministry of Information, which would have changed the nature of the political system in Kuwait. Judgments about Kuwait's future are for the Kuwaiti people, obviously, and entirely. But I believe as friends of that Nation who have fought and died with them, we all have a stake in the growing movement of that society for free expression.

I know my colleagues join me with some relief and considerable pride in that in a reformed Government following this incident, Sheikh Saud Al-Nasir Al-Sabah was kept as Oil Minister. Indeed, not only did he remain in the Government, therefore, but he received a promotion.

I know the people of Kuwait have been traumatized by this effort, through this emergence of Islamic factions within their political system, to extend their control and threaten rising elements of democracy in their society. I trust that Kuwaiti democracy will be the stronger for this experience, that the people of Kuwait will not only understand but appreciate the interests of the U.S. Senate in the political system of that country, since the concept of the government and free expression in Kuwait is so much a part of our mutual understanding for the defense of that society.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2057, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2057) to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personal strengths for such fiscal year for the Armed Forces, and for other purposes.

The Senate resumed consideration of the bill.

PRIVILEGE OF THE FLOOR

Mr. THURMOND. Mr. President, I ask unanimous consent that a list of staff that I send to the desk, be permitted the privilege of the floor during the pendency of the Department of Defense authorization bill.

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

The list of staff follows:

ARMED SERVICES COMMITTEE STAFF MEMBERS

Les Brownlee, Staff Director
George Lauffer, Deputy Staff Director
Scott Stucky, General Counsel
David Lyles, Minority Staff Director
Peter Levine, Minority Counsel
Charlie Abell
John R. Barnes
Stuart H. Cain
Lucia Monica Chavez
Christine E. Cowart
Daniel J. Cox, Jr.
Madelyn R. Creedon
Richard D. DeBobes
John DeCrosta
Marie F. Dickinson
Keaveny Donovan
Shawn H. Edwards
Jonathan L. Etherton
Pamela L. Farrell
Richard W. Fieldhouse
Maria A. Finley
Cristina W. Fiori
Jan Gordon
Creighton Greene
Gary M. Hall
Patrick ''PT'' Henry
Larry J. Hoag
Andrew W. Johnson
Melinda M. Koutsoumpas
Lawrence J. Lanzillotta
Henry C. Leventis
Paul M. Longsworth
Stephen L. Madey, Jr.
Michael J. McCord
J. Reaves McLeod
John H. Miller
Ann M. Mittermeyer
Bert K. Mizusawa
Cindy Pearson
Sharen E. Reaves
Sarah J. Ritch
Moultrie D. Roberts
Cord A. Sterling
Eric H. Thoemmes
Roslyne D. Turner

Mr. THURMOND. Mr. President, today the Senate begins consideration of S–2057, the National Defense Authorization Act for Fiscal Year 1999. I want to thank all members of the Committee who have worked so hard this year to bring this bill to the floor. I particularly want to thank Senator LEVIN, the Ranking Member, for his cooperative support.

I also want to acknowledge the contributions of Senator COATS, Senator KEMPTHORNE, and Senator GLENN. This will be their last defense authorization bill. On behalf of the committee and the Senate, I want to thank them for their dedication to the national security of our country and their support for the young men and women who serve in our armed forces. We will miss these three outstanding Senators who have served our country and the committee so well.

Mr. President, I also want to express my appreciation to the members of the staff of the Senate Armed Services Committee. We on the Committee are very proud of our staff. I believe that we have the most competent and professional staff on Capitol Hill. They work well together in a very bi-partisan way and all of us on the Committee are indebted to them for their selfless dedication. I ask unanimous consent that a list of the members of the staff be included following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. THURMOND. This is the 40th defense authorization bill on which I have worked since I joined the Armed Services Committee in 1959. It is my fourth as Chairman of the committee and as I indicated earlier this year, while I intend to remain on the Committee, this will be my last year as Chairman. I look forward to the floor debate on this bill as well as the conference with the House. I am hopeful that we are able to complete the bill and send it to the President before the July 4th recess. It is essential that we complete floor action before the Memorial Day recess in order to meet this ambitious schedule.

We have accelerated significantly our process this year. I cannot recall ever bringing the defense authorization bill to the floor this early in the year. If we are successful in completing conference in late June, we may be setting a modern day record.

Mr. President, the Defense Authorization bill for Fiscal Year 1999 which I bring before the Senate today is only 3.1 percent of Gross Domestic Product—the lowest since 1940. Defense outlays peaked in 1986 at 6.5 percent. President Reagan's defense buildup was one of the great investments in our history. As a result of President Reagan's strong leadership and our strengthened military, we won the Cold War. Therefore, we have been able to reduce our defense force structure. These reductions enabled the Nation to reduce the

deficit and achieve a balanced budget. The victory in the Cold War and the resulting peace dividend, which began, by the way, under President Reagan, is now saving us over $250 billion per year—the major factor in achieving a balanced budget.

Mr. President, we haven't debated the levels for defense spending on the floor of the Senate for some time. Maybe its because defense doesn't rank very high these days in the polls which reflect the concerns of the American people. Or maybe it's because everyone assumes that the defense budget is adequate and there is no reason to debate it. I am concerned first of all because I believe there is a clear shortfall between the ambitious foreign policy of this Administration and the resources we are willing to provide for national defense.

The operational tempo of our military forces is at an all time high. American forces are deployed literally around the globe. The foreign policy of this Administration has raised the number of separate deployments to the highest in our history. Our servicemen and women spend more and more time away from their homes and families on more frequent and extended deployments. As a result, recruiting grows more difficult and retention is becoming an extremely serious problem—especially for pilots.

We are also beginning to see increasing indicators of readiness problems. Spare parts shortages, increased cannibalization, declining operational readiness rates, cross-decking of critical weapons, equipment and personnel foretell a potential emergence of readiness difficulties that could seriously cripple our military forces in the very near future. The Chiefs of the military services indicate that they are on the margin in readiness and modernization. The Chief of one of our military services has recently stated orally as well as in writing that his budget for fiscal year 1999 is, for the third year in a row, inadequate.

While, at the present time, the American people may not be expressing concern about threats to our national security or the readiness of our armed forces, we in the Senate are not relieved of our responsibilities to ensure that we have capable, effective military forces ready to defend our nation's vital interests. It is our job in the Congress to examine the readiness and capability of our armed forces and ensure that we have provided adequate resources and guidance to the Secretary of Defense so that he can carry out his mission to protect our national security. I believe, as I have stated so many times on this floor, that nothing that we do here in the Congress is as important as providing for our national security. I intend to continue to make this point whenever I believe that we in the Senate may not be paying enough attention to this most critical issue.

Mr. President, the Congress has endeavored over the past several years to shore up our defense budgets with annual add-ons. However, reductions in the defense budgets over the last 3 years to pay for Bosnia have denigrated the effect of those Congressional plus-ups. Almost half of the $21 billion we added to the defense budgets over the last 3 years, which was intended to enhance readiness and modernization, was spent instead for operations in Bosnia. The maintenance of our forces in Bosnia and in the Persian Gulf, places great strain on our military forces and budgets.

As many of you are aware, we have been forced to cope with a $3.6 billion outlay shortfall in the defense budget resulting from scoring differences between the Office of Management and Budget and the Congressional Budget Office. The Chairman of the Budget Committee, Senator DOMENICI has been very helpful in working out a solution to help alleviate this problem. I am sure the Chairman of the Appropriations Committee joins me in thanking Senator DOMENICI and his staff for their assistance.

Under the budget agreement, we have not added funds to the defense budget this year. I do not believe that a majority of Senators would support adding funds to the defense budget in violation of the budget agreement. Therefore, we have conducted our markup consistent with the budget agreement. However, I have stated in the past and I say again, I believe that we are not providing adequate funds for defense. The Chairmen and Ranking Members of the House National Security Committee have also called for increases in the defense budget. It remains my firm belief that we should provide additional funds for our national security.

In this bill, the Committee has achieved a balance among near-term readiness; long-term readiness, through investments in modernization infrastructure and research and development; force levels; quality of life and ensuring an adequate, safe and reliable nuclear weapons capability. The Committee modified the budget request to improve operations and achieve greater efficiencies and savings and to eliminate spending that does not contribute directly to the national security of the United States.

The Committee recommended provisions to provide a 3.1 percent pay raise for the uniformed services; to enhance the ability of the services to recruit and retain quality personnel; and to restore appropriate funding levels for the construction and maintenance of both bachelor and family housing. The bill recommends increased investment in research and development activities to ensure that the Department of Defense can leverage advances in technology.

The Committee remains concerned about the level of resources available for the reserve components and the continued lack of a spirit of cooperation between the active and reserve forces. The Committee recommended a number of policy initiatives and spending increases intended to continue the improvement of the readiness of the reserve forces and to permit greater use of the expertise and capabilities of the reserve components. One such measure is the authority for the reserve components to prepare to respond to domestic emergencies involving the use or intended use of a weapon of mass destruction. I am proud to be able to recommend this important legislation which will enable the Nation to be prepared for the most unimaginable terrorist incident.

I do want to tell my colleagues that this defense bill does not include a long list of new major projects or new initiatives. Quite simply, there is no money to support new major projects or new initiatives. However, I should note that over the past three or four years, the Committee on Armed Services has produced defense bills with major new program starts, reforms of the acquisition process, initiatives related to missile defense and counter proliferation, and programs to achieve efficiencies and enhance readiness. The Secretary of Defense must now implement these major programs. As the Department of Defense executes the programs we enacted over the past several years, I anticipate that they will come back to the Congress to suggest modifications addressing areas in which they believe they need additional flexibility.

Mr. President, I would like to remind my colleagues that any amendments to the defense authorization bill that would increase spending should be accompanied by offsetting reductions.

Mr. President, this is a sound bill. It provides a road map to take our Nation's Armed Forces into the 21st century. I urge my colleagues to join the Members of the Armed Services Committee and pass this bill with a strong bipartisan vote.

I yield the floor.

EXHIBIT I

ARMED SERVICES COMMITTEE STAFF MEMBERS

Les Brownlee, Staff Director
George Lauffer, Deputy Staff Director
Scott Stucky, General Counsel
David Lyles, Minority Staff Director
Peter Levine, Minority Counsel
Charlie Abell
John R. Barnes
Stuart H. Cain
Lucia Monica Chavez
Christine E. Cowart
Daniel J. Cox, Jr.
Madelyn R. Creedon
Richard D. DeBobes
John DeCrosta
Marie F. Dickinson
Keaveny Donovan
Shawn H. Edwards
Jonathan L. Etherton
Pamela L. Farrell
Richard W. Fieldhouse
Maria A. Finley
Cristina W. Fiori
Jan Gordon
Creighton Greene
Gary M. Hall
Patrick ''PT'' Henry
Larry J. Hoag
Andrew W. Johnson
Melinda M. Koutsoumpas

Lawrence J. Lanzillotta
Henry C. Leventis
Paul M. Longsworth
Stephen L. Madey, Jr.
Michael J. McCord
J. Reaves McLeod
John H. Miller
Ann M. Mittermeyer
Bert K. Mizusawa
Cindy Pearson
Sharen E. Reaves
Sarah J. Ritch
Moultrie D. Roberts
Cord A. Sterling
Eric H. Thoemmes
Roslyne D. Turner

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I am pleased to join the chairman of our committee in bringing the defense authorization bill for fiscal year 1999 to the floor. As we all know, as Senator THURMOND has so eloquently reminded us, this is the last year that he will be chairman of the Senate Armed Services Committee, through his choice. Therefore, it is the last year that he will be bringing an authorization bill to the floor. I just want to thank him and commend him for the commitment that he has made to our Nation's defense. It has been longstanding, it has been a matter of keen devotion. It is really a significant moment for me to be here with him as this defense authorization bill comes to the floor. I know I am thanking him on behalf of all of the members of our committee and the Senate for the energy he has placed into this issue of defense, security, and this bill itself.

Mr. THURMOND. Thank you very much.

Mr. LEVIN. Mr. President, this is also the final defense authorization bill for three other members of our committee—Senators GLENN, COATS and KEMPTHORNE. They will be leaving us this year, also through their choice. We will miss them keenly. They have all made tremendous contributions to the work of the Armed Services Committee and to the national security of our country. Sometimes their ways were similar and sometimes they were different, but we are grateful for their contributions. I wanted to note that as we get to work on the defense authorization bill.

The bill that we bring to the floor this morning is the product of several months of hard work by the Armed Services Committee. It is a large and complicated bill that could not have been produced without the dedicated effort of our chairman, the other members of our committee and our staffs. I join Senator THURMOND in thanking our staffs for their work.

While I don't agree with everything in this bill—none of us do or ever can in a bill this big and complicated—I think it will improve the quality of life for the men and women in uniform and for their families. It will continue the process of modernization of our Armed Forces to meet the threats of the future.

Senator THURMOND has already summarized the provisions of the bill. I will just highlight a few provisions that will make a significant contribution to the national defense and to our men and women in uniform.

The bill contains a 3.1 percent pay raise for military personnel and authorizes a number of bonuses to enhance our ability to recruit and retain quality men and women for our armed services.

The bill would authorize three health care demonstration projects that would address concerns about gaps in the military health care system by requiring the Department of Defense to provide health care to retired military personnel and their families who are over 65 and Medicare-eligible.

The bill contains a bipartisan Defense Commercial Pricing Management Improvement Act, which would require the Department to address management problems in sole-source buying practices.

The bill would provide funding for the U.S.-Canada environmental cleanup agreement, and for a new $24 million initiative for the development of pollution prevention technology.

Finally, the bill includes a series of other provisions that are designed to assist the Secretary of Defense in his effort to streamline our defense infrastructure and improve the Department's so-called ''tooth-to-tail'' ratio. These provisions would require reductions in DOD headquarters staff; extend current personnel authorities available to the Department to assist in downsizing; encourage public-private competition in the provision of support services; require improvements in the Department's inventory management and financial management systems; enable the Department to undertake needed reforms in travel management and the movement of household goods; and require the Department to streamline its test and evaluation infrastructure.

Mr. President, the committee was presented with a dilemma on the Air Force's F–22 fighter program. Although there is broad support for achieving the revolutionary capability the F–22 program promises, a number of us remain concerned about the degree of overlap between development, testing, and production in the program. Four years ago, we expected that 27 percent of the flight testing hours would have been completed before the Air Force signed a contract for the first production aircraft. Last year, that number had fallen to 14 percent. This year, the committee was faced with the Air Force's plan of signing a production contract with only four percent of the flight testing completed.

The bill would address this problem by making the long-lead funding for the six F–22 aircraft in FY 2000 contingent upon certifications by the Secretary of the Air Force that: (1) adequate flight testing has been conducted to address technical risk in the program; and (2) the financial benefits of going forward with the program exceed the financial risks.

I am also pleased that the bill contains a provision to encourage and facilitate organ donation by service men and women. Organ donation represents, in my view, one of the most remarkable success stories in the history of medicine. Over the past several years, the Department of Defense has made some strides in increasing the awareness among service members of the importance of organ donation. With our encouragement, DOD has included organ donation decisions in their automated medical databases, and established policies that give service members regular opportunities to state a desire to become organ donors upon their deaths.

In an effort to enhance the value of these initiatives, the bill provides the framework in which DOD will provide each new recruit and officer candidate information about organ donation during their initial weeks of training, and will include organ donation procedures in the training of medical personnel and in the development of medical equipment and logistical systems. This initiative is likely to have a vital impact on the survival of countless individuals who will, one day, benefit from organs donated by service men and women.

From the beginning of the year, Secretary Cohen and the Joints Chiefs of Staff have stressed three things that they would like to achieve in this bill:

First, they have requested authority to close excess military bases in order to fund their modernization priorities in the next decade;

Second, they have urged us not to undermine military training and readiness by reducing operations and maintenance budgets; and

Third, they have urged us to provide the necessary funding to support U.S. military operations in Bosnia during FY 1999 in a manner that does not cut into current levels of DOD funding.

I would say that the committee has achieved roughly one and a half of these three goals.

First, the bill before us would authorize $1.9 billion for continued U.S. military operations in Bosnia, in the manner requested by the Department. I am sure that many Members will want to be heard on this subject as we debate this bill. At the appropriate time I intend to offer my own amendment, which would ensure that the President reports to the Congress on progress toward achieving benchmarks toward implementation of the Dayton Accord with an exit strategy and that the Congress has an opportunity to vote on the continued presence of U.S. ground combat forces in Bosnia beyond June 30, 1999.

Second, the Armed Services Committee did a reasonable job of funding training and readiness, given the budgetary constraints under which we were

operating. Overall, the bill would reduce operations and maintenance funding by roughly $300 million, but these cuts would be achieved through reductions for fuel savings, foreign currency fluctuations, and civilian underexecution—which, if DOD's and CBO's predictions prove right, should not have a significant negative impact on military training and readiness.

On the other hand, the Secretary has asked us not to cut operations and maintenance accounts at all, because any cuts to these accounts pose some risk of a negative impact on training and readiness. We have been hearing complaints for several years now that the Administration has not provided adequate funding for military training and readiness. If we are not able to increase the level of O&M funding in conference, the cuts in this bill mean that Congress must share responsibility with the Department of Defense for any training and readiness problems resulting from O&M funding shortfalls that DOD may experience in the next year.

On the third point, I am deeply disappointed that the Armed Services Committee has again filed to authorize a new base closure round, as requested by the Secretary of Defense, the Joint Chiefs of Staff, the Quadrennial Defense Review, and the Joint Chiefs of Staff. The Secretary's Report on Base Closures from Secretary Cohen contains almost 1,800 pages of backup material. It is responsive to those who said last year that we need a thorough analysis before we can reach a decision on the need for more base closures.

The Report reaffirms that DOD still has more bases than it needs. From 1989 to 1997, DOD reduced total active duty military endstrength by 32 percent, a figure that will grow to 36 percent by 2003. Even after 4 base closure rounds, the reduction in DOD's base structure in the United States has been reduced only 21 percent.

DOD's analysis concluded that DOD has about 23 percent excess capacity in its current base structure. For example, by 2003:

The Army will have reduced the personnel at its classroom training commands by 43 percent, while classroom space will have been reduced by only 7 percent.

The Air Force will have reduced the number of fighters and other small aircraft by 53 percent since 1989, while the base structure for those aircraft will be only 35 percent smaller.

The Navy will have 33 percent more hangars for its aircraft than it requires.

Secretary Cohen's report also documents the substantial savings that have been achieved from past base closure rounds. Between 1990 and 2001, DOD estimates that BRAC actions will produce a total of $13.5 billion in net savings. After 2001, when all of the BRAC actions must be completed, steady state savings will be $5.6 billion per year.

Based on the savings from the first four BRAC rounds, every year we delay another base closure round, we deny the Defense Department, and the taxpayers, about $1.5 billion in annual savings that we can never recoup by studying to death the question of savings from previous rounds. In his report on base closures last month, Secretary Cohen stated: ''More than any other initiative we can take today, BRAC will shape the quality and strength of the forces protecting America in the 21st century.'' General Shelton told our committee: ''I strongly support additional base closures. Without them we will not leave our successors the warfighting dominance of today's force.''

Admiral Jay Johnson, the Chief of Naval Operations, stated:

> This is more than about budgeting. It's about protecting American interests, American citizens, American soldiers, sailors, airmen, and Marines. We owe them the best force we can achieve. Reducing excess infrastructure will help take us there and is clearly a military necessity.

Mr. President, closing bases is a painful process. I know that as well as anyone. All three Air Force bases in my state have been closed, and we are still working to overcome the economic blow to those communities. We have heard a lot of complaints in the last year about inadequate funds for modernization or for readiness. I am sure that we will hear more such complaints in the next year. But we don't have much standing to be critical of DOD for underfunding important defense needs if we don't allow them to do what Secretary Cohen and the Chiefs have repeatedly said they need to do—close unneeded bases.

There are several other issues in the bill that concern me. I am disappointed by the committee's cuts in the Department of Energy's stockpile stewardship program, which Secretary Peña says will have a real and dramatic impact on our ability to maintain the safety and reliability of our nuclear weapons stockpile and undermine confidence in our nuclear deterrent. I am disappointed by the cuts we have made in the chemical demilitarization program, which may make it impossible for the United States to comply with our obligations under the Chemical Weapons Convention. And I am disappointed that we have funded several weapons systems for which the Department of Defense says that it has no current need. I look forward to amendments that will improve the bill in these and other areas in the course of our debate.

Mr. President, I know that there will be some vigorous debate on this bill, and I hope Senators will come to the floor and offer their amendments so that we can complete Senate action on the bill in a timely manner then go to conference with the House.

I must leave here for perhaps a half hour to an hour. I note that Senator CLELAND will be floor managing the bill for this side of the aisle. This is an important day for us. I know it is meaningful for him, but it is an important day for us and for this institution, and for this country to note that Senator CLELAND, who is truly a hero for all of us, is now managing this bill. I can't think of anyone I would rather have do that, anyone in whom I have greater confidence to protect this Nation's interest, as he always has, than Senator CLELAND.

I yield the floor.

AMENDMENT NO. 2399

(Purpose: To increase the amount for classified programs by $275,000,000, and to offset the increase by reducing the amount for Air Force procurement for the Advance Medium Air-to-Air Missile System program by $21,058,000, and by reducing the amount for Defense-wide research, development, test, and evaluation for engineering and manufacturing development under the Theater High Area Defense program by $253,942,000)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from South Carolina [Mr. THURMOND], for himself and Mr. LEVIN, proposes an amendment numbered 2399.

Mr. THURMOND. 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:

> In section 103(2), strike out ''$2,375,803,000'' and insert in lieu thereof ''$2,354,745,000''.
>
> In section 201(3), strike out ''$13,398,993,000'' and insert in lieu thereof ''$13,673,993,000''.
>
> In section 201(4), strike out ''$9,837,764,000'' and insert in lieu thereof ''$9,583,822,000''.

Mr. THURMOND. Mr. President, I rise to offer an amendment on behalf of the Armed Services Committee.

This amendment implements an agreement between the Armed Services Committee and the Intelligence Committee. Pursuant to this agreement, the Armed Services Committee has agreed to reduce by $275 million funds in the pending bill for nonintelligence programs and to increase by $275 million funds for the next Foreign Intelligence Program, which is also part of this bill.

The Armed Services Committee has considered the range and options for implementing this agreement, all of which involve making difficult choices to cut defense programs. After considerable deliberation, the committee has decided to reduce funding for the Theater High Altitude Area Defense Program by $250 million and the Advanced Medium Range Air-To-Air Missile System by $21 million. These funds are now assigned to these two programs.

Mr. LEVIN. Mr. President, the DoD authorization bill, as reported, includes a cut of some $550 million in classified intelligence programs. I serve on both the Armed Services and the Intelligence Committees. I am very aware of the tough choices that members of both committees have to make in discharging our respective responsibilities. However, I must say that the

magnitude of this cut to intelligence programs disturbed me, as it did other members of the Committee.

Based on these concerns, the Committee agreed during the markup of the Defense Authorization Bill to try to come to some compromise with the Intelligence Committee that would reduce the magnitude of this reduction. This amendment restores $275 million of the original reduction made by the Committee. I am glad that we have worked together to achieve this outcome.

The bulk of the funds to increase the level of intelligence programs in this amendment comes from one particular program, the Theater High Altitude Area Defense, or THAAD program. The THAAD program is designed to meet a theater missile defense requirement. I have supported theater missile defense programs like THAAD because we have a clear requirement for theater missile defense systems.

The THAAD program has had a number of testing failures, and two days ago, there was another unfortunate test failure in the program. Mr. President, this failure led the Committee to the conclusion that it would be appropriate to adjust the fiscal year 1999 funding for the THAAD system. While we do not know the full implications of this test failure, it is clear that it would now be premature for the THAAD program to move from the demonstration/validation phase of the program to engineering and manufacturing development (EMD) next year as proposed in the fiscal year 1999 budget. The Committee amendment to the bill implementing the agreement with the Intelligence Committee eliminates EMD funding for THAAD in fiscal year 1999, since it is unrealistic to expect THAAD to enter EMD during that period.

I must point out that the Committee is proposing that the Senate make this adjustment without prejudice to the THAAD program. I believe that the Committee will need to follow this program as we proceed to conference with the House on this bill. If it turns out that we need to adjust this position to one that is better for the underlying THAAD program, I will work with Chairman THURMOND to do just that.

Mr. SMITH of New Hampshire. Mr. President, I rise to address the committee amendment offered by the Senator from South Carolina and the Senator from Michigan. This amendment implements agreements made between the Armed Services Committee and the Intelligence Committee. Pursuant to this agreement, the Armed Services Committee has agreed to reduce by $275 million funds in the pending bill for non-intelligence programs, and to increase by $275 million funds for the National Foreign Intelligence Program, which is also part of this bill.

The Armed Services Committee has considered a range of options for implementing this agreement, all of which involve making difficult choices to cut defense programs. After consideration deliberation, the committee has decided to reduce funding for the Theater High Altitude Area Defense (THAAD) program by $254 million and the Advanced Medium Range Air-to-Air Missile system by $21 million. The $21 million in AMRAAM is now excess to program requirements as a result of contract negotiations between the Air Force and the contractor. The funding issue related to THAAD is more complex.

We have all heard the news of Tuesday's THAAD test failure. This was the fifth time in a row that THAAD has filed to intercept a target. Although we don't have the details, we know that there was an electrical failure in the booster which caused the missile to self-destruct early in flight. Whatever impact this may have on the long-term prospects for THAAD, judging by what we now know it appears that the THAAD program will not be able to enter engineering and manufacturing development (EMD) during fiscal year 1999.

In its markup of the Defense Authorization Bill, the committee expressed concern that THAAD might not be able to spend all of its EMD budget during fiscal year 1999 even if the recent flight test was a success. Therefore, the markup included a reduction of $70 million in THAAD EMD. This left $254 million in the THAAD EMD budget, $498 million in the THAAD Demonstration and Validation (Dem/Val) budget, for a total of $752 in fiscal year 1999 for THAAD.

With the recent test failure, however, it will be virtually impossible for THAAD to enter EMD during fiscal year 1999, which means that the remaining $254 million of THAAD EMD money cannot be spent.

I am very disappointed by the results of the THAAD test, but I continue to believe that this program is important and must be permitted to proceed. Therefore I believe that the Senate should support the full budget request of $497 million for THAAD demonstration and validation. Nonetheless, due to the circumstances that the THAAD program is now in, I believe the best course of action to take now is to disapprove funding for THAAD to enter EMD during FY99. I would remind the Senate that this would leave almost $500 million in the THAAD program overall.

I would like to emphasize that I fully support the THAAD program and I would not have supported this reduction if I felt it would in any way hinder current progress on the program. The THAAD program is a critical upper-tier theater missile defense program that has encountered a setback, but I have full confidence these programs can be corrected and the program can move forward to its next test.

Mr. THURMOND. Mr. President, this amendment has been agreed to on both sides of the aisle. I now ask for a vote on this amendment.

The PRESIDING OFFICER (Mr. ENZI). Is there further debate on the amendment?

Mr. CLELAND. Mr. President, our side supports the amendment. We think it is a good compromise. We think the staff and the committee did an excellent job of putting this together. It was a difficult choice. But we support the amendment.

I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from South Carolina.

The amendment (No. 2399) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CLELAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I now turn to Senator COATS for recognition.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I thank the chairman for his recognition.

I want to also thank Senator LEVIN for the kind remarks he made about my service on the committee. It has truly been an honor for me and a privilege to serve for 10 years on the Armed Services Committee. I say without reservation that my service on that committee is the most enjoyable aspect of anything I have done in the U.S. Senate. It is a truly bipartisan committee working for one purpose: To strengthen our Armed Forces, and to strengthen our national security, and to provide our men and women in uniform with the very best that we can under obviously difficult budget conditions.

It is the first responsibility of government to provide for the common defense. We are proud of the work that our men and women in uniform have done—their dedication, their commitment, their sacrifice, their loyalty, their duty, their honor—all virtues which are in short supply in this country today. There are few institutions left that honor those virtues. The military is one of them.

It has been a great pleasure for me over the past 10 years to be a part of that, to help shape those forces to address the needs and concerns, to look to the future to see what is needed, and to hopefully put in place those programs and policies that will address those needs in the future. It has not been easy.

The decade of the 1980s was clearly a great time to be serving on that committee. We had a challenging and important time. We had a demonstrated need. We had a demonstrated bipartisan commitment to address that need, and we had the resources to accomplish that. It all culminated in the most extraordinary and outstanding victory in the history of warfare. The United

States' and the allies' performance in Desert Shield and Desert Storm was revolutionary in terms of the way warfare is dictated.

I will never forget the debate that we had both in committee and on the floor regarding what our participation should be in that situation, and the authorization for use of force, if necessary. Those were difficult times. We feared significant loss of life. And yet, the magnificent synergy of quality personnel, quality leadership, quality weapons, quality training, doctrine and command resulted in something that was truly extraordinary: A decisive victory in a very short period of time with minimal loss of life and injury—creating a dominant military the world has seldom witnessed in its history.

However, that was the culmination of the decade of the 1980s. Those were decisions that were made during the 1980s in terms of how we structure our forces, what kind of training and equipment we provide them, how we develop our leadership, and how we bring all of that together. The 1990s have been a different story. It has been a time of budget constraints. It has been a time of very significant cutbacks, a time of rejoicing over the fall of the Berlin Wall, over the fall of the Iron Curtain, the demise of a nuclear superpower that was challenging us for world superiority, not that we were looking for that, but that it was a triumph of an idea, a triumph of an idea of freedom, the concept of freedom, and an economic concept of free enterprise over totalitarianism and Marxism. That, obviously, led to major changes in the way we structured our defense.

The decade of the 1990s has been a transition period, a period in which budget limitations have driven very significant changes, a period in which the Department of Defense has contributed more to the elimination of deficit spending than perhaps all of the other aspects of Government combined. The little-told story about why we now have a surplus with our budget, why we have been able to control Government spending, is the contribution of the Department of Defense to that achievement. That contribution has overwhelmed all other contributions put together. The roughly 30-percent to 40-percent declines in spending in real dollars, the substantial downsizing of the military, the substantial downsizing in procurement, the substantial savings that have been achieved over what we would have had to spend had we maintained our military defense spending at the level of the 1980s, has made the most significant contribution to deficit reduction. And we shouldn't forget that fact. That has happened with a truly bipartisan effort.

So it has been a joy for me to work with my colleagues, Republican and Democrat, on these issues. Have we had differences of opinion? Yes. Have we had difficult debates? Closed-door debates? Yes. But in the end we have always forged a consensus, and we have done so because foremost in our minds was providing for the common defense in an effective way and looking out for the needs and the interests of our service personnel.

Mr. President, let me just briefly comment on the fiscal year 1999 defense authorization bill that has just come out of committee and that we are addressing here on the floor. First of all, I want to start with quality of life and briefly touch on that.

I served for 4 years as ranking member and 2 years as chairman of the Personnel Subcommittee.

While I still serve on that committee, I no longer am chairman. I will leave much of the details of what that committee has done to Senator KEMPTHORNE and the ranking member. However, I view this as the No. 1 priority of the committee in establishing our budget because no weapon, no doctrine, no training manual, nothing can take the place of quality personnel. And so our goal has been to attract the very best we can, to retain those personnel, and to provide them with the essentials of what they need, and to provide for them a standard of living that is commensurate with their sacrifice.

Let me say that no standard of living that we can provide is commensurate with the kind of hours and the kind of sacrifice and the kind of commitments that are made by our military personnel, but we try to do the best we can. Over the years they have been shortchanged in terms of housing. They have been shortchanged in terms of pay. And they have been shortchanged in terms of benefits. We have tried to make up for some of that. It is certainly better than it was but nowhere equal to the kind of commitment and the demands that we ask of our military personnel. Yet, day after day, year after year, they continue to provide the kind of effort and the kind of service that is unheard of in the private sector, and we owe them a great debt of gratitude as a Nation. It means that we need to keep their pay consistent with pay on the outside.

Today, we are attempting to attract people who are skilled in technical areas, who have the capacity and the capability and the training and the experience to employ today's modern military equipment using today's advanced operational concepts. It is not just simply foot soldiers carrying heavy loads, walking through the mud, although that will always be an essential part of our military as it needs to be. But it is that foot soldiers and everyone else involved in our military are today operating very sophisticated, modern equipment. They need to think on their feet. They need to have capabilities in terms of information processing, in terms of utilizing the latest in technologies, in weapons and computers and information sources that are commensurate with what is needed in the private sector.

And so we have to have the incentives in place, and pay in place to allow us to compete, and to attract and to retain these personnel.

In that regard, we have provided in this bill a 3.1-percent pay raise for military personnel. We also provide an increase of $500 million in military construction projects, $164 million of which will fund barracks, dining facilities, and military housing. If there is a shortfall in terms of what we have done for our troops over the years, it is military housing. Much of it, nearly two-thirds of military housing is substandard, substandard by military code, military, not commercial standards —and the military standards in many cases are not up to the same level as private standards—and yet year after year we ask our military families to live in this housing. It is inadequate housing, it is substandard housing, and they do so without complaint. We owe it to them, to the single soldiers and airmen and marines, men and women, and to their families. We owe it to them to give them affordable, decent housing.

We are underway with an initiative that was started by Secretary Perry to, in many cases, privatize or leverage the ability of the Department of Defense to utilize private contractors to provide military housing in arrangements which allow us to make maximum use of the funds we have, to leverage those funds in the way that the private sector leverages their money to address this housing shortfall, and so we are underway with that.

Health care is another major issue. I won't go into that. I will let Senator KEMPTHORNE address that. This is a major concern of our military personnel, something that needs to be addressed. We are in the transition period with that also, and there are many questions that need to be answered. We attempt to do some of that in this bill including the direction of three health care demonstrations for our military retirees who are Medicare eligible: one related to FEHBP; one related to TRICARE; and one related to mail order pharmacy benefits. I support these initiatives, but more needs to be done.

Let me now talk about readiness. The bill also adds over $400 million to the readiness account levels requested in the President s budget for our Active and Reserve Forces. We are all aware of the demand on readiness with our commitments overseas—Bosnia and the Persian Gulf, to name just two, and there are many, many more. These are stretching our capacity. These are costly. They affect our readiness and our ability to sustain the preparedness of the force. And we need to understand that this is a major concern which should be continually monitored and addressed by the Congress.

I want to focus most of my comments, though, Mr. President, on the modernization question. For years we have deferred modernization of our

weapons systems and of our equipment—trucks, radios, and basic equipment. We have deferred that modernization because we have not had the resources available to fund quality of life, readiness, all other aspects of our national defense such as research and development, as well as the modernization of weapon platforms and systems.

Now, this underfunding of modernization was done with the understanding that by fiscal year 1998, which we are now in, and we are dealing with the 1999 fiscal year with this budget, we will have ended this pause where we have downsized our modernization spending by as much as 70 percent over previous levels. And the understanding, the promise, was that this administration would bring procurement back to at least a $60 billion a year procurement level in fiscal year 1998 in order to replace aging tanks, aging planes, and aging equipment. This is what was originally programmed and projected. Not all of us thought that was attainable. We thought that we were doing less than we should. We were able to secure some funds to plus-up some of that modernization in the past but at levels far below what was recommended to us by experts outside the military and by military personnel who were looking at this question.

Well, here we are with an increased modernization budget but still at a $50 billion level, not the $60 billion level we were supposed to have achieved last year. So, again, modernization accounts remain on the margin. We are unable to modernize in a way that we believe is most effective from a cost standpoint and from a requirements standpoint. We have increased procurement in some areas. And I think we appreciate the ability to gain some extra funds for that, but I just want our colleagues to know there is no basis on which to come to this floor and criticize the Armed Services Committee for spending too much on new systems. We are still spending too little on the modernization of our military forces. We are below what the Department of Defense has told us, well below what they have told us is required to replace the aging weapons systems that we currently use, and recapitalize our joint warfighting capabilities.

Several of these modernization issues come through my committee. I am privileged to chair the Airland Committee. Let me just talk about some of these major procurement items.

First, the land portion of this—land power. The committee has held hearings on land power, and we are pleased to note that the Marine Corps advances in urban warfare experiments and revolutionary expeditionary capabilities with the MV22 and the AAAV seem to be on schedule. They are important in the future.

We are also pleased that the Army is moving forward to consolidate gains it has learned from its Force XXI process. And that the Army says it is investigating the transformation to the faster, smaller, more lethal and more deployable force structure it will need in the 21st Century. But the Army's modernization strategy to pursue this modernization is short particularly in some of the less glamorous areas of aviation, armored vehicles, and trucks. The committee has added provisions which address these issues. Again, there is not as much procurement for landpower as we would like, but at least we are moving in the right direction.

I want to say, Mr. President, that we have also made some very significant progress in this whole question of addressing Reserve component modernization. Thanks to the fine work of Senator GLENN in particular, and committee and staff, we have for the very first time structured what I believe is a coherent process in determining Guard and Reserve procurement. For the first time, the budget request by the Department has included a substantial amount of funds for National Guard and Reserve procurement—a $1.4 billion level, which is a 50-percent increase over last year. Our mark adds to this another $700 million.

But the important point to note here is that all of the additions that we have added for the Army Guard were requested by the Army Chief of Staff, including Blackhawk helicopters to enhance tactical airlift, new and remanufactured trucks that improve our transportation capabilities and reduce operating costs, and radios that enable the Guard to integrate with the Active Army's tactical internet. Clearly, the Senate's bipartisan efforts in this regard have had a very positive effect on the whole concept of total force integration.

As we look at limited defense budgets on and over the horizon, and as we look at ways in which we assess the threats of the future, and at our ability to deploy, and at the cost of those overseas deployments, and at our ability to preposition equipment, and at, perhaps, the denial of access to facilities overseas—to landing strips, sea ports, and bases—we need total force integration across our Active Army, and our Army Reserves, and our Army National Guard. And in order to accomplish that, we need to dispense with the former practice of making the Guard and Reserve budget requests a secondary priority to that of the Active Army, but to make them an integral part of the budget request sent over from the Department of Defense. The Department needs to assess what the Reserve components need, and they need to tell us that in the budget request, and then we need to look at that as an integrated requirement, rather than as two separate entities.

We have begun, under the prodding of the SASC, that process of total force integration and taken a significant step forward this year. I commend the Department for doing that and we need to do more for total force integration in the future.

Let me talk about TACAIR, tactical aircraft. We have held a number of hearings on TACAIR to assess the status of the F/A18–E/F, Super Hornet and the F–22 Raptor. The Navy and the Director for Operational Test and Evaluation provided their assessment that the Super Hornet's, the F/A18–E/F, the wing-drop and buffeting issues have been fixed, and that the program should proceed with production as planned. This authorization supports those funds requested for the F/A18–E/F.

These issues with the Super Hornet were not as serious as many had thought. They were, really, reported as being more serious than they were. However, they were issues that needed to be addressed. The Department of the Navy and the contractors have successfully addressed these issues, and I am pleased that the F/A18–E/F program will proceed as planned.

Now, let me speak about the F–22. Last year I spoke on the floor at length about my concerns with F–22 cost overruns and demonstrated performance. And I want to state for the record here, up front, I address these issues as a supporter of F–22 development, not as a critic of the F–22. And I spoke last year because was concerned that if we don't keep our arms around this issue and keep a good, clear oversight of the issue, the F–22 may run into very serious problems in terms of funding and in terms of support for that funding. And I don't want to jeopardize that. Based on the testimony of the Air Force and the assessment of the General Accounting Office and other entities, there are many who share a deep concern over whether or not we can maintain support for the F–22 if costs continue to escalate toward $200 million per aircraft. So we need, and we ask for, adequate demonstration of performance and cost control.

The bill that is before us authorizes the requested F–22 funding levels. I want to repeat that. The bill before us, for those who are supporters of F–22—and there are many here, because it is a marvelous new leap-ahead technology that is important for our national security and our national defense in the future—many support this marvelous new development in technology that is going to provide the basis for Air Force air dominance capabilities in TACAIR for many, many years in the future. We have authorized every penny that has been requested for next year's budget in order to continue developing the F–22. But we have put some key oversight provisions in place that will help the Congress and help the administration keep the program on track. And the reason we have done this is because there is a great deal in jeopardy if we don't do that.

Several things could happen if we cannot control F–22 costs, none of which are good. One, we could end up treating F–22 as we ended up treating B–2, another leap-ahead technology that provided us with one of the most

amazing developments in long-range strategic aircraft that any nation has ever enjoyed. But we ended up producing far fewer than what we had planned because the cost per copy had escalated so high we just simply couldn't afford to produce more. While the threat today doesn't necessarily justify additional B–2s, the threat of tomorrow could and we won't have those planes. We don't want that to happen to the F–22.

Second, we could lose support for other key systems that are necessary to provide for our future defense needs, such as carriers, Comanche, V–22. We could jeopardize those systems if the cost overruns for F–22 escalate to the point where we are spending more money on that program, and we have to take it from somewhere else. And I am afraid we would have to take it from these key and necessary weapons platforms that we require in the future.

Or third, we could lose the ability to produce what we need of the Joint Strike Fighter. The Joint Strike Fighter is the complement to the F–22 that is coming on at a later date. It is currently in its early stages of its engineering and manufacturing development, and we could jeopardize this program if F–22 costs grow. The reason why we cannot allow that to happen is that the Navy and the Marines are absolutely depending on the Joint Strike Fighter to provide stealth and to address their other TACAIR needs for the future, just as the Air Force is depending on F–22 to address their needs.

In fact, the Marine Corps has staked their entire TACAIR future on Joint Strike Fighter. So we have to be careful that we preserve our ability to go forward with the conventional variant, the carrier variant, and the short takeoff / vertical land (STO/VL) variant of the JSF. And that is why we have placed some prudent oversight provisions on F–22.

Here is what we have done and here is why we did it. When we reviewed the F–22 program, the Air Force planned F–22 flight tests beginning in May of 1997 with a contract award for the Lot I production scheduled in June 1999. Lot 1 is the first two production planes, which are followed by a Lot 2 of six aircraft. And this gets a little esoteric here—they planned for that contract award for June of 1999 when there would be 601 hours of flight testing complete, which is 14 percent of the total flight-test program.

The 14 percent is an important threshold because the Defense Science Board Report of 1995 on the F–22 production noted that most of the ''program killer''—how they describe it, ''program killer'' problems are usually discovered in the first 10 to 20 percent of developmental flight tests.

Our experience in the past has demonstrated that somewhere in that 10- to 20-percent range we find the kind of problems that can potentially terminate or cause major modifications to the technical specifications of the program that are so significant they don't justify the expense to go forward and fix the problem. You almost have to go back to page 1 of the program, and obviously that puts it in great jeopardy. So we were concerned that before we execute a contract for production, we reach a threshold level of testing, flight testing that would give us some assurance that executing that contract would be wise—a wise business decision, and a decision in the best interests of our taxpayers, but also in line with our defense needs before we executed that contract.

Unfortunately, this F–22 flight testing program has had to slip. The first flight was nearly 4 months late. Instead of May of 1997, it was in September 1997. Another test flight had to be canceled. To date, only 3 hours of flight time have been accumulated. In addition, the program is experiencing manufacturing delays of up to five months. And we have already had the previous assessment of a Joint Evaluation Team of Air Force and industry experts that concluded the F–22 program would significantly exceed its cost estimates and that it should be restructured to reduce risk. This caused us to reallocate a very significant amount of funds, $2.2 billion, to get the program back on sound footing.

Yet, despite all these problems, the Air Force wants to move the contract award not back, not to keep it at the same level, but to move it forward 6 months when the program hopes to have only 4 percent of its flight testing

We have had a lot of debate about this. We have had hearings. We have heard from the contractors. We have heard from the Air Force. We have heard from outside witnesses. We have heard from experts. We have debated among ourselves. And I believe we have reached an acceptable consensus as to how we ought to address this particular problem.

We need to address it because the obvious answer, the first answer that comes to mind, is, ''Well, let's just delay; let's just delay until they get to 14 percent.'' I wish it were that easy. Delay means that the prime contractors have to cease a schedule of lining up subcontractors, of establishing production lines, of hiring workers—a myriad of tasks that have to be accomplished, people who have to be hired, procedures that have to be put in place—and that delay costs a great deal of money and can break the production base of the program.

We have had this very complicated schedule to put together. We are talking about one of the most complex and difficult development processes and production processes that anybody can imagine. This involves a great deal of effort, time, and cost. To delay that incurs considerable risk and considerable cost.

By the same token, going forward without adequate testing produces a great deal of risk—risk that the F–22 will not turn out as we hope it turns out, risk that the flight testing between the current level, the 4-percent level, or the 14-percent level will turn up something that is a showstopper, that is a ''program killer.'' So we are trying to balance this risk against the cost of delay.

In addition to this, there has been a very complex set of negotiations that have taken place with the Air Force and the contractor, in particular, that imposes a fixed-price contract for these initial production aircraft. The Air Force states: ''This is all the money you are going to get. No matter what problems come up, we're not going to give you more, so you have to operate under the fixed-price contract.''

The contractor comes back and says: ''Well, if we have to operate under the fixed-price contract, you can't delay the contract, because there is no way we can meet the goal of producing what you want us to produce at the time you want us to produce it under the cost cap that you have imposed on us if you delay the contract and production process.''

So all of this has to be put into the mix and a decision must be made in terms of how we proceed.

This is what we decided to do: No. 1, we are going to approve the budget request for the full funding of continued development for the F–22. However, we are going to put what we call a fence—that is, we are going to put some of the what we call long lead money, money that is going to be spent in the future on items that allow us to prepare for production—we are going to put that money in a category which says it will not be released for expenditure until a couple of things happen.

First of all, I need to point out, we are going to go ahead and produce and buy the Lot I series of F–22 which consists of two aircraft. We are going to keep that on schedule. There are no restraints on that, no holds, no fences, no conditions. This is underway. We need to proceed. We are going to buy those first two planes.

Lot II consists of the next six planes. What we are going to do is say that advance procurement of lot II F–22s, the next six aircraft, cannot commence until we reach a threshold level of 10 percent of testing, which is the minimum that was specified by the Defense Science Board back in 1995—not the 14 percent, but the 10 percent. Remember, they gave us the range of 10 to 20 percent. We thought 14 percent was an adequate number. We are going to drop that down to 10 percent. That is the minimum. So there is still risk, and we are trying to minimize risk and balance risk against cost.

We are going to fence that money until 10 percent of testing is complete or until the Secretary of Defense certifies to us that a lesser amount of flight testing is sufficient and provides his rationale and analysis for that certification. And we are also requiring the Secretary to certify that it is financially advantageous to proceed to

Lot II production, aircraft three through eight, rather than wait for completion of the 10 percent of the currently planned test schedule.

That last portion is something Senator LEVIN suggested. The first portion is what I suggested. The two together, I believe, form a good basis for us to impose upon the Secretary of Defense a certification and verification process that provides us the necessary assurance that they have kept their eyes on the program, have determined through testing that if that level is 8, 8½, 9 or 9½, that is sufficient. There is no magic to the 10-percent number. Again, it was selected because the Defense Science Board set it as its minimum. However, we have new production techniques, we have new manufacturing processes in place for this plane, which have never been done before. And if we can, through simulation, if we can, through other procedures, determine that we have adequate information relative to the performance and capabilities of this plane to go into production at a lower level of demonstrated performance, then the Secretary can certify that for us.

He can't do that if the flight testing is less than 4 percent. We have to get to at least that level. Of course, that is the level suggested to us by the Air Force as necessary, and that is the level they currently plan to achieve before contract award. Those are the necessary flight test hours that are required to move up the contract award 6 months.

Those are the committee's efforts to try to balance risk with excess cost for delay and put in place a process that will give us the opportunity to have the oversight and to force the Secretary of Defense to keep his focus on the F–22 program and on any kind of cost escalation that might jeopardize the program.

We have reached this accord with the significant help of members on both sides of the committee. The committee was unanimous, Republicans and Democrats—unanimous—that this is the procedure that we ought to put in place. So there is complete bipartisan support for this effort.

I am urging my colleagues, and I have already had discussions with some of our House colleagues about why this is important. This should not be an item for compromise. We have made some very, very tough decisions here.

Mr. President, in moving away from TACAIR, let me talk for a moment about defense transformation, something Senator LIEBERMAN and I have worked on diligently in the past several years. I am pleased he has joined me on the floor, and I know we will hear from him about this when I am finished.

Defense transformation is, I think, a necessary process to address the threats of the future and to have the capability to deal with those threats. What happens under defense transformation will bear fruit 10 or 15 or 20 or more years from now. Just as the astounding success of Desert Storm was the result of decisions made in the late seventies and throughout the eighties, the successes that we can achieve in addressing threats of the future in the year 2014 or the year 2020 or beyond will be determined by the decisions that are made today, and in 2001, and 2003, and 2007.

Those decisions—in terms of the kind of platforms and equipment that we purchase, in terms of the kind of doctrine that we develop to address those new threats, in terms of the kind of forces that we structure, in terms of the kind of assessments that we make of those threats and the response to those threats —those decisions will be made now and in the next several years. And we will understand the significance of that well beyond the time that most of us will still be in the U.S. Senate.

But we owe it to the future—just as those who made the decisions in the late 1970s and in the 1980s provided for the future success of our national defense strategy in the late 1980s and 1990s—we owe it to the future and future generations to make the right decisions now.

We know that the threats of the future will be different than the threats of the past. Few, if any, tyrants or dictators or world leaders will ever again amass forces in a desert situation and line them up in traditional warfare and take on the capabilities that the United States demonstrated during the Gulf War.

No dictator is going to pour tens and hundreds of billions of dollars into building the kind of defense structure that the United States annihilated in Desert Storm. They are going to be looking at different types of threats, threats that we call asymmetric, not what is typical, not what we expect, not the war of the past, but the war of the future.

Historians will tell you that those who fight wars based on the last war lose the next war—because their adversaries are always adjusting, always evaluating and transforming. We saw that with Blitzkrieg; we saw that in naval aviation and a number of ways throughout history. The last thing we want to do is maintain the status quo, because the status quo will not be adequate to address threats of the future. So defense transformation is necessary. It is necessary to prepare us for the future. But how do we transform our military capabilities?

The Armed Services Committee has focused on this issue. A couple of years ago we authorized what we call the Quadrennial Defense Review (QDR). It simply means once every 4 years there is a review of the threats, and the processes and capabilities we have put in place as the means by which we address those threats. This QDR was an internal process. It was a process that takes place within the Department of Defense.

We believe there needs to be an ongoing, continuing process, a continual update and assessment of the threat, and how we address that threat, and what changes need to be made, and what structures need to be imposed in order to successfully address those threats in the future.

With that, we combined the QDR with a process which we labeled the National Defense Panel (NDP). It was a selection of outside experts who took a look at the same situation, a second opinion, if you will. Faced with a serious disease, people should—and I think in most cases do—get a second opinion. We don't just go to the very first doctor and say, ''Well, that sounds good. Let's go ahead.'' And we should treat our national security the same way. ''This is so serious, potentially life threatening, I want a second opinion before I make a decision.'' The NDP was our second opinion, but it was an outside opinion.

We worked closely with Secretary Perry, Deputy Secretary White, and others to fashion how we select these individuals for the NDP, and how we put this process together. It was led by Phil Odeen, chairman of the National Defense Panel, and with distinguished and recognized outside thinkers, experts, and experienced people with military background and training.

That panel produced an extraordinary report which ought to be one of the blueprints for the future. We have combined this external NDP process with the internal QDR process to try to lay out an assessments of where we are, where we are going, and how we will get there. Our defense authorization bill this year includes a sense of the Congress on a key process at the foundation of fulfilling some of these requirements—the designation of a combatant commander who has the mission of developing, preparing, conducting, and assessing a process of joint warfare experimentation.

This joint warfighting experimentation is at the foundation of this whole defense transformation. Basically, what this process says is that before we rush into what Senator COATS or Senator LIEBERMAN or the Armed Services Committee, or even the Chairman of the Joint Chiefs or the Secretary of Defense, thinks is the direction we ought to go, let us test it, let us test some ideas, let us experiment, let us look at how we develop all of this, let us take the good ideas and throw out the bad, let us not just commit to something that turns out 4 or 5 years from now to be the wrong item or the wrong direction.

Secretary Cohen is reviewing currently, for his signature, a charter which would assign the mission of joint warfighting experimentation to a combatant commander, the Commander in Chief of US Atlantic Command (USACOM) in Norfolk. We have met with Secretary Cohen. And we met with General Shelton and Admiral Gehman, the CINC of USACOM. They

have worked with us to craft this language. We have their full support.

We are not going forward here thinking that we know all the answers to these issues. We are not the experts. We have some ideas and we would like to move them forward. And we have bounced them off the Department. And we have worked together. And we have structured something which we agree on. I visited USACOM. I visited their joint training and simulation center, and their joint battle lab. And I can report, Mr. President, that progress is being made to develop the foundation for this joint experimentation process.

The Senate, I believe, has been keenly aware of the need to transform our military capabilities to address the potentially very different challenges we are going to face in the future. The National Defense Panel report argues that these challenges—which include things such as challenges in power projection, information operations, and weapons of mass destruction—can place our security at far greater risk than what we face today.

Correspondingly, the NDP recommended establishing this combatant command which will drive the transformation of our military capabilities through this process of joint experimentation. The NDP testified that the need for this joint experimentation process is ''absolutely critical'' and ''urgent.'' I am pleased that the Department of Defense has been so cooperative in working with us in helping to establish this new mission for a command and this new process. The resounding consensus from several hearings on defense transformation that we have held in the committee support the combination of joint and service experimentation as the foundation for the transformation of military capabilities to address the operational challenges of the future.

So we are taking joint and service experimentation, and combining our efforts, those best efforts and forces of our services and of our unified commanders, along with individual service experimentation initiatives—Force XXI, Sea Dragon—and a whole number of other joint and individual service processes, and looking at ways in which we take the very best insights as the basis for developing our capabilities for the future.

This process of experimentation is designed to investigate the co-evolution of advances in technology, with changes in the organizational structure of our forces, and with the development of new operational concepts. The purpose of joint experimentation is to determine those technologies, those organizations, and those concepts which will provide a leap-ahead in joint warfighting capability. Just as we are looking to leap-ahead technologies in platforms, aircraft carriers, joint strike fighters, et cetera, we are looking for leap-ahead development in concepts, and in doctrine, and in force structure.

As I said earlier, it is just as important to select winners as it is to determine losers. Under joint experimentation, failure can be a virtue. We know everything will not be a success. We do not want to reward failure, but we want to recognize failure as important to determining what works and what does not. The worst thing we could do is make a commitment to a major change in doctrine, operational concepts, weapon systems, or force structure only to find out that it does not address the relevant threats of the future. It is through experimentation that we can distinguish the true leap-aheads in capability, from those that fall short.

Identifying these failures will be just as important to our achieving success in transformation, as identifying the leap-aheads themselves because it will allow us, in a time of limited budget, to deploy and to utilize our resources in the most effective way.

We cannot afford to do what we did in the 1980s. The threat was so great, the work that we had to do was so needed, the status of our defense forces and our national security was so at risk, that we had to risk failure to determine success. But we had the budget to accommodate this failure if we had to. We had the budget to experiment and still develop all the potential systems. We don't have that luxury anymore. We don't have the kind of funds that were available in the 1980s. Therefore, we must be selective. And therefore we must have a process which allows us to determine what is the wisest course of action to take.

Mr. President, previously in our history this country has found itself unprepared for the threats we have faced at the outset of war. With God's grace and with the magnificent commitment and response of the American people, we have always rallied to eventually overcome these threats to our freedom.

That was always done at a cost, not only the fiscal cost to the taxpayer, but the cost in terms of the lives of young people who made the ultimate sacrifice for our country. We are currently contemplating the construction of a World War II memorial down on The Mall. It will join the Vietnam memorial. It will join a tribute to the Korean war. It will join other monuments to wars that this country has fought which ought to sober all of us and remind us of the tremendous cost we had to pay in order to secure and maintain our freedom, and to provide freedom for millions of people around the world.

Previously in this nation's history, we have found ourselves unprepared for the threats we faced at the outset of war. Because we were unprepared, we were vulnerable. Because we were vulnerable, we were exploited. And we had no choice but to respond. We did so, but we did so often at a terrible cost. It was worth the cost because we have maintained our freedom and we enjoy that freedom today. But we desperately want to learn from our history how to avoid those circumstances. And the tragedy that we should have learned is that being unprepared for the threats we face at the outset of conflict results in the need to build significant memorials to those who sacrifice their lives, and to those whose lives were correspondingly changed forever—those families, those relatives, those friends. All this because we failed to prepare for the relevant threats that confront us.

We desperately want to avoid this situation. We know we will be facing different threats in the future. We know that the way we are currently constituted doesn't necessarily prepare us to address those threats successfully. Obviously, the most successful thing we can do is ensure we are never vulnerable to be exploited in the first place—to be so prepared and to be so strong that no adversary desires to take us on. For us to achieve this preparedness, it is going to take a transformation in thinking. And it is going to take a transformation in structuring our military forces and in our operational concepts for us to be prepared to address the threats of the future. The joint experimentation program is one piece of the puzzle in terms of how we transform our capabilities to do that, and this bill supports that effort. In short, joint experimentation is essential to ensuring that our Armed Forces are prepared to address the security challenges of the 21st century.

In conclusion—I have taken a long time—the bill makes great strides in improving quality of life, readiness, and modernization of the force. And this bill also lays the framework for the transformation of defense capabilities to address the operational challenges envisioned in the 21st century.

I want to acknowledge and thank the distinguished service of our chairman, Senator THURMOND, who has provided such diligence and tremendous effort as chairman of this committee. He has been a member of the Senate Armed Services Committee for nearly 40 years. This will mark his last defense authorization bill as chairman of the committee. He will always be chairman in our hearts, and chairman emeritus of that committee, and will continue to make significant contributions. What a privilege it has been for this Senator to serve under this distinguished leadership of this distinguished member who has given so much to this committee!

I also thank Senator GLENN for his support and stewardship of defense issues in this, our last defense authorization bill. People have said, ''What has happened to our heroes in this country?'' JOHN GLENN is a genuine American hero—first to orbit the Earth, and now, at the age of 77, at the termination of a distinguished Senate career, he will climb back in the shuttle and orbit the Earth once again. I think that is one of the most remarkable achievements of this century. And we recognize him for that.

Senator LEVIN, as ranking member, has made an outstanding contribution

to our efforts. Many others, up and down the committee, have also played very significant roles in this. Again, I say this is a truly bipartisan effort.

Finally, without the support of our staff, this could not have been accomplished: Les Brownlee, staff director; and his counterpart David Lyles as minority staff director; our committee staff, Steve Madey and John Barnes who have been so helpful to me on the Airland Subcommittee; Charlie Abell, who I think is on the floor here, was so helpful to me during my time as Personnel Subcommittee chairman.

My personal staff—Frank Finelli, Pam Sellars, Bruce Landis, Sharon Soderstrom, and others—has been so helpful. I couldn't do it without their help.

And in closing, I wish to state that this defense bill has my full support, and I strongly encourage all members to support it.

PRIVILEGE OF THE FLOOR

Mr. COATS. Mr. President, in that regard, I ask unanimous consent Bruce Landis, a fellow in my office, be granted floor privileges throughout the consideration of this bill.

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

The Chair recognizes the Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Indiana. First, he has delivered a magnificent address on the importance of the Armed Services Committee work and defense in general.

Next, I want to commend him for the long, faithful service he has rendered to this committee. I don't know of any member of the committee that has worked harder and has stood stronger for defense and has been more knowledgeable in accomplishing what we have been able to do than the able Senator from Indiana. He is truly an expert on armed services matters. I wish him well in all that he does in the future.

I regret that he has seen fit not to run again. We will miss him here. A vacuum will be created. It will be hard to fill. He is such a fine man, such a knowledgeable man, and such a dedicated man. I want him to know that our country appreciates what he has done.

I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent floor privileges be granted to John Jennings, a fellow in my office, during the pendency of this defense bill.

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

The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise today in support of the fiscal year 1999 defense authorization bill.

I do want to add my own voice to those who have offered thanks and praise to the leadership of our committee, the distinguished chairman, the Senator from South Carolina, the Senator from Michigan, who have worked together as chairman and ranking member to do exactly what Senator COATS said earlier, which is to build a strong, bipartisan—in many ways, nonpartisan—effort to meet the defense national security needs of our country.

We used to say, and sometimes we are still able to, that partisanship stops at the Nation's borders, at the water's edge, when we enter foreign policy, defense policy. It could also be said in good measure that partisanship stops when we enter the rooms of the Senate Armed Services Committee. I thank the leadership of this committee for making that possible.

I want to pay particular tribute to Senator THURMOND, who is an American institution, a figure that looms large in our history, who, as we all know from personal service with him, manages to do what they used to say only about wine, which is that he gets better as he adds years. He is not only informed and experienced and committed; the truth is, he is a great patriot. In so many ways that will never be visible, his leadership has strengthened the security of the United States of America in the world. It has been a great honor to get to know him at this stage of his career, to work with him, particularly on the Armed Services Committee, to thank him on this historic occasion as he manages the last of these armed services bills through the Senate. The nation is in his debt, deep debt. I think all of us who have served with him are very proud that we have.

This is a person who, in the hurly-burly and sometimes mean-spirited world of politics, never seems to have anything but a positive word to say—certainly, toward his colleagues. In addition to all of the substance that I have talked about, that notion of spirit is one that I deeply appreciate.

Mr. President, while we are talking about members of the committee, I do want to thank Senator COATS, the Senator from Indiana, for the remarkable statement he has just made—eloquent, thoughtful, informed. He has made a tremendous contribution on this committee. It has been a real pleasure to work with him on a host of issues. In our case, it almost seems that I don't have to say ''across party lines,'' because we never thought about that; we were focused on common interests.

We got interested in this business of the military transformation when we were both invited, on the same day, to a day-long seminar that a think tank in town was holding on national security. We spoke at different times during the day. We had not talked to each other about the fact that we were on the same program, and we both essentially gave the same speech about the challenges facing our military—that in a world where we have faced a remarkable range of challenges, post-cold war revolution, technology, and fiscal resources constraint we had to begin to think about how to stay with it and produce the most cost-effective defense we could. From that coincidence, we began to work together on some of the elements of this authorization bill that Senator COATS has spoken of and which I will get back to in a moment. I wanted to thank him, while he was on the floor, for his tremendous contributions, and in a personal way, thank him for the partnership that we have had, which has also become a friendship. I hate to see him leave; I am going to miss him, and the Senate will miss him. I know that wherever he is, by his nature, he will be involved in public service. I wish him Godspeed in that work.

Mr. President, I rise to support the bill before us because I believe it is a very responsible bill. It is a bill that adequately provides for our Armed Forces, which is our constitutional responsibility, fully in accord with our duty of raising Armed Forces to protect our Nation. After all, it is one of the primary responsibilities that motivates people to form governments, and I think this bill continues to carry out that responsibility, uphold that duty in a way that is measured and as best we could do under the circumstances. It has never been easy to make the choices that are necessary to make when one deals with national security. I would say, having been honored to be part of this process on the committee, that it has been even harder than normal this time, because we have been working with very severe fiscal constraints.

Senator COATS made the important point—one that I think is little appreciated here in Congress and, more broadly, around the country—that as we have worked very hard to bring our Federal Government books into balance, the real contributor to that balance in reduced spending has been the defense side of the budget. That is the fact. Sometimes people look at the amount of money we are authorizing and appropriating for national security and say, ''You folks don't understand that the cold war is over.'' Believe me, we understand, and the programs have been constricted, have been in some ways squeezed, and even strangled occasionally to live within the constraints, to give what we have been asked to give to help in this great effort that is now successfully achieved—to balance our budget.

Lets talk specifically. By my reckoning, this is the 14th straight year in which our defense authorization and the spending to follow has declined in real dollars. We are spending a smaller percentage of our gross domestic product on defense today than at any time since prior to the beginning of the Second World War. I know the cold war is over, but the reality is that the world not only remains an unsettled and dangerous place—as we have seen in the last few days with the nuclear explosions in India—but that our military, in many ways, is operating at a more

intense and faster up-tempo than it did during the cold war. And the limitation on funding that we have imposed on ourselves has made it difficult to do all that we need to do, has made it difficult to provide for our personnel as we want to provide for them, and has put us in a position to push them at a very intense level, leading some to leave.

As is well known, Mr. President, the Air Force particularly is seeing a significant departure of pilots. They have invested a lot of money in training, pushing them at a very hard pace, and more and more of them are just reaching the conclusion that, well, I love my country, I love to serve, I have been trained to do this, I love being a pilot for the U.S. military, but my family can only take so much; it is time to leave and get a much higher-paying job in commercial airlines and have more time with my family.

So this steady constriction of our spending on the military has had an affect on us. This budget is 1.1 percent below the rate of inflation. The budget that we put before you, the authorization bill, S. 2057, is 1.1 percent below the rate of inflation. That means more pressure to get more out of what is being provided. It is having an affect.

Let me describe one area I am particularly interested in, because I have had the privilege of serving as the ranking Democrat on the Subcommittee of Armed Services on Acquisition and Technology. It is a pleasure to serve with the Senator from Pennsylvania, Mr. SANTORUM, who has done a superb job as chairman of the subcommittee. There are no partisan differences here. We both agree that there is a dangerous trend in our investment in science and technology. It has often been said, but it bears repeating, that we are some distance from the great victory we achieved in Desert Storm and the Gulf war. The remarkable technologically and sophisticated weapons system that so dominated the enemy in that war didn't just spring out of nowhere a year or two before the war; they are the result of investments in science and technology that occurred in the 1970s, which came to maturation in the 1980s, which produced the systems and the equipment that we used so successfully in the early 1990s in Operation Desert Storm.

The Department of Defense's science and technology budget has three basic elements: basic research, applied research, and advanced technology development. The total science and technology budget, comprised of these components just mentioned, has declined from $9.5 billion in fiscal year 1993 to $7.7 billion last year, and to somewhat over $7.1 billion this year. These are the investments we are making in the brilliant ideas that lead to the remarkable weapons systems that we are going to need in the future to defend ourselves.

No business would do this. Today, in fact, private business, understanding how important innovation and knowledge are, are investing more and more. The best businesses constantly reinvest in basic research technology and creative development. This is an alarming trend, and I point it out on the floor here this morning with the hope that we will see it, come to understand, and turn it around. I am encouraged to believe that my colleague from New Mexico, Senator BINGAMAN, will, at some point, be offering an amendment to this bill, if not a freestanding bill, which would set some higher standards and goals for increasing our support of the science and technology aspect of the defense budget.

Incidentally, Mr. President, there is a bright story to be told here. The investments we make in defense technologies have produced enormous benefits for civilian and commercial technology, and for our world, our economy. Most people, if you ask them what the most exciting technological development of recent years is, would say personal computers, the Internet—the unprecedented ability we have to communicate with each other and the people around the world to gain knowledge rapidly.

The Internet is the result of investments that the Defense Department—DARPA, the research agency—made years ago for its own original military uses. Then it spun off and become the Internet. You could mention one after another of the remarkable developments that make our lives more exciting and make it easier to be educated but in effect make us safer but healthier. They came from science and technology budgets of the DOD. We cut that. We are again down from $9.5 billion in 1993 to almost $7.2 billion in 1999, the next fiscal year. That is a problem. We are all going to pay for it.

Mr. President, overall when we look at the various factors that create the environment for security and international security, when we look at the effect that these technological changes are having in creating what the experts call a revolution in military affairs, we can do things we could never do before. Commanders are able to see the entire battlefield before them in real time, not only on the battlefield. We have the ability now to send a picture of real time back to somebody at a base, or even at the Pentagon thousands of miles away from the battlefield, to see what is happening and sight the enemy. We have the ability to strike an enemy from standoff positions, exposing our own personnel to no danger, with remarkable accuracy. And it is changing constantly.

So we have the revolution in military affairs. We have the global changes that are occurring: The end of the cold war; breakouts in some places of nationalistic and ethnic rivalries; and the spread of technology so that nations that are less wealthy than we are can focus their energy into, unfortunately, lower priced means of not only defense but offense—weapons of mass destruction, chemical, biological, and nuclear; the means to deliver those weapons with the unprecedented ability from standoff positions and with great accuracy.

Ballistic missiles: I voted yesterday for cloture on the measure introduced by the Senator from Mississippi, Senator COCHRAN, and the Senator from Hawaii, Senator INOUYE, on the policy of creating a national missile defense and stating that clearly here in the Senate. I didn't agree with every provision of the bill. To me, it is an urgent national problem that deserved our debate. When we got to it, I was going to prepare some amendments. I hope eventually we do get to it and we can have an agreement across not only the aisles here but between the Congress and the administration to state clearly that the development of a national missile defense is a national priority and here is the way we ought to go at it.

Incidentally, when we go at it, we ought to begin to negotiate it with our friends in Russia about how it affects the Anti-Ballistic Missile Treaty, not to do it by way of surprise or antagonism. But the Anti-Ballistic Missile Treaty was negotiated and signed more than a quarter of a century ago. The world is a very different place. In many ways, the strategic interests of Russia and the United States are comparable certainly on this ground: Common concerns about being affected by the spread of technology and ballistic missiles delivering weapons of mass destruction.

So put that together—revolution of military affairs, global changes—and add to that the fiscal restraints that I have described, and you have a tough situation, one that falls on us here in Congress and on those who serve our Nation in uniform and as civilian leaders in the Pentagon, to not accept the status quo, to stick with it. Everything is changing. You can't succeed and stay static, stay the way you have been doing. You have to keep moving. You have to keep looking for better ways for doing what you are doing. You have to keep looking for efficiencies and finding ways to save money so you can use that money to invest in other areas that help you with your future defense.

There is a great company headquartered in the State of Connecticut. Awhile back, I was reading in one of our newspapers that they were about to achieve record profits in a quarter, that they were going to go well over a couple of billion dollars on an annual basis, I believe, in profits. What is the story? The CEO of the company is calling in all of the division heads and pushing them for how they are going to find new efficiencies in the company—What are the market opportunities of the future? What are their competitors going to be doing?—knowing that, as great as things are now, unless they keep asking those questions, they are not going to stay on top 5 years from now or 10 years from now.

That is exactly the way I think we have to approach our national security. We are the strongest nation in the world; unrivaled. Yet the world is changing. We have to keep focusing on those changes.

General Shalikashvili a while ago, when he was Chairman of the Joint Chiefs of Staff, informed us and warned us about what we call—as Senator COATS mentioned today—''asymmetric warfare.'' Yes, we are the superpower, but a much lesser power, much less wealthy, less technically developed, smaller military can focus its investment of funds into an area where they see some vulnerability in us, asymmetric, and strike at that vulnerability—perhaps our capacity to forward deploy our troops, perhaps using weapons of mass destruction, chemical warfare; or, noting how dependent we are now on space-based assets for navigation, for surveillance, targeting, for communications, perhaps to try to develop systems that would focus on that dependence and try to incapacitate some of those systems, hurting us in a conflict.

So we have to look at that wide range of threats and protecting our assets in space, developing our ability to defend against weapons of mass destruction delivered by ballistic missiles.

That is why we have to continue to find within a budget that is going to be constrained—I don't see in the near future, certainly barring the kind of international crisis that none of us wants, hope and pray never occurs, a great public support, a support here in Congress, for the kinds of increases in our military spending that we truly need.

So we are going to have to squeeze more out of the rock. That means tough questions. It means, in my opinion, that we are going to have to go back and do another look at our infrastructure. It is controversial; I understand. But all of the statistics tell us that we have more infrastructure than we need, that we have reduced our personnel and other expenditures much more than we have reduced the spending we are doing on our bases. We have to come back to that and acknowledge that maybe we have to find a better way to do it, but somehow we have to do it because we need that money. As I say, we have to continue the work we have done on acquisition reform as a way to find more funds for these programs that we need to support.

It is in this context that I come to two amendments that are in this bill, in which I think we have, as a committee and hopefully now as a full Senate, stepped up to our responsibility to oversee the transformation of our military to the future course that will not only protect our security better in the 21st century but will do it in a more cost-effective fashion.

There are two provisions in this bill that I think are very important for our execution of this oversight responsibility. I want to speak about them. The first supports the Chairman of the Joint Chiefs of Staff, our current chairman, General Shelton—doing a superb job—in his decision to establish a joint experimentation process. The second requires on a regular basis a Quadrennial Defense Review and a National Defense Panel assessment be done every 4 years—the experience we have been through in the last couple of years not to be a one-time experience but it continue on.

Let me talk about the first. And, again, I see this not only as a move to jointness, not only as a way to better take advantage of the revolution of military affairs, but to be more efficient. We have developed a force service. They are remarkable centers of excellence and purpose, patriotism, but no one would want to diminish the unique contributions each one of them makes; and yet there are redundancies and we have to find ways while preserving the uniqueness of each service—and the special edge that some of that competition among them brings—to also bring them together more in joint requirements, joint experimentation because our premise is—and the experts tell us this, the National Defense Panel told us this—that more and more war fighting of the future will be joint war fighting.

During the 1980s it became clear that we needed to change the way our military was organized, with more joint planning, more joint conduct of military operations. The Congress of the United States in that period of time stepped up to the responsibility when, frankly, the Pentagon would not and responded with the Goldwater-Nichols act, which I would say that most everybody today in Congress and outside says was right and necessary.

The collapse of the Soviet Union and the unprecedented explosion of technological advances that could fundamentally redefine military threats and military capabilities in the future, once again, have generated the need this bill responds to to examine the suitability of our defense policies, our strategy, and our force structure to meet future American defense requirements. Several assessments have been done but the rapid pace of change, I think, outstripped the ability of these assessments to give us durable and continuing relevant answers.

General Shalikashvili, the former Chairman of the Joint Chiefs of Staff, reacted to this changing environment and published Joint Vision 2010 in May of 1996 as a basis for the transformation of our military capabilities. I think this was a brilliant and farsighted document which embraced the improved intelligence and command and control available in the information age, and also developed the operational concepts of dominant maneuver, precision engagement, full-dimensional protection, and focused logistics to achieve the objective of the widest spectrum, full spectrum dominance in war fighting—a very important step forward.

We in Congress have also been concerned about the shortcomings in defense policies and programs derived from some of the earlier assessments. In 1996, we passed the Military Force Structure Review Act. That act required the Secretary of Defense to complete in 1997 a Quadrennial Defense Review of our programs to include a comprehensive examination of our defense strategy, force structure, force modernization plans, infrastructure, and other elements of the defense program and policies with a view toward determining and expressing the defense strategy of the United States and establishing a revised defense program through the year 2005.

That Military Force Structure Review Act of 1996 also established a National Defense Panel, a team B, a group of outside experts, many of them with active military experience, to assess the Quadrennial Defense Review and to conduct their own independent, nonpartisan review of the strategy force structure and funding required to meet anticipated threats to our security through the year 2010 and beyond—an attempt to force the process to do what our colleagues in the private sector do, try to look out beyond the horizon, make some reasoned and informed judgments as best we could about what threats we face, what competition we face, and then come back and decide where should we be investing, how should we be restructuring and reorganizing to be in the best possible position to meet those threats of the future.

I appreciate the bipartisan, unanimous support that was given to that Military Force Structure Review Act of 1996, and I believe it resulted in two reports that have had a very important effect on our military and how we view our future needs.

The QDR, as it is called, the Quadrenniel Defense Review, completed by the Secretary in May 1997, defined the defense strategy in terms of shape, respond and prepare now—three cardinal principles. The QDR placed greater emphasis on the need to prepare now for an uncertain future by exploiting the revolution in technology and transforming our forces toward Joint Vision 2010. It concluded that our future force will be different in character than our current force.

Then came the National Defense Panel. Its report, published in December of 1997, concluded that ''the Department of Defense should accord the highest priority to executing a transformation strategy for the U.S. military starting now.''

Let me just repeat those words. A transformation strategy, broad, bold transformation strategy to the next era of threat and opportunity, offense and defense, and the final words ''starting now.'' It is timely. It is important. It recommended the establishment of a joint forces command with responsibility as the joint force integrator and

provider, a center of activity to meld the services together in some joint experimentation, investments, requirements, training.

Also, the NDP recommended that this joint forces command have the responsibility and budget for driving the transformation process of U.S. forces, including the conduct of joint experimentation. If we are not experimenting together, how are we going to really be prepared for the joint war fighting that the experts tell us will dominate the future?

Admiral Owens, former Vice Chairman of the Joint Chiefs of Staff, said to us on many occasions to look around and note that we don't have joint bases, and that is something to think about. That may be one.

Both of these assessments, the QDR and the NDP, provide Congress with a compelling argument that the future security environment and the military challenges we will face will be fundamentally different from today's. They also reinforce the fundamental principle, the underpinning of the Department of Defense Reorganization Act of 1986, the so-called Goldwater-Nichols act, and that fundamental principle was that warfare in all its varieties will be joint warfare requiring the execution of joint operational concepts.

As a result of these two assessments, the Chairman of the Joint Chiefs of Staff, General Shelton, and the Senate Armed Services Committee certainly have concluded that a process of joint experimentation is required to integrate advances in technology with changes in the organizational structure of the Armed Forces and the development of joint operational concepts which will be effective against the wide range of anticipated threats, and will not just be effective, but will be cost effective because they will achieve efficiencies of scale; they will eliminate redundancies; they will pool resources for maximum results.

It is necessary to identify and assess independent areas of joint warfare which will be key to transforming the conduct of future U.S. military operations. To do this, U.S. Armed Forces must innovatively investigate and test technologies, forces and joint operational concepts in simulation, war game and virtual settings, as well as in field environments under realistic conditions against the full range of future challenges. The Department of Defense, I am pleased to note, is committed to conducting aggressive experimentation as a key component of its transformation strategy. Service experimentation and the resultant competition of ideas is vital in this pursuit. To complement the ongoing service experimentation, it is essential that an energetic and innovative organization be established within the military and empowered to design and conduct this process of joint experimentation to develop and validate new joint warfighting concepts aimed at transforming the Armed Forces of the United States to meet the anticipated threats of the 21st century.

Mr. President, in this regard I refer my colleagues to title XII of this defense authorization bill, S. 2057, which sets this out in the form of a sense of the Senate, in a quite detailed form and, in my opinion, quite progressively, as a result of very constructive discussion among the Senate Armed Services Committee, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff. I think we have a blueprint here which expresses the transformation that our military is now undergoing, led by the Secretary and the Chairman of the Joint Chiefs of Staff, and sets down a mark that is an expression of the policy desires of the Congress in this regard, that we not only appreciate that the military move in this direction; dispatching our constitutional responsibility, we urge them to do just that. And we require, here, a series of reports to tell us how they are doing. The joint experimentation provision in the bill, title XII, is our statement of support to General Shelton, as he designs and executes his plans for joint experimentation, to select a command, the Atlantic Command, presumably, to carry out this important responsibility.

Title XII does not dictate either the method that the Chairman of the Joint Chiefs should choose nor the outcomes that he should arrive at. It is a sense of the Congress. It helps establish a framework for us to explore the options for our future security in the hard light of tests on the ground, the only place where these arguments can begin to be settled objectively and where these theories can be tested realistically. And this provision in title XII offers a mechanism for us to get a report about the process, about the results, that is detailed enough for us to provide the kind of oversight we should and must provide if we are going to make the right decisions about our national security in the coming years.

Finally, the provision that requires a quadrennial defense review and national defense plan to be conducted every 4 years is equally important. The assessments that were conducted and the debate they have engendered within the Congress, within the inner community of active defense thinkers, and hopefully increasingly within the country, has been very useful. But the valid criticism by some, of both of these studies, and the conflicting ideas that they have raised make it obvious that a one-time assessment is not going to provide us all the answers we need.

We also know that the world is not going to stop changing, and just as that CEO of that large private company headquartered in Connecticut that I described who, at the moment of greatest historic success, was pressing his managers to review where they were, look forward, decide what they had to do so they would stay on top, 5, 10, 15, 20 years from now—the repetition of these two reports, the QDR and the Inside the Pentagon Review, and the NDP, a nonpartisan, independent review, offer that same hope of constant reevaluation, sometimes provocation, and hopefully, some good, solid ideas. That kind of formal review of our national security posture every 4 years will permit the needed look at where we have been and what course corrections we need to make without the disruption of too frequent interference, with the certainty that we will not slide into destructive or unproductive or irrelevant paths because we simply haven't stopped to look at what we are doing and where it is taking us.

Mr. President, I thank the Chair, I thank my colleagues. Bottom line, this is a balanced bill, the best I think this committee could offer the Senate, Congress, and the Nation, to protect our national security in a time of restraint on resources that is greater than I think is really in our national interest. But we have done the best we could. Again, I thank the leadership of the committee for the purposive, cooperative and informed way they have led us through the exercise that has produced this bill.

I yield the floor.

If there is no one else on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The distinguished Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I thank the able Senator from Connecticut for the kind remarks he made about me. I also wish to thank him for the great service he renders as a member of the Armed Services Committee. He is one of the most valuable members of our committee.

I also thank him for the great service he renders this Nation. He has taken sound positions and he has followed a course of action that our Nation would be well to follow. I appreciate all he does for his country and want him to know his colleagues hold him in high esteem.

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

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

The Senator is recognized.

AMENDMENT NO. 2387

(Purpose: Relating to commercial activities in the United States of the People's Liberation Army and other Communist Chinese military companies)

Mr. HUTCHINSON. Mr. President, I have an amendment No. 2387 which I call up at this time.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. HUTCHINSON), for himself and Mr. ABRAHAM, proposes an amendment numbered 2387.

Mr. HUTCHINSON. 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:

Add at the end the following new title:

TITLE ____—COMMERCIAL ACTIVITIES OF PEOPLE'S LIBERATION ARMY

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) The People's Liberation Army is the principal instrument of repression within the People's Republic of China, responsible for occupying Tibet since 1950, massacring hundreds of students and demonstrators for democracy in Tiananmen Square on June 4, 1989, and running the Laogai (''reform through labor'') slave labor camps.

(2) The People's Liberation Army is engaged in a massive military buildup, which has involved a doubling since 1992 of announced official figures for military spending by the People's Republic of China.

(3) The People's Liberation Army is engaging in a major ballistic missile modernization program which could undermine peace and stability in East Asia, including 2 new intercontinental missile programs, 1 submarine-launched missile program, a new class of compact but long-range cruise missiles, and an upgrading of medium- and short-range ballistic missiles.

(4) The People's Liberation Army is working to coproduce the SU–27 fighter with Russia, and is in the process of purchasing several substantial weapons systems from Russia, including the 633 model of the Kilo-class submarine and the SS–N–22 Sunburn missile system specifically designed to incapacitate United States aircraft carriers and Aegis cruisers.

(5) The People's Liberation Army has carried out acts of aggression in the South China Sea, including the February 1995 seizure of the Mischief Reef in the Spratley Islands, which is claimed by the Philippines.

(6) In July 1995 and in March 1996, the People's Liberation Army conducted missile tests to intimidate Taiwan when Taiwan held historic free elections, and those tests effectively blockaded Taiwan's 2 principal ports of Keelung and Kaohsiung.

(7) The People's Liberation Army has contributed to the proliferation of technologies relevant to the refinement of weapons-grade nuclear material, including transferring ring magnets to Pakistan.

(8) The People's Liberation Army and associated defense companies have provided ballistic missile components, cruise missiles, and chemical weapons ingredients to Iran, a country that the executive branch has repeatedly reported to Congress is the greatest sponsor of terrorism in the world.

(9) In May 1996, United States authorities caught the People's Liberation Army enterprise Poly Technologies and the civilian defense industrial company Norinco attempting to smuggle 2,000 AK–47s into Oakland, California, and offering to sell urban gangs shoulder-held missile launchers capable of ''taking out a 747'' (which the affidavit of the United States Customs Service of May 21, 1996, indicated that the representative of Poly Technologies and Norinco claimed), and Communist Chinese authorities punished only 4 low-level arms merchants by sentencing them on May 17, 1997, to brief prison terms.

(10) The People's Liberation Army contributes to the People's Republic of China's failure to meet the standards of the 1995 Memorandum of Understanding with the United States on intellectual property rights by running factories which pirate videos, compact discs, and computer software that are products of the United States.

(11) The People's Liberation Army contributes to the People's Republic of China's failing to meet the standards of the February 1997 Memorandum of Understanding with the United States on textiles by operating enterprises engaged in the transshipment of textile products to the United States through third countries.

(12) The estimated $2,000,0000,000 to $3,000,000,000 in annual earnings of People's Liberation Army enterprises subsidize the expansion and activities of the People's Liberation Army described in this subsection.

(13) The commercial activities of the People's Liberation Army are frequently conducted on noncommercial terms, or for noncommercial purposes such as military or foreign policy considerations.

SEC. ___. APPLICATION OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO CHINESE MILITARY COMPANIES.

(a) DETERMINATION OF COMMUNIST CHINESE MILITARY COMPANIES.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Attorney General, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation, shall compile a list of persons who are Communist Chinese military companies and who are operating directly or indirectly in the United States or any of its territories and possessions, and shall publish the list of such persons in the Federal Register. On an ongoing basis, the Secretary of Defense, in consultation with the Attorney General, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation, shall make additions or deletions to the list based on the latest information available.

(2) COMMUNIST CHINESE MILITARY COMPANY.—For purposes of making the determination required by paragraph (1), the term ''Communist Chinese military company''—

(A) means a person that is—

(i) engaged in providing commercial services, manufacturing, producing, or exporting, and

(ii) owned or controlled by the People's Liberation Army, and

(B) includes, but is not limited to, any person identified in the United States Defense Intelligence Agency publication numbered VP–1920–271–90, dated September 1990, or PC–1921–57–95, dated October 1995, and any update of such reports for the purposes of this title.

(b) PRESIDENTIAL AUTHORITY.—

(1) AUTHORITY.—The President may exercise the authorities set forth in section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)) with respect to any commercial activity in the United States by a Communist Chinese military company (except with respect to authorities relating to importation), without regard to section 202 of that Act.

(2) PENALTIES.—The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to violations of any license, order, or regulation issued under paragraph (1).

SEC. ___. DEFINITION.

For purposes of this title, the term ''People's Liberation Army'' means the land, naval, and air military services, the police, and the intelligence services of the Communist Government of the People's Republic of China, and any member of any such service or of such police.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that my good friend and colleague, Senator ABRAHAM of Michigan, be added as an original cosponsor of the amendment.

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

Mr. HUTCHINSON. Mr. President, today's debate is about the security of the United States. The underlying question in the debate today on the Defense Department authorization bill concerns the safety and security of the citizens of the United States, and that is why I am offering an amendment that will give the President increased powers to confront America's greatest threat, or certainly America's greatest external threat, and that is the People's Liberation Army of the People's Republic of China.

My amendment mirrors exactly the language that passed overwhelmingly on the floor of the House of Representatives last November. This language, in bill form, in the House passed by a vote of 405 to 10.

The amendment would do two things: First, it would require the Secretary of Defense, in consultation with the Attorney General, the Director of the Central Intelligence and the Director of the FBI, to maintain a current list of Chinese military firms operating directly or indirectly in the United States. This list, consisting strictly of PLA-owned companies, would be updated regularly in the Federal Register.

Secondly, the amendment would give the President enhanced authority under the International Emergency Economic Powers Act to take action against Chinese military-owned firms if circumstances warrant, including the President would have the authority to freeze assets or otherwise regulate these firms' activities. Thus, if a PLA-owned firm is found to be shipping missile-guidance components to a rogue state like Iran, the President would have the authority to take immediate action against a United States subsidiary of that firm which might, for example, be selling sporting goods in the United States.

I should note that this amendment would not require the President to take any action whatsoever. It would simply enhance his ability to do so should he believe that the circumstances warrant that action.

Let me explain the reasoning behind this amendment and why it is so critical, I believe, that the Senate adopt this amendment.

Mr. President, last week I came to this floor to discuss the growing threat that the People's Republic of China poses to the citizens of the United States. I discussed the recent CIA report covered in the Washington Times on May 4, 1998, under the headline, ''China Targets Nukes At U.S.'' This article and this CIA report noted that 13 of China's 18 long-range strategic missiles, with ranges exceeding 8,000 miles, have single nuclear warheads aimed at the United States of America.

These missiles, which are under the control of the PLA, with PLA officers manning their nuclear buttons, are in addition to China's 25 CSS–3 missiles, with ranges of more than 3,400 miles; its 18 CSS–4 missiles, with ranges exceeding 8,000 miles; and its planned DF–31, with a range exceeding 7,000 miles.

Until last year, China lacked the military intelligence necessary to manufacturer boosters that could reliably strike at such long distances.

Unfortunately, the Pentagon has reported that two U.S. companies—Loral Space and Communications and Hughes Electronics—illegally gave China space expertise during cooperation on a commercial satellite launch which could be used to develop an accurate launch and guidance system for ICBMs. This issue is still under investigation. But while it was still under investigation, in February, Loral launched another satellite on a Chinese rocket and provided the Chinese with the same expertise that is at issue in the criminal case.

The chairman of the House Science Subcommittee on Space and Technology has received word from an unnamed official at Motorola that they, too, have been involved in ''upgrading'' China's missile capability. Interestingly, this executive claims that the work is being done under a waiver from this administration, thus circumventing all bans and restrictions on such technology transfers.

The People's Liberation Army is engaged in a massive military buildup which has involved a doubling since 1992 of announced official figures for military spending by the PRC. We do not know how much may be spent, how much investment there may be in their military establishment that is not released for official consumption, but the official public figures indicate a doubling of that expenditure since 1992.

The PLA is working to coproduce the SU–27 fighter with Russia and is in the process of purchasing several substantial weapons systems from Russia, including the 633 model of the Kilo-class submarine and the SS-N–22 Sunburn missile system specifically designed to incapacitate U.S. aircraft carriers and Aegis cruisers.

So the question arises, Mr. President, how does the People's Liberation Army fund the ongoing arms race? By selling its technology to rogue states is one means by which they do it, selling arms, or at least attempting to sell arms, to U.S. gangs in our inner cities and selling CDs, socks, consumer electronics, and scores of other commercial items to U.S. consumers.

For example, the People's Liberation Army has contributed to the proliferation of technologies relevant to the refinement of weapons-grade nuclear material, including transferring ring magnets to Pakistan. Additionally, the PLA and its associated defense companies have provided ballistic missile components, cruise missiles, chemical weapons ingredients, to Iran, a country that the executive branch has repeatedly reported to this Congress is the greatest sponsor of terrorism in the world today.

I point to this chart. The source is the Office of Naval Intelligence, March of 1997. They reported:

> Discoveries after the Gulf War clearly indicate that Iraq maintained an aggressive (W)eapons of (M)ass (D)estruction procurement program.

And then they point out:

> A similar situation exists today in Iran with a steady flow of materials and technologies from China to Iran. This exchange is one of the most active weapons of mass destruction programs in the Third World, and is taking place in a region of great strategic interest to the United States.

So we have, I think, very clear, overwhelming evidence that China continues to export technology, nuclear technology as well, and in so doing places at risk the national security of the United States.

They also are funding the arms buildup in China, not only by selling weapons to rogue states like Iraq and Iran, but also there is evidence that they are trying to actually sell weapons produced in the People's Republic of China to gangs in the United States.

In May 1996, the U.S. authorities caught the People's Liberation Army enterprise entitled Poly Technologies—a PLA-owned and operated enterprise—they were caught by U.S. authorities, and the civilian defense industrial company, Norinco, that is also involved, the U.S. authorities caught these two companies attempting to smuggle 2,000 AK–47s into Oakland, CA, and offering to sell urban gangs shoulder-held missile launchers capable of taking out a 747.

Communist authorities, upon capture of these individuals, punished only four of them—four low-level arms merchants—and they did so, sentencing them May 17, 1997, to brief prison terms.

I would suggest and I suspect that the prison terms given to these merchants of arms to the young people of this country were far less than the prison terms that have been exacted upon those prisoners of conscience, those who dared to speak up against the oppressive regime that controls the largest nation in the world. Eight years was given to Wang Dan for his support of the demonstrations in Tiananmen Square almost 9 years ago in addition to the 12 years that he was recently serving for supporting democracy in China.

It is estimated that the PLA earns $2 billion to $4 billion a year in earnings through the many enterprises that it operates that deal in nonmilitary commodities and that these enterprises profit handsomely from their activities in the United States. A report released earlier this year indicated that vast quantities of goods, as varied as toys, skis, garlic, iron weight sets, men's pants, car radiators, glassware, swimming suits, and many more such commercial domestic items are being sold to U.S. consumers by PLA-owned firms.

This chart indicates—and I will quote from this chart regarding the PLA-affiliated companies and their operation in the United States. This comes from the Institutional Investor, July of 1996: ''And we find that military-affiliated companies can be found in virtually every part of the Chinese economy with the most rapid expansion occurring in the lucrative service industries. Though the PLA enterprises are scattered throughout the economy, they have carved out niches in the eight areas to the right''—including transportation, vehicle production, pharmaceuticals, hotels, real estate development, garment production, mining and communications.

Some of these products are being exported—which becomes a rich source of revenue for the People's Liberation Army. Even those products and those services that are sold domestically to the Chinese people become an unaccounted for subsidy, if you will, for the arms race, in the development of the PLA military strength and might. So I believe this should be of great concern to us as we continue to see the PLA fund the arms race.

I point out that the Chinese defense industrial trade organizations have a broad, broad interrelationship with the industries in China. This chart shows the web of PLA-owned enterprises that operate in the United States and around the world.

All of the companies on the left, in the peach color, are companies that have been documented by our Defense Intelligence Agency as being directly owned by the People's Liberation Army. The ones to the other side, in the yellow, are their defense industrial base. Some of them have indirect connections also, but they are not directly owned by the People's Liberation Army.

This next chart I believe shows the chain of command for companies like China Poly Group, China Carrie Corp., and other well-known Chinese companies and their interrelationship with the government and the PLA and the Communist Party. In fact, the Communist Party Central Military Commission is right at the top of the chain of command—going down to these various companies, including the China Poly Group, and the 999 Enterprise Group, and so forth. I think the American people would be shocked to see the companies listed on this chart. This, I

might add, is a very incomplete list, which is why I emphasize again the need for this amendment which would require a listing to be published of all PLA-owned enterprises that are buying and selling and doing business in the United States.

It is well documented that the PLA violates international intellectual property rights by running factories which pirate videos, compact discs, and computer software that are products of the United States. This is the main reason the People's Republic of China failed to meet the standards of the 1995 memorandum of understanding with the United States on the protection of intellectual property rights. During my trip to China in January, I saw firsthand the evidence of the pirating of videos and CDs and the selling of those pirated products on the market, on the streets of Shanghai and Beijing.

In violation of a February 1997 agreement with the United States, the People's Liberation Army continued to operate enterprises which engaged in the transshipment of textile products through third countries, thus thwarting tariffs and restrictions on illegally produced items from China.

With all but five of China's long-range nuclear missiles pointed at the citizens of the United States, it is obvious that the increasingly aggressive People's Liberation Army views the United States as its most serious adversary. My colleagues have said they would like China as an ally. We would all like to have China as an ally. But let us not fool ourselves. When our Central Intelligence Agency tells us their missiles—13 of 18 of their long-range nuclear missiles—are pointed at the citizens of the United States, it is clear they view us as an adversary. It is a sad paradox that U.S. consumers, American consumers, purchasers of products in retail stores across this country, are the unwitting supporters of and funders of the military that has their hand on the nuclear button that threatens cities in the United States.

Now, as we talk about the response of this amendment, of letting the American people know what companies are owned directly and indirectly by the military of the Chinese communist government, it seems to me to be a very basic freedom-of-information kind of issue, the right-to-know kind of issue.

We talk about the response of the President, having the enhanced authority to deal with those PLA-owned companies that might be subsidizing the military buildup in China. It is important for us to remember the ongoing human rights violations that are occurring in China. Not only are they increasing their threat internationally, but within their own borders they continue to oppress their own people. This is not some human rights watchdog group that I am going to cite. It is our own State Department which each year issues a report from various countries around the world on human rights conditions. The latest State Department report on human rights in China shows that China is still one of the major offenders of internationally recognized human rights standards. This report notes that China is continuing to engage in ''torture, extrajudicial killings, arbitrary arrest and detention, forced abortion and sterilization, crackdowns on independent Catholic and Protestant bishops and believers, brutal oppression of ethnic minorities and religions in Tibet and Xinjiang, and absolute intolerance of free political speech or free press.''

To visit Shanghai, to visit Beijing, some of the largest cities in the world, the most populous cities in the world, and to realize there is not one free newspaper in those cities—in northwest Arkansas, in a two-county area, population of 200,000, we have half a dozen competing newspapers. These are free voices—free to criticize me, free to criticize this U.S. Senate, free to criticize our President—and in the largest cities in the world in China, not one voice of freedom, not one voice to reflect the values of democracy.

So let us in this China debate, and as we look at amendments to the Department of Defense authorization bill, remember the ongoing human rights abuses that are taking place. Furthermore, that the current policy that we have pursued has so dismally failed.

According to a recent report in the Washington Post entitled ''U.S.-China Talks Make Little Progress on Summit Agenda,'' the United States is getting very few concessions from China relating to the inspection of the technology we share with them, concessions on limiting proliferation of technology to third parties like Iran, or concessions on human rights conditions, particularly in Tibet.

So our President is preparing to go to China next month, negotiations going on. We would hope they would be positive in light of our so-called policy of constructive engagement, yet we find our policy is one of give and give and give. We are not seeing corresponding concessions on the part of the Chinese Government. In fact, we are continuing to see these horrible human rights abuses taking place.

We have provided key technology that puts our own country at risk. We have set up a hotline that reaches from the White House to China. We have begun assisting China on its efforts to gain membership in the World Trade Organization. We dropped, to the consternation of many Members of this body, we dropped our annual push for a resolution condemning China's human rights record at the United Nations, something this country has done year after year as part of our foreign policy. We dropped that resolution so as not to offend the Chinese Government. We continue to allow PLA-owned companies to operate unregulated in the United States, and we continue to provide China most-favored-nation status. In return, we have witnessed the release of four, in return for all of these concessions that we have granted, we have seen the Chinese Communist government release four prominent prisoners out of the thousands upon thousands of political and religious dissidents being held today in Chinese prisons.

So I say to my colleagues, the American people have a right to know they are funding the People's Liberation Army. I believe the American consumers ought to know whether the products they are buying—including things like toys, sweaters and porcelain that they might purchase for the upcoming holidays—are supporting the People's Liberation Army and the kind of activities that I have identified today. The American people have a right to know. It may not be possible for American consumers to go into a Wal-Mart or Kmart or Target store and to identify all of the Chinese-produced products and to decide voluntarily they are not going to support that. But at least they ought to know which of those companies are controlled, directly or indirectly, by a military establishment in China that has targeted American cities with its missiles.

This amendment will help to do just that. It is needed both to shed light on the PLA's activities in the United States and to ensure that the President has the latitude and has the authority he needs to take appropriate actions when the evidence of wrongdoing arises. I hope my colleagues will support this amendment.

Again, this amendment merely requires the Secretary of Defense to document and list PLA-owned companies operating in the United States and provides the President with the power, authority, and discretion to take action against these companies, should circumstances so warrant. It does not require the President to do anything. I believe it is a commonsense amendment that, once again, passed by an overwhelming margin in the U.S. House of Representatives. I ask for my colleagues' support.

I ask for the yeas and nays.

The PRESIDING OFFICER (Ms. SNOWE). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Madam President, the Senator brings to the attention of the Senate through this amendment a very important subject, one which is currently before the Senate in a number of committees—Foreign Relations Committee, Banking Committee, and in all probability the Commerce Committee has an interest in it. I say to my colleague that the Armed Services Committee, indeed, would have an interest, of course, because it goes to the fundamental proposition of national security.

But I have to say in total candor that this amendment would require consideration by at least the three enumerated committees as well as ours. What I am asking of my colleague, and I

want to ask a few questions about it, is that I hope the Senator would be agreeable to laying this amendment aside so that the Senate would proceed with other amendments, and within that period of time it would be the pending amendment, within that period of time, we will get the expression and the views of colleagues serving on those other committees.

Mr. HUTCHINSON. I thank the chairman for his consideration, and I would not object to laying it aside so long as I will be assured there will be a rollcall vote if I so request it.

Mr. WARNER. Madam President, he has requested and gotten his rollcall vote.

Mr. HUTCHINSON. Madam President, I only point out that I think it would be very appropriate to consult with and visit with the appropriate chairman. I remind my distinguished colleague that this is the exact language that passed by a 405–10 vote in the House, and I would regard that as pretty bipartisan and noncontroversial. That language passed out of the House last November and has been referred to the appropriate committees, where it has—if I might use the word—''languished'' for several months without any action. So it is for that reason I think it is imperative that the Senate have an opportunity to express its will on something the House expressed its opinion on months ago.

Mr. WARNER. I thank my colleague.

At this time, Madam President, I ask unanimous consent that this amendment be laid aside but that it remain as the pending business on this bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Madam President, I see other colleagues here who may wish to continue with opening statements on the bill.

Mr. LEVIN. I wonder if my friend from Virginia would yield to me so I could ask the Senator from Arkansas a question?

Mr. WARNER. Yes, I yield the floor.

Mr. LEVIN. Madam President, on the matter that was set aside, I wonder if the Senator could tell us whether or not there have been any discussions between you and those committees that we have now asked their reaction from relative to holding hearings on that amendment. Could he give us a little background on that?

Mr. HUTCHINSON. I think there were 10 bills that passed out of the House regarding China policy as a block, separate bills, but that was last November. Two of those have passed, in various forms, in the Senate. Six of those bills were referred to the Foreign Relations Committee. The other two—the two I am now offering—one was referred to Banking and the other to Finance. I have had ongoing discussions with Senator HELMS of the Foreign Relations Committee. It is my understanding that they will address these bills this coming week. Therefore, I defer taking any action upon those because of the committee's anticipation of looking at these next week.

The ones in Banking and Finance I thought were important to move ahead on. This was the most appropriate vehicle before us. I am not aware that there were any plans for hearings. Since so much time had elapsed since they were referred to the Senate, it would seem to be the appropriate time to move them.

Mr. LEVIN. If I could ask the Senator an additional question. I am not familiar with his amendment. Is this particular amendment—has this been introduced as a bill in the Senate separately, or was it a House bill that came over and was referred? And, if so, was it referred to Banking or Foreign Relations?

Mr. HUTCHINSON. This particular bill was referred to Banking.

Mr. LEVIN. Has the Banking Committee indicated that they are likely to hold a hearing and have a markup on this bill?

Mr. HUTCHINSON. They have not indicated to me their intent to hold hearings or move on this bill.

Mr. LEVIN. Have there been discussions between you and the chairman?

Mr. HUTCHINSON. I have not talked to Senator D'AMATO about the bill.

Mr. LEVIN. I thank my friend.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Madam President, I rise to talk not so much about this bill but the bills that have been talked about here that passed in the House last year. Many of them were referred to the Foreign Relations Committee, of which I happen to be chairman of the Subcommittee on Asia and the Pacific Rim. These were not heard because the committee did not choose to hear them. Now we find ourselves having a hearing this morning on China. We find the President preparing to go to China.

So this bill, of course, as the Senator pointed out, was referred to Banking. I am not familiar with that one. I am here to tell you that I don't think this is the appropriate procedural place to deal with these bills. There are committees that have jurisdiction over them. They have been referred to those committees. They can be referred to those committees, and, in my view, they should be referred to those committees. So if we are going to extend the length of this debate by having each of 10 bills discussed here and voted on, then I think we need to prepare ourselves for a rather long time.

Furthermore, I think we talked at great length this morning about China and about these kinds of issues. The point of the matter is that nobody disagrees with some of the issues that are to be done here; the disagreement is how they should be handled. To send the President off to China with language of this kind doesn't seem to be a proper thing to do. They were talking about it when Jiang Zemin came here last time.

So I am prepared to talk about these bills if that is what we are going to do. But, procedurally, it doesn't seem to me that this is the appropriate place to deal with the bills. We can go on for a very long time if that is what is going to take place on this authorization bill.

I yield the floor.

Mr. ABRAHAM. Mr. President, I rise to support the amendment to the National Defense Authorization bill offered by the Senator from Arkansas to address what is clearly a national defense issue—the conduct of Chinese companies, owned and operated by the People's Liberation Army, in the United States. It is based on a provision in a comprehensive bill I introduced last year, the China Policy Act.

I believe that this bill is not only an appropriate place to consider this issue, it is the most appropriate, and is indeed an issue of supreme national security interest. Furthermore, Mr. President, if I thought the original bill that was passed by the House by a vote of 405–10 would actually be considered by the Banking Committee, it may be appropriate to wait. But it has been over six months, Mr. President, and no action has been taken. Given this is a national security issue, we need to discuss this here and now.

Therefore, Mr. President, I wish to outline some of my specific national security concerns regarding these People's Liberation Army companies. First, we are all familiar with the well publicized examples of Polytech and Norinco, two companies caught trying to smuggle fully automatic AK–47 assault rifles, along with 4,000 clips of ammunition, valued at over $4 million, to supply street gangs and drug runners in the United States. During the course of this undercover sting operation, U.S. agents were offered a slew of other heavy ordinance, including shoulder-fired surface-to-air missiles.

Now Mr. President, these two companies are effectively controlled by the People's Liberation Army. In fact, the head of the Polytech parent company, Poly Group, is Major General He Ping, the son-in-law of Deng Xiao-ping. He heads Poly Group, a company that reports directly to the Central Military Commission of the People's Liberation Army. At the same time, Norinco is the parent company of 150 businesses, including the largest motorcycle maker in China and one of the country's most successful automakers.

As state-owned enterprises, PLA companies frequently operate on noncommercial terms, conducting their affairs for such non-market reasons as military espionage and prestige considerations. Critics have also contended that the China Ocean Shipping Company, otherwise known as COSCO, have offered transoceanic shipping at well below market rates because of state subsidization and extremely low crew costs, in order to penetrate markets and further develop a strategic lift capability.

Last, Mr. President, the profits from these companies will end up financing

the Chinese military. Karl Schoenberger, writing in Fortune Magazine, estimated that the profits from these PLA activities is conservatively estimated at $2 to $3 billion. Based in part on this purchasing power and the Chinese military establishment's considerable use of off-budget financing, the Arms Control and Disarmament Agency estimated that Chinese military spending is nine times what it announced.

The question therefore becomes, Mr. President, do we want to know which companies in the United States are financing Chinese military expansion? Do we want to know which companies are financing the arm of repression in the PRC that has been extensively detailed on this floor over the past year? Do we want to give the American consumer the opportunity to know whether the product they are buying will help finance the oppression in Tibet? I believe that is our responsibility, Mr. President, and that this amendment will provide that vital information for our national security, by mandating that the Director of Central Intelligence and the Director of the FBI compile a list of these PLA companies operating in the United States.

Finally, Mr. President, the President of the United States needs the additional authority to take decisive action against those companies that do threaten our national security. This amendment provides that economic authority to stop the operation of these front companies, and provides the only effective tools in this economic warfare—the prohibition of economic activity.

Therefore, Mr. President, I urge my colleagues to support this amendment as necessary, germane to the Defense Authorization bill, and vital to our national security.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. Madam President, I rise as chairman of the Strategic Subcommittee of the Armed Services Committee to focus on some areas that are very critical to our Nation's defense. Certainly, ''strategic'' takes on a new meaning as we hear news in the last few days of what is happening in India.

We tried, in our subcommittee, to continue initiatives that have been started in previous years. At the same time, because of overall funding reductions, we were forced to make some substantial cuts, cuts that I did not want to make. But as part of the overall budget, we felt we had to do it. So we do have a budget cap, and that issue, in and of itself, is somewhat controversial.

I think it is time, as we look at the reduction in defense spending, to begin to look at that cap and, in my opinion, remove the cap. We must recognize that the defense budget has been cut deeply, and these cuts are beginning now to affect the effectiveness of our military force.

The budgets of both DOD and DOE, which are in my Strategic Subcommittee, had to be reduced. I tried to do that as fairly as I possibly could. Let me just outline some of the tough choices that we had to make. Missile defense, of course, is an area that I care deeply about. But there is some redundancy in some of the programs that we have. We have to begin to set some priorities.

The budget, as it was presented to us by the President, had some areas in it that were funded in this budget but not in future years. So the question is, If a program such as MEADS—Medium Extended Air Defense System—is not funded beyond 1999, what is the purpose of providing funding for it in fiscal 1999? So I tried to look at this. If I could not get a commitment from the administration to fund beyond fiscal year 1999, then I, for the most part, reduced or eliminated the funds for next year. In the case of MEADS, our intent is to encourage DOD to find alternative approaches to meeting the requirement. But we cannot support the program if DOD has no budget for it in the future.

Another very controversial reduction, which I was not happy about, was our cut of $97 million from the Airborne Laser Program. Because this was a tough decision, I want to explain what happened.

There were a lot of news reports that said we ''slashed'' the Airborne Laser Program, that we ''ruined'' the program, that we ''killed'' the program, that we have made it impossible for the program to recover, and so on. This is unfair and inaccurate. I simply felt that we had an obligation to review the technical and operational viability of the program.

Two years ago, our Committee included report language which basically called on the Air Force and Airborne Laser Program advocates to come forward and justify the program. I do not believe that they have done so.

So we withheld funds for placing this very complex technology on an actual aircraft, a 747, until the capability is more fully tested and the operational concepts are better defined by the Air Force. I do not want to go into great detail; to some degree I cannot because it is classified. But let me be clear—we only cut the dollars intended for integrating this technology on an aircraft. This does not destroy the Airborne Laser Program, nor does it make any comment, subtle or otherwise, by anyone on the committee that somehow this program is not worthy. It does require the Secretary of Defense, with the help of outside experts, to review the program's technology and concept of operations, and show us how this technology will work when it is placed upon an aircraft. I don't think it destroys the program to delay the purchase of an airplane for a year or two while we find out whether the technology and the operational concept is valid. This is what congressional oversight is all about.

We have increased funding for Navy Upper Tier, another missile defense program, and the space-based laser readiness demonstrator, which is the ultimate step, I think, in missile defense—the space-based laser.

We tried to reduce as much of the risk as possible in the NMD Program by encouraging the Department to modify the program. Currently the so-called 3+3 program is extremely high risk. To deploy a complex system in 3 years is very, very difficult. It is an artificially compressed date and an artificially compressed program. It requires us to do everything at once instead of running a low-risk program to ensure everything fits together first. There is no margin for failure or problems. If one thing goes wrong, the whole program could collapse. It needs to be run like any other defense acquisition program, with the objective of reducing the program risk.

With the Administration's 3+3 program, we must first decide that there is a missile threat to the United States. Then we assume that in 3 years we can deploy a system to intercept that missile. I think that assumption just does not make sense.

Can we depend on our intelligence to give us that information? I draw my colleagues' attention to what happened in the last few days with India's nuclear tests. We didn't, frankly, know what was happening until it happened. We either did not have that information, or we did not heed it.

I am not trying to fault the intelligence community, other than to say that intelligence is not always objective. It is not always thorough. It is not always timely. It is not always heeded. The question we have to ask is, Are we willing to take the risk once we know that somebody has the capability and the intent to use a missile against us, and are we then prepared to say that in 3 years we will have the technology deployed to intercept that missile? I am not prepared to take that kind of chance, which is why I was very disappointed in the vote in the Senate yesterday on Senator COCHRAN's legislation, which would have established a policy to deploy a national missile defense system when it becomes technically feasible. That wise legislation was rejected; it did not get enough votes to bring it to cloture. So the current administration plan for NMD 3+3 means an NMD system will be developed in 3 years, and when a threat is acknowledged this system will be deployed in 3 years.

This just does not make a lot of sense. It naively assumes that we will see all emerging threats, and that if and when we see one, we can confidently deploy a complex system in just 3 years.

So I hope my colleagues in the Senate sometime sooner rather than later

will come to the realization of how dangerous this 3+3 approach really is. Perhaps a few more unforseen nuclear tests will convince them. If not, this extremely naive and extremely dangerous complacency could cost us dearly in years to come. We are seeing proliferation of missiles, and of the technology to develop missiles, all over the world—China, North Korea, India, Pakistan, Iran. And, yet, we were denied the opportunity yesterday on the Cochran proposal to get going on a national missile defense system.

It is extremely disturbing. As one who deals with these issues every day on the Armed Services Committee, and specifically as the chairman of the Strategic Subcommittee, I know full well that this is a naive policy. It is well intended—there is no question there—but naive.

Colin Powell, former National Security Adviser to President Reagan and the Chairman of the Joint Chiefs of Staff under Presidents Bush and Clinton, used to say we have to be concerned first and foremost about the capability of an enemy because we never know what his intent will be. The intent tomorrow might be good. It might be bad. But what is the capability? We all know that the Chinese, and the Russians, have the capability to fire a missile at the United States of America. Do they have the intent? Maybe not today. But what about tomorrow?

So we have to deal with capability. If we deny that, if we look the other way, we are really putting our heads in the sand.

In space programs, the committee increase funding for a range of activities: space control technology development; the enhanced global positioning system; the microsatellite program and the space maneuver vehicle. The budget for those programs were increased. These efforts are critical for the future exploitation and use of space by the United States.

Another area of the strategic forces subcommittee budget concerns weapons and other activities of the Department of Energy. We tried there to stabilize the core mission funding for weapons activities and environmental cleanup. As you know, we have a lot of environmental cleanup to do as a result of DOD and DOE activities over the past several decades, especially during the cold war.

So we tried in our budget to maintain the capability to remanufacture and certify enduring U.S. nuclear warheads. We tried to maintain the pace of cleanup at DOE facilities with our funding, and though the overall DOE budget was reduced, a number of funding increases were authorized for programs critical to achieving these goals.

Increases include additional funding for the four weapons production plants, tritium production, and environmental management technology development. Some will criticize these DOD cuts. But it is a matter of balance. If you look at the budget in real terms, since 1996, DOD funding has decreased by 5.2 percent, and DOE has increased by 7.7 percent.

We did the best we could. I hope that my colleagues will be supportive of the recommendations that we have made, not only in the Strategic Subcommittee but in other subcommittees as well. It is a tough job. I don't think there is a member of the committee who doesn't feel that we have gone probably too far, that we need to, perhaps, remove that budget firewall and begin to put more dollars into defense. But given the constraints of the budget agreement, we had to do with what we had.

In conclusion, I thank Senators THURMOND, LEVIN, and BINGAMAN for the cooperation that we have had together, especially Senator BINGAMAN on the subcommittee who has always been courteous to me.

I want to thank Eric Thoemmes, Paul Longsworth, and Monica Chavez of the Armed Services Committee staff, and John Luddy, Brad Lovelace, and Steve Hellyar of my own staff as well.

I would be happy to yield the floor, Madam President. I see others who wish to speak.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Madam President, I ask unanimous consent that privileges of the floor be granted to Adam Pawluk, Chrissie Timpe, and Meg Dimeling for today's session of the Senate.

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

Who seeks recognition?

Mr. SMITH of New Hampshire. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HAGEL. Mr. President, I rise this afternoon to reflect on the business at hand today; that is, our Department of Defense authorization bill.

Three hours ago, I had the privilege of joining a couple of my colleagues at the Tomb of the Unknown Soldier during a very somber, serious ceremony to exhume the remains of the unknown Vietnam veteran from the Tomb of the Unknown Soldier. If you have followed this, as all of our colleagues in this body and most of America have, you are aware that through sophisticated, primarily DNA testing—and you, Mr. President, of all people understand this very well—we now are going to be able to identify almost all remains from the Vietnam war.

I begin my remarks this afternoon with that reflection because what we are about here today is serious business. It is about the business of national defense—defending America's interests in the world. It is costly, it is serious, and at some times it is devastating. It is devastating for the families who lose loved ones in crisis, in war, in conflict.

But when I say it is costly, Mr. President, I mean costly. As one who has spent some time in the Armed Forces, who is somewhat familiar with the sacrifices that we ask of our men and women and their families, I am as concerned today about the defense capabilities of our armed services as I have been since the late 1970s. Not that our men and women, our warriors, are not up to the task, but I fear what we are doing to our men and women who have committed their lives to the defense of freedom and the defense of this Nation is that we are not providing them, we are not making to them, the kind of commitment in the resources they need to do their job.

We are asking—and this has been the case over the last 10 years—our Armed Forces to do more with less—more deployments, longer deployments. And as you look at our Defense Department budgets, this fiscal year 1999 budget represents the 14th consecutive year of decline in defense spending. In real dollars, I think the American public should know that this budget represents $3 billion less than current levels and about a 40-percent drop from the spending levels of the mid to late 1980s.

I compliment my colleagues on the Armed Services Committee for dealing with a difficult issue. I especially compliment Chairman THURMOND, who, I understand, will lead this authorization bill fight for the last time. His commitment to his country is not only exemplary but it is truly unmatched in this Chamber. There is no one who understands this business better than Chairman THURMOND and who understands what I am talking about today.

I will jump to the conclusion of my remarks by saying this. It is time the Congress of the United States be direct and honest with the American public and say what needs to be said, and that is, we need to increase spending for our Defense Department. We need to increase spending. Any measurement you take of where we are in inflation-adjusted dollars, this year's defense budget represents the smallest, in real dollars, the smallest Defense Department budget since the beginning of the Korean war. We have the smallest military in nearly 50 years.

I am astounded that the President of the United States comes before the Congress and the American public and says we have the smallest Government ever. First of all, we don't have the smallest Government ever; a $1.7 trillion Government is rather significant. But he is half right; we have a military that we have continued to hollow out over the last 10 years. We will pay a severe price for what we are doing to our Armed Forces capability.

About 3 percent of our gross domestic product today, less than half of what we had in the 1980's, goes to defense

spending. By any measurement you take of this issue of research, acquisition, and deployment of new weapons systems, we are relying on aging and older equipment.

I had an interesting conversation over the weekend at the airport in Omaha, NE. It was with two DOD auditors who have been with the DOD, auditing systems equipment, for almost 30 years. Each of them told me independently that they have never seen such a situation since the late 1970s. When they are auditing military orders to cannibalize equipment in order to get spare parts off of our jets, off of our ships, off of our military vehicles, something is drastically wrong when that happens, drastically wrong.

I hear very interesting commentary from the Secretary of Defense, whom I admire greatly, about, if you would just close more bases, that would give us more money and free up the resources. Well, that may do some of that, but what is interesting is that it does not give you any more manpower, and in fact in the President's budget this year he calls for cutting 36,000 uniformed men and women from military service, 12,000 Reserve men and women. How can we, in fact, focus the resources and make the commitment we need to make to our men and women who defend this Nation?

Let's remember something. National defense is the guarantor of our foreign policy. Without a national defense, we have no foreign policy. Yet we continue to ask our men and women in uniform to do more. Since 1990, our Armed Forces have been used in 36 foreign missions compared to 22 from 1980 to 1989. The Army decreased its manpower by 36 percent while increasing the workload by over 300 percent. Since 1989, the Air Force personnel have been cut by one-third yet the number of missions has quadrupled. From October to January of last year, we lost over 600 Air Force jet pilots. The Army estimated in 1997 that its deployable units spent 180 to 190 days away from home each year. This was before—before—the recent escalation of our forces in the Persian Gulf.

The Army Chief of Staff, General Dennis Reimer recently said, ''Our requirements exceed our people to man those requirements.''

Let's look at the quality of life. Let's ask what we are doing for the men and women we are asking to commit, in some cases, their lives; what we are asking them to do and what we are giving in return—not only the increasing rate of deployment, longer deployment, cutting their time with families, impacting their quality of life, but what about housing? It is disgraceful. Last year, the outgoing Chairman of the Joint Chiefs of Staff, General John Shalikashvili, said that, ''* * * we have family housing that we ought not be asking our folks to live in.''

In the Air Force alone there are over 41,000 families on waiting lists for decent housing. In my State of Nebraska, at Offutt Air Force Base alone, there is a terrible need for decent housing. When I say decent housing, I don't mean villas, I mean running water, hot water, plaster not falling from the ceiling, windows not broken out. These people in our Armed Forces are not asking for palaces. How do we expect the men and women in our Armed Forces, as we send them, deploy them all over the world, to concentrate on the serious business before them if they are worried about their families at home because we in the Congress and the President are not paying attention to focusing on the resources that our men and women need?

Military pay lags 13 percent behind that of the private sector. By the Department of Defense's own estimates, more than 23,000 men and women in uniform, and their families, are eligible for food stamps. What does this do to retention, recruitment and readiness? That is the essence of a capable military. The Army has fallen short of its recruitment goal for the first time since 1979—the first time. And the percentage of recruits in the United States Army with high school diplomas is declining. Since Desert Storm, the percentage of Navy petty officers who say they intend to make the Navy a career has dropped by 10 percent.

Look at the world today. Is it getting safer? Need we really look beyond what happened earlier this week with the atomic testing done by India? We have major troop deployments around the world today: 37,000 troops in South Korea, major deployments of forces in the Middle East, Japan, Europe, Bosnia. And what about the flash points that are there today, the real possibilities of conflict south of Bosnia, Kosovo? What is yet to happen on the subcontinent of Asia with Pakistan and India? I will be in the Caspian Sea region in 2 weeks—a tinderbox. Are we prepared?

The end of the cold war has reduced some threat. But now is no time to not only withdraw American leadership but to withdraw the commitment to our Armed Forces. Our armed services are the capability that we are relying on to protect our national interests, our role in the world, to guarantee our foreign policy. That will not be done by hollowing out our military. Today we see a world that is shifting globally in its geopolitical, economic, and military power structures. We cannot allow America to become weaker, or withdraw from that world. Now is not the time. Now is the time for America to project its leadership and help form and help craft and help incentivize and lead the world to more freedom. You cannot accomplish that with an unprepared military.

I looked at the President's budget again this week, his fiscal year 1999 budget. The President proposes $123 billion in new domestic programs, but again proposes to cut our military budget. Surely now—surely America's national interests and our national security has some priority in this budget.

As we step back for a moment and survey the world as it is—not as we hope or wish it will be, but as it is—if we in fact are, and I believe we are, capable of taking advantage of the tremendous opportunities and hopes and the series of historical consequences and events that have come together in a rather magnificent way to make the world better, it is going to require American leadership. Not that we need to shoulder all the burden—of course not. But part of that American leadership is a national security worthy of who we are and a commitment to the people that we ask daily to defend our Nation—a commitment to give them the resources they need.

I would say finally, Mr. President, to me a part of that commitment is not to underfund our military but, in fact, it is to start rebuilding our military. I hope as this issue develops and debate develops, that the issue we are about today will extend far beyond the narrowness of the focus that we debate today, but interconnects with the future and our leadership, and much of that future resides at the core of our national defense capabilities.

I thank my colleagues who serve on the Armed Services Committee for their efforts, their leadership, and their lives that many have devoted to making this a more secure world and helping our military.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I thank my able colleague from Nebraska for his kind words about me. I also wish to thank him for the great service he has rendered this country here in the Senate. He is an expert on defense matters and his opinions are certainly worth the consideration of every Senator here.

Again, it is a pleasure to serve with him. I wish him continued success.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. LEVIN. Mr. President, I wonder if the Senator will yield just for one moment?

Mr. THOMAS. Certainly.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I simply want to add my thanks to the Senator from Nebraska. Every year when this bill comes up, he is here. It is a very important contribution which he is making to the national defense. We on the Armed Services Committee do the best we can, but we have colleagues such as the Senator from Nebraska who add their immense expertise and passion and feeling about these issues, and it is significantly important to us and I thank the Senator for doing that.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Hutchinson amendment.

AMENDMENT NO. 2401 TO AMENDMENT NO. 2387

Mr. THOMAS. Mr. President, I send an amendment to amendment No. 2387 to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS] proposes an amendment numbered 2401 to amendment No. 2387.

Mr. THOMAS. 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:

In the pending amendments, on page 1, strike lines 5 through page 5, line 4.

Mr. THOMAS. Mr. President, I simply send the amendment which will deal with the findings of this bill and eliminate them in a second-degree amendment.

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

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

PRIVILEGE OF THE FLOOR

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Ed Fienga, a Department of the Air Force fellow in the office of Senator KAY BAILEY HUTCHISON be granted the privilege of the floor during the consideration of S. 2057.

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

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

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

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that the pending business be set aside so that I can offer a second amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 2388

(Purpose: Relating to the use of forced labor in the People's Republic of China)

Mr. HUTCHINSON. Mr. President, I call up amendment No. 2388 and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. HUTCHINSON), for himself and Mr. ABRAHAM, proposes an amendment numbered 2388.

Mr. HUTCHINSON. 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:

Add at the end the following new sections:

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) The United States Customs Service has identified goods, wares, articles, and merchandise mined, produced, or manufactured under conditions of convict labor, forced labor, and indentured labor in several countries.

(2) The United States Customs Service has actively pursued attempts to import products made with forced labor, resulting in seizures, detention orders, fines, and criminal prosecutions.

(3) The United States Customs Service has taken 21 formal administrative actions in the form of detention orders against different products destined for the United States market, found to have been made with forced labor, including products from the People's Republic of China.

(4) The United States Customs Service does not currently have the tools to obtain the timely and in-depth verification necessary to identify and interdict products made with forced labor that are destined for the United States market.

SEC. ___. AUTHORIZATION FOR ADDITIONAL CUSTOMS PERSONNEL TO MONITOR THE IMPORTATION OF PRODUCTS MADE WITH FORCED LABOR.

There are authorized to be appropriated for monitoring by the United States Customs Service of the importation into the United States of products made with forced labor, the importation of which violates section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, $2,000,000 for fiscal year 1999.

SEC. ___. REPORTING REQUIREMENT ON FORCED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Customs shall prepare and transmit to Congress a report on products made with forced labor that are destined for the United States market.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

(1) The extent of the use of forced labor in manufacturing products destined for the United States market.

(2) The volume of products made with forced labor, destined for the United States market, that is in violation of section 307 of the Tariff Act of 1930 or section 1761 of the title 18, United States Code, and is seized by the United States Customs Service.

(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor that are destined for the United States market.

SEC. ___. RENEGOTIATING MEMORANDA OF UNDERSTANDING ON FORCED LABOR.

It is the sense of Congress that the President should determine whether any country with which the United States has a memorandum of understanding with respect to reciprocal trade which involves goods made with forced labor is frustrating implementation of the memorandum. Should an affirmative determination be made, the President should immediately commence negotiations to replace the current memorandum of understanding with one providing for effective procedures for the monitoring of forced labor, including improved procedures to request investigations of suspected prison labor facilities by international monitors.

SEC. ___. DEFINITION OF FORCED LABOR.

As used in sections ___ through ___ of this Act, the term ''forced labor'' means convict labor, forced labor, or indentured labor, as such terms are used in section 307 of the Tariff Act of 1930.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent to add my good friend and colleague, Senator ABRAHAM of Michigan, as an original cosponsor of this amendment.

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

Mr. HUTCHINSON. Mr. President, this amendment is simple and, again, it was noncontroversial when it was voted on in the House of Representatives. In fact, the language in this amendment passed the House with almost unanimous support. Having served in the House 4 years, I know this happens rarely. It was a 419-to-2 vote. So, it had overwhelming bipartisan support.

This amendment will simply do two things: First, it will express the sense of the Congress that the President should replace any memorandums of understanding on prison labor that lack effective monitoring procedures like the one negotiated with the People's Republic of China and replace the agreement with a stricter monitoring system.

Second, the bill authorizes $2 million in additional funds for the U.S. Customs Service to monitor the importation of slave-labor-produced goods. As everyone in this body knows, the importation of goods made by convicts has been banned for more than a half a century. This law underscores Americans' firm conviction that such products produced by coerced and forced labor should not be sold in this country. I believe Americans are repulsed by the very thought of benefiting from cheap prices on products produced by the sweat and blood of foreign prisoners.

Despite this ban, products made in Communist China's vast archipelago of slave labor camps, known as the laogai, continue to flow into this country unabated. This system of laogai, a word meaning reform through labor, was designed for the dual purposes of political control and forced economic development. Interestingly, this system is modeled on Stalin's Soviet Gulag, which we all remember was exposed most graphically by Alexander Solzhenitsyn.

This system of forced labor, slave labor, has been an integral part of Chinese totalitarianism since the inception of the People's Republic of China in 1949. Harry Wu, a survivor of the laogai, and a friend of mine, has estimated that some 50 million Chinese men and women have passed through these camps, of whom 15 million have perished. Today, anywhere from 6 to 8 million people are captive in the 1,100 camps of laogai, held and forced to work under grossly inhumane conditions.

According to official statistics, the laogai operate 140 export enterprises selling products to over 70 nations abroad, including the United States. These enterprises are responsible for producing key commodities, including uranium, graphite, rubber, cotton, asbestos, and one-third of Chinese tea is produced in these slave labor camps, as well as a huge array of consumer goods, including toys, artificial flowers and, ironically, Christmas lights and rosaries.

When I went to China in January, I asked to visit a laogai prison. In fact, I asked every day. I asked repeatedly, and repeatedly, but my requests to visit a laogai prison were denied. Fortunately, one of my colleagues in the House on an earlier trip, Representative FRANK WOLF, was able to visit Beijing Prison No. 1. This is the exterior of that prison camp that Congressman WOLF visited, a prison camp that includes a slave labor industry.

This second photo shows us the picture of the Beijing hosiery factory. This is located inside of that prison camp.

The third photo actually shows the assembly line where these products are made.

In this prison, Mr. WOLF found slave laborers producing socks on this assembly line. I have some of the very socks produced on that assembly line which Mr. WOLF brought back. You can see the socks. This particular pair was determined to be for export. This is not just a matter of laogai slave labor prisons, which would be horrific enough, that would be bad enough, but these particular products were made for export to other countries.

When I was in China, I saw many things. One thing I did not see was any golf courses, but the logo on these socks is a person swinging a golf club, obviously not intended for sale within China but for sale on the foreign market.

Although the United States entered into binding agreements with China in 1992 and 1994 to bar trade in prison labor products and to allow inspection of its forced-labor camps, the Chinese Government has frustrated their implementation, both by using dual names to disguise camp products and by denying access to those slave labor camps.

In 1996, the Chinese Government granted access to just one prison labor camp. Out of the whole laogai system, access in 1996 was granted to only one that had been requested by the U.S. Customs Service.

Mr. President, the following two charts show examples of laogai prison camps that have never been inspected, though the request has been made to visit. These photos were taken, obviously, outside the camp. This is laogai slave labor camp No. 5 and Zhejiang laogai slave labor camp. Both of these labor camps—we have a second picture as well—show individuals going into the camp. These pictures were obtained by the Laogai Research Foundation.

Mr. President, the two most recent State Department human rights reports on China state that ''Repeated delays in arranging prison labor site visits called into question the government's intention regarding the implementation of the two agreements.''

So we have two agreements with China which were to provide for inspections of these camps in which these kinds of products are made to compete with American workers. According to our State Department, we have found, instead of cooperation, obstructionism and delays in arranging for visits to those labor camps.

Obviously, I think this indicates that the Chinese Government is not intent on cooperating with us on trying to ensure that the products produced are not being sold domestically or to the foreign market and that humane conditions prevail in these camps.

The U.S. Customs Service has already banned 27 different products of laogai camps. Unfortunately, in testimony before the Senate Foreign Relations Committee, on May 22, 1997, the Customs Commissioner George Weise noted that the Customs Service is too weak and understaffed to monitor China's slave labor enterprises.

Specifically, he said:

> We simply do not have the tools within our present arsenal at Customs to gain the timely and in depth verification that we need.

I want to say I do not know whether he is accurate in that contention or not. I would not presume to say whether or not the Customs Service actually has the resources to do the job or not. But I want them to have no excuse; I do not want them to be able to come to the House or to the Senate, to our committees, our oversight committees, and say, we simply cannot do the job that we are mandated to do in ensuring that these products are not being sold in the United States of America that are being produced in these slave labor camps.

These expansive forced-labor camps operate at very low costs even in relation to China's lower wage scale, thus providing them a competitive advantage over other firms and giving them sizable profit margins that help to fund the Chinese Government. The laogai are in a win-win situation. It is a win-win for China. They help maintain their political control and indoctrination of the citizenry, and they funnel money into their treasury through these slave labor enterprises. American businesses that use wage-earning employees are being placed at a competitive disadvantaged by less scrupulous competitors who use this illegal source of artificially cheap labor.

These socks are the kind of thing they are producing. And they are producing them with slave labor, prisoners who are being paid little, if anything. And those laborers are competing with American workers, placing our workers at an incredible disadvantage. As more businesses rely on Chinese slave labor and slave-labor-produced goods, U.S. employment in these industries fall. Thus, despite the productivity advantage of U.S. labor—and I do not believe there is a better worker in the world; I do not believe there are harder workers in the world than the American worker—but in spite of that high productivity, how can we ask them to compete? And, in fact, they cannot compete against low- or no-cost employment in the People's Republic of China.

Mr. President, I doubt American consumers would knowingly fund a Stalinist system of forced labor and repression. That is why they support laws banning this practice and expect the U.S. Government to do everything possible to ensure that such products are not sold in the United States. Yet because of the lax enforcement and the open Chinese disregard for United States law, Americans are being duped into buying products made by slave laborers. I think that is unfortunate. I think they are doing so unwittingly. But I think we have to do a better job to ensure, in monitoring those products that are coming into this country, that they are not made in inhumane, slave labor conditions that exist in hundreds of prisons in China today.

That is why this is a modest—what I would call a baby step, this is a minimalist approach. This is the least we can do, to simply give $2 million to the Customs Service and say we have to have better monitoring of these products. We have a moral obligation to do everything in our power to stop slave labor and to end the flow of slave-labor-produced goods in this country which will stop the flow of profits or at least slow the flow of profits into the PRC. I think it is a rational first step, a small step but a rational step.

I urge my fellow Senators to join 419 Members of the U.S. House of Representatives by passing this amendment to increase the Customs Service enforcement funding and to reach agreements that give the Customs Service the powers they need to end this bloody trail.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

Is there a sufficient second?

There is not a sufficient second.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I would like to inquire of the Senator, here he provides $2 million to be used to handle this situation. Will that come out of the defense bill?

Mr. HUTCHINSON. I say to the chairman, I would presume that the $2 million—this is an amendment to the Department of Defense bill, so I would assume the $2 million would come out of the defense bill. And $2 million, I might add—if I might inquire of the chairman, the total budget, the total amount authorized in the defense bill, is how much?

Mr. THURMOND. If that comes out of defense, then I will have to oppose the amendment.

Mr. HUTCHINSON. I simply say that the national security of the United States—part of that is ensuring that the People's Liberation Army and the Chinese Government not receive resources and revenues through products produced by slave labor.

Mr. HARKIN. Will the Senator yield?

Mr. HUTCHINSON. I am glad to.

Mr. HARKIN. To answer the chairman's point, it does not come out of defense. It just authorizes the Department of Treasury to allocate $2 million.

Mr. HUTCHINSON. Two million dollars.

Mr. HARKIN. For this purpose.

Mr. HUTCHINSON. I thank my colleague for that clarification.

Mr. HARKIN. It does not come out of this.

Mr. HUTCHINSON. I say to the chairman, may I clarify my previous response that in fact it would not come from the Department of Defense, not come from the defense budget, but authorizes $2 million from the Department of Treasury. So it would not in any way intrude upon that which your committee has sought to ensure adequate defenses for the country.

Mr. THURMOND. Thank you for the clarification.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 2402 TO AMENDMENT NO. 2388

(Purpose: To increase monitoring of imported products made with forced or indentured labor and forced or indentured child)

Mr. HARKIN. Mr. President, I have an amendment to the Hutchinson amendment I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. WELLSTONE, proposes an amendment numbered 2402 to amendment No. 2388.

Mr. HARKIN. Mr. President, I ask that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The United States Customs Service has identified goods, wares, articles, and merchandise mined, produced, or manufactured under conditions of convict labor, forced labor, or indentured labor, in several countries.

(2) The United States Customs Service has made limited attempts to prohibit the import of products made with forced labor, resulting in only a few seizures, detention orders, fines, and criminal prosecutions.

(3) The United States Customs Service has taken 21 formal administrative actions in the form of detention orders against different products destined for the United States market, found to have been made with forced labor, including products from the People's Republic of China.

(4) However, the United States Customs Service has never formally investigated or pursued enforcement with respect to attempts to import products made with forced or indentured child labor.

(5) The United States Customs Service can use additional resources and tools to obtain the timely and in-depth verification necessary to identify and interdict products made with forced labor or indentured labor, including forced or indentured child labor, that are destined for the United States market.

(6) The International Labor Organization estimates that approximately 250,000,000 children between the ages of 5 and 14 are working in developing countries, including millions of children in bondage or otherwise forced to work for little or no pay.

(7) Congress has clearly indicated in Public Law 105–61, Treasury-Postal Service Appropriations, 1998, that forced or indentured child labor constitutes forced labor under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

SEC. 2. AUTHORIZATION FOR ADDITIONAL CUSTOMS PERSONNEL TO MONITOR THE IMPORTATION OF PRODUCTS MADE WITH FORCED OR INDENTURED LABOR.

There are authorized to be appropriated $2,000,000 for fiscal year 1999 to the United States Customs Service to monitor the importation of products made with forced labor or indentured labor, including forced or indentured child labor, the importation of which violates section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code.

SEC. 3. REPORTING REQUIREMENT ON FORCED LABOR OR INDENTURED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner of Customs shall prepare and transmit to Congress a report on products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

(1) The extent of the use of forced labor or indentured labor, including forced or indentured child labor in manufacturing or mining products destined for the United States market.

(2) The volume of products made or mined with forced labor or indentured labor, including forced or indentured child labor that is—

(A) destined for the United States market,

(B) in violation of section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, and

(C) seized by the United States Customs Service.

(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

SEC. 4. RENEGOTIATING MEMORANDA OF UNDERSTANDING ON FORCED LABOR.

It is the sense of Congress that the President should determine whether any country with which the United States has a memorandum of understanding with respect to reciprocal trade that involves goods made with forced labor or indentured labor, including forced or indentured child labor is frustrating implementation of the memorandum. If an affirmative determination be made, the President should immediately commence negotiations to replace the current memorandum of understanding with one providing for effective procedures for the monitoring of forced labor or indentured labor, including forced or indentured child labor. The memorandum of understanding should include improved procedures for requesting investigations of suspected work sites by international monitors.

SEC. 5. DEFINITION OF FORCED LABOR.

In this Act, the term ''forced labor'' means convict labor, forced labor, or indentured labor, as such terms are used in section 307 of the Tariff Act of 1930. The term includes forced or indentured child labor—

(1) that is exacted from any person under 15 years of age, either in payment for the debts of a parent, relative, or guardian, or drawn under false pretexts; and

(2) with respect to which such person is confined against the person's will.

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended by adding at the end the following new paragraph:

''For purposes of this section, forced or indentured labor includes forced or indentured child labor.

Mr. HARKIN. Mr. President, this is a second degree to the Hutchinson amendment.

I ask unanimous consent to add my name to the Hutchinson amendment as a cosponsor; and Senator WELLSTONE also wanted to be added as a cosponsor of the amendment.

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

Mr. HARKIN. I have spoken with the author of the pending amendment, and I am very supportive of Senator Hutchinson's amendment. This is a friendly amendment, which he accepts. My amendment does not in any way change the intent of the Hutchinson amendment nor does it add any more money.

Basically, this amendment reflects the intent of Congress to include forced and indentured child labor in the interpretation of section 307 of the Tariff Act of 1930.

The Congress spoke with one voice when it instructed the U.S. Customs Service to block from entry into the United States any imports made by forced or indentured child labor, as they are inherently for imports made with forced and indentured labor.

This clarification of congressional intent was part of the fiscal year 1998 Treasury-Postal appropriations bill which the President has signed into law. So, again, this amendment does not change anything really of the Hutchinson amendment. It simply adds forced and indentured child labor as part of the amendment.

As I said, it preserves the congressional intent passed last year. The U.S. Customs Service will still be able to aggressively pursue items made with convict labor, forced labor, or indentured labor, and prevent them from reaching our shores. They should rightly do so. That is why I am supportive of the Hutchinson amendment.

Again, the reason this is necessary is a little over a year ago—actually about 2 years ago now—I contacted the Treasury Department to ask if section 307 of the Tariff Act of 1930 covered forced and indentured child labor.

I got a letter back saying, well, they did not know. They needed clarification. Last year, under the Treasury-Postal appropriations bill, we provided that clarification that it indeed covered forced and indentured child labor. And that is what my amendment does here; it just adds those words back in there.

And, again, it should be added because in many cases these children are like slaves. They are sold, maybe sometimes for an outstanding debt that is owed to a family. They are traded like cattle. Typically what happens is, a child is sold into a factory or plant as a payment for an outstanding debt. The middle man, a loan shark, transfers the child to a work setting far away from his home. And these kids literally work as virtual slaves doing anything from making rugs to soccer balls to serving as prostitutes, to breaking bricks or mining granite or making glassware. Many times these kids are never released from their bondage until they get too old to do the work. They are punished severely; a lot of times they work 12 to 15 hours a day.

Mr. President, last year I visited a place out of New Delhi called the Muki Ashram, or ''liberation retreat'' established in 1991 by Kailash Satiyarti, president of the South Asian Coalition on Child Servitude, located right outside of New Delhi, a place where bonded child laborers are freed from the shackles of slavery. They are brought there, they are rehabilitated, they are able to go to school, learn a trade and regain their sense of self-worth. I was deeply moved by this establishment.

I saw somewhere between 50 and 100 kids who were there, many as young as 8 years of age, many of whom had been beaten. I saw kids that had marks still on their face and their arms where they had been burned with red-hot pokers and things like that. These kids were now being taught in a school, provided nutrition. As I said, they get their sense of self-worth back.

I have two stories here of two of the kids who I saw when I was there. I ask unanimous consent that these two stories be printed in the RECORD.

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

STORY OF EXPLOITED CHILD

Mohan, a seven year old boy exploited by a carpet loom owner. He was taken away by a dalal from his native village of Bihar to a carpet loom in Allahabad, U.P. Labour recruiter (Dalal) came to his parents and lured them by giving false promises of a good life and bright future of Mohan Kumar.

After reaching Allahabad, his cruel employer treated him just like an animal, Mohan was forced to work for 16–18 hours a day. While working he was beaten very frequently by his master or his attendant. Some times he passed sleepless night due to pain, but nobody was taking care of him. In the name of food, he was given only two chapaties, and forced to eat at the same place where he worked. He was guarded by the attendant of his master in the night and even not allowed to go for routine work alone.

One day Mohan was weeping to go to meet his parents at the very moment, his cruel employer hitted him by a pointed weapon. His left eye had injured. His parents came to know of his pathetic condition, they reported the matter to the activists of BBA–SACCS. A raid and rescue operation was organized by activists of BBA–SACCS for releasing of Mohan Kumar.

After releasing, Mohan Kumar joined Mukti Ashram, he was suffering from the traumatic effects. Still he has the mark of that brutal act of his master under his left eye. Slowly and gradually, he accustomed with the environment of Mukti Ashram and recovered from the traumatic effect. He began to taking interest in his studies. Now his ambition to become a Sub-divisional Magistrate (SDM) so that, he can help to those miserable children, who are in bondage.

SMILE EVEN WHEN YOU ARE IN TROUBLE

One fine morning Nageshwar sang while walking in Mukti Ashram's garden—''Smile and sing even when you are in trouble.'' For every winter follows spring as the dawn follows dusk.

And the Mukti Ashram celebrated it, Everyone, children and teachers were singing and dancing, 'Thank God! Nageshwar's voice came back, which he lost for more than three weeks.

Nageshwar comes from a remote district of Bihar. When he was seven and playing with his two younger brothers, a Dalal (Labour recruiter) came along with four children of the same age of Nageshwar lured him by giving some sweets and false promise of a good life and bright future. Due to allurement, Nageshwar and his brothers were ready to go with Dalal. Dalal taken away them to a carpet loom situated in the remote area of Allahabad, Uttar Pradesh.

Carpet loom owner treated him just like a slave. Nageshwar was forced to work for 18 to 20 hours a day even some times for whole night also. While weaving the carpet his cruel employer often beat him brutally with a panja (a tool used in carpet weaving). In the name of food, Nageshwar's employer given him two chapaties with salt twice a day and forced to eat. Nageshwar has no separate place to sleep and forced to sleep only for two hours in the same place where he worked.

It was November 1st, 1995 the acts of barbarism against Nageshwar reached their peak. Around mid night after Nageshwar had helped his two younger brothers to escape from the continuous harassment, physical torture and tyranny they had been suffering for years, his employer punished him with red hot iron rod, causing irreparable damage to his body. Nageshwar cried and cried—'Oh God, Oh father' but no body was their to help him.

When the villagers noticed the sign of this torture they reported to BBA–SACCS. November 4th 1995 was the independence day for Nageshwar. On that day Nageshwar and his younger brothers and other four children were released with the great efforts of the activists of BBA–SACCS.

When Nageshwar came to the Mukti Ashram, he was ''shell shocked'', and lost his speech. After a month of comprehensive medical treatment and special care and attention from other children and the Ashram staff, he became able to speak and express his feelings Slowly and gradually he had begun to enjoy the life of Mukti Ashram.

Mr. HARKIN. Again, I want to make it clear I am very supportive of the Hutchinson amendment. I believe it is a good amendment. This is a friendly amendment—just to add the word ''child.'' In other words, under ''forced and indentured labor'' to include ''forced and indentured child labor'' to clarify section 307 of the Tariff Act of 1930.

I am proud to be a cosponsor of the Hutchinson amendment.

Mr. HUTCHINSON. Will the Senator yield?

Mr. HARKIN. Yes.

Mr. HUTCHINSON. I may have missed this. Would you clarify it, was this the language that was adopted last year?

Mr. HARKIN. Yes, this exact language was adopted by both the House and the Senate last year on the Treasury-Postal appropriations bill.

Mr. HUTCHINSON. But because it was appropriations, it was only good for 1 year?

Mr. HARKIN. That is the problem.

Mr. HUTCHINSON. I express my support for the friendly amendment and appreciate your support for the underlying amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. 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. WARNER. Mr. President, if the Chair will advise as to the pending amendment so everybody listening has it clearly in mind.

The PRESIDING OFFICER. The pending amendment is amendment numbered 2402 offered by the Senator from Iowa as a second-degree amendment to the amendment of the Senator from Arkansas.

Mr. WARNER. For further clarification, the yeas and nays have not been ordered?

The PRESIDING OFFICER (Mr. INHOFE). That is correct.

Mr. WARNER. And therefore the debate and the colloquy on this amendment should continue. I am advised that we would not be successful in a unanimous consent requirement to lay it aside and am perfectly willing at this time to continue debate on the Senator's amendment.

Mr. HUTCHINSON. Mr. President, I would like to modify my amendment to accept the Harkin second degree.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 2388), as modified, is as follows:

At the end of the bill add the following:

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The United States Customs Service has identified goods, wares, articles, and merchandise mined, produced, or manufactured under conditions of convict labor, forced labor, or indentured labor, in several countries.

(2) The United States Customs Service has made limited attempts to prohibit the import of products made with forced labor, resulting in only a few seizures, detention orders, fines, and criminal prosecutions.

(3) The United States Customs Service has taken 21 formal administrative actions in the form of detention orders against different products destined for the United States market, found to have been made with forced labor, including products from the People's Republic of China.

(4) However, the United States Customs Service has never formally investigated or pursued enforcement with respect to attempts to import products made with forced or indentured child labor.

(5) The United States Customs Service can use additional resources and tools to obtain the timely and in-depth verification necessary to identify and interdict products made with forced labor or indentured labor, including forced or indentured child labor, that are destined for the United States market.

(6) The International Labor Organization estimates that approximately 250,000,000 children between the ages of 5 and 14 are working in developing countries, including millions of children in bondage or otherwise forced to work for little or no pay.

(7) Congress has clearly indicated in Public Law 105–61, Treasury-Postal Service Appropriations, 1998, that forced or indentured child labor constitutes forced labor under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

SEC. 2. AUTHORIZATION FOR ADDITIONAL CUSTOMS PERSONNEL TO MONITOR THE IMPORTATION OF PRODUCTS MADE WITH FORCED OR INDENTURED LABOR.

There are authorized to be appropriated $2,000,000 for fiscal year 1999 to the United States Customs Service to monitor the importation of products made with forced labor or indentured labor, including forced or indentured child labor, the importation of which violates section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code.

SEC. 3. REPORTING REQUIREMENT ON FORCED LABOR OR INDENTURED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner of Customs shall prepare and transmit to Congress a report on products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

(1) The extent of the use of forced labor or indentured labor, including forced or indentured child labor in manufacturing or mining products destined for the United States market.

(2) The volume of products made or mined with forced labor or indentured labor, including forced or indentured child labor that is—

(A) destined for the United States market,

(B) in violation of section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, and

(C) seized by the United States Customs Service.

(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

SEC. 4. RENEGOTIATING MEMORANDA OF UNDERSTANDING ON FORCED LABOR.

It is the sense of Congress that the President should determine whether any country with which the United States has a memorandum of understanding with respect to reciprocal trade that involves goods made with forced labor or indentured labor, including forced or indentured child labor is frustrating implementation of the memorandum. If an affirmative determination be made, the President should immediately commence negotiations to replace the current memorandum of understanding with one providing for effective procedures for the monitoring of forced labor or indentured labor, including forced or indentured child labor. The memorandum of understanding should include improved procedures for requesting investigations of suspected work sites by international monitors.

SEC. 5. DEFINITION OF FORCED LABOR.

In this Act, the term ''forced labor'' means convict labor, forced labor, or indentured labor, as such terms are used in section 307 of the Tariff Act of 1930. The term includes forced or indentured child labor—

(1) that is exacted from any person under 15 years of age, either in payment for the debts of a parent, relative, or guardian, or drawn under false pretexts; and

(2) with respect to which such person is confined against the person's will.

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended by adding at the end the following new paragraph:

''For purposes of this section, forced or indentured labor includes forced or indentured child labor.

Mr. WARNER. Mr. President, on behalf of the chairman of the Armed Services Committee, Mr. THURMOND, 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. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR

Mr. THURMOND. Mr. President, I ask unanimous consent that Richard Voter, a military fellow in the office of Senator WARNER, be granted floor privileges for the duration of the Senate debate on S. 2057, the Defense Authorization Act.

The PRESIDING OFFICER. Without objection, it is ordered.

Mr. THURMOND. Mr. President, 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. WARNER. 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. WARNER. Mr. President, the chairman of our committee, the distinguished ranking member, and myself are trying the best we can to accommodate a number of Senators. The Senator from Minnesota is anxious to speak in relation to one of the pending amendments by the Senator from Arkansas.

I ask unanimous consent that following the Senator from Minnesota, the Senator from California be recognized for the purpose of another amendment, and then we will take it from there.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I may be permitted to proceed for up to 5 minutes as in morning business.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

THE FIGHT AGAINST BREAST CANCER

Mr. D'AMATO. Mr. President, I see the Senator from California on the floor and I would like to give her whatever part of my time that might be left because this is in regard to legislation that I think is so important. It is important for the psychology of the women of America who, unfortunately, will be diagnosed with breast cancer. It is important in their medical treatment. It is important to their families. It is important to the community. It is important to let people know we are serious in our battle to win the fight against breast cancer and to see that those who are diagnosed get the proper treatment and don't have some medical plan or medical director who says that—as a result of the ERISA laws passed more than 20 years ago—we don't have to provide you basic coverage; we don't have to say that reconstructive surgery is covered. And, indeed, we have had plans today in America where millions of women face being denied basic coverage as it relates to cancer and its treatment and the reconstructive surgery that is necessary.

On January 30, 1997, Senator FEINSTEIN and myself, along with a dozen or more colleagues—now 21—introduced the Women's Health and Cancer Rights Act. We have amended that and, indeed, put some provisions aside, and we have reduced it to two main parts. No. 1, no bean counter, no statistician can set an arbitrary limit on the length of time that a woman takes after a medical procedure for breast cancer. Some plans limit her stay to 24 hours. Imagine that. If there are complications, it is too bad. She and her family then have to pay for any longer stay. That is unconscionable. The decision in terms of the length of stay should be predicated upon the needs of that patient. That determination should be made according to the medical necessity and by her physician, not some bean counter who arbitrarily looks at a policy and says, ''We won't pay for more than 24 hours.'' We say that decision should be made as the medical necessity requires.

The second major provision of that bill is that reconstructive surgery will not be treated as something optional or cosmetic. Let me refer to the case of a young woman. This past February, not that long ago, her doctor called me. Dr. Wider of Long Island said to me, ''Janet Franquet, a 31-year-old woman, needs a radical mastectomy. When I contacted her medical plan, the medical director said that they would not

authorize payment for reconstructive surgery.'' Here is a young woman, 31 years of age. I called the director of that plan, Dr. Hodos, and I said to him, ''How could you be saying that this is not necessary?'' He said, ''Replacement of a breast is not medically necessary and not covered under the plan.'' Then he said, ''This is not a bodily function and therefore cannot and should not be replaced.''

That is not an isolated case, Mr. President. The women of America—our mothers, daughters, sisters, neighbors, friends—should know that they are covered.

Let me tell you something. The sorry history of this legislation is that, in spite of Senator FEINSTEIN, myself, Senator SNOWE, and I think every woman Senator who signed on to support this bill—I have colleagues who say we should not legislate by body part. Imagine that. We should not mandate that. You are right, we should not have to mandate it. But the situation requires that. Then we get others who say, oh, no, we are not going to let you have a vote on this bill until or unless you let us have a vote on some other legislation. What nonsense—to hold the women of America captive.

Senator FEINSTEIN and I, and a number of colleagues, have decided that we will bring this legislation up and offer it as an amendment on every piece of legislation that goes through here that is vital, where there is a bipartisan interest in seeing this pass. We are going to put it on. Indeed, at some point in time, we may hold this assembly hostage.

When the wheels slow down—understand, it is almost a year and a half now we have been trying to get this vote. I don't want people saying we are attempting to work our will against the majority. We backed down on the education bill; we took it off the IRS reform bill. We introduced this bill on January 30, 1997, 14 months ago. We brought it up during the consideration of IRS reform. We lost in committee. We got six votes. We brought it up again. In terms of the package that has just gone by, we brought it up and it was rejected 6 to 6 during the A+ education bill. We brought it up on the IRS bill during committee and we lost 8 to 10. We brought it up again today and we won 11 to 9. It is on the tobacco bill and it will be coming to this floor.

When people say ''what relevance,'' we are talking about the health of American women. Indeed, I am prepared to offer it as an amendment to the defense bill, because we spend defense funds, as Senator FEINSTEIN says, for cancer research and the defense of the families, and the women of America should not be shelved by partisan considerations or some ideological philosophy that says we can't have mandates. We have mandates every day. And some of the same people who voted against this bill vote for mandates every day. That is nonsense. It is too bad we need this.

So this has been reported out 11 to 9 and will be on the tobacco bill. I thank the 11 members on the Finance Committee who voted for it. But understand, this Senator is serious. We are going to continue until this ''win'' turns into a real win and America's women do not have to be held hostage any longer.

I yield the floor.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

The Senate continued with the consideration of the bill.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the Hutchinson amendment No. 2388, as modified.

AMENDMENT NO. 2387

Mr. GRAMS. Mr. President, I ask unanimous consent that the pending amendment be set aside and that we consider the Hutchinson amendment numbered 2387.

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

Mr. GRAMS. Mr. President, this amendment lies within the jurisdiction of the Banking Committee's International Financial Subcommittee, of which I am chairman, and the Senator from Virginia, Senator WARNER, also requested consultation with the committee of jurisdiction on this amendment.

I hereby am registering my opposition. This is a controversial amendment. I believe it deserves to be considered through the normal committee process.

So, with all due respect to my colleague from Arkansas, and many Senators formally registering concern about these bills, Mr. President, I move to table the underlying Hutchinson amendment but also ask unanimous consent that the vote not occur before 3 o'clock.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, I apologize to the Senator, I was momentarily distracted. Could the Senator repeat his UC request?

Mr. GRAMS. I move to table the underlying Hutchinson amendment and ask unanimous consent that the vote not occur before 3 o'clock.

Mr. WARNER. Mr. President, does the Senator wish to put that motion in right now, or is he going to state it at 3 o'clock so the debate will continue between now and 3?

Mr. GRAMS. I could state it at 3. Could I move to have it tabled now with that unanimous consent agreement and have the vote at 3 o'clock?

Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMS. Mr. President, I ask unanimous consent that the vote occur at 3 o'clock.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRAMS. Thank you, very much, Mr. President.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

THE FIGHT AGAINST BREAST CANCER

Mrs. FEINSTEIN. Mr. President, before I send an amendment to the desk, if I may, I would like to make one comment on the remarks posed to the body by the Senator from New York with respect to the legislation that we cosponsored.

I want to congratulate him for getting this legislation on the tobacco bill.

I also want to express my dismay that this route has been taken and that an amendment which is very direct cannot get by this body any other way.

Mr. President, every day women of this country are being subjected to a mastectomy being performed in the morning and being pushed out on the streets that afternoon. It is called a ''same-day mastectomy,'' a ''drive-through mastectomy.'' I never thought in my lifetime that I would see the medical profession in a position where the length of hospital stay could not be determined by the physician.

All we would do in this amendment is say that the length of a woman's hospital stay, having had a mastectomy, would be based on the advice and knowledge of her physician. Whether she has a radical mastectomy, what her reaction to anesthesia is, what her preconditions are, all should be party to that decision, and not some HMO that says henceforth all major surgical procedures called mastectomies will be conducted on a same-day basis. This, to me, is bad medicine.

We also, as the Senator said, simply provide that the insurance company must provide for reconstructive surgery or prosthetic surgery, and that the doctor cannot be penalized for recommending additional treatment for the woman.

It seems to me, Mr. President, that we owe this simple gesture to the women of America, because to say to any woman that she has to go into a hospital for major, major surgery and is going to get pushed out on the street—I would hazard a guess that there isn't a man in this room who wants to have major surgery, leave with two to four drains in their body, having had a general anesthetic, and losing a significant portion of their torso, and hear, ''You cannot stay overnight in the hospital no matter how you feel.''

So I hope that the leadership of this body, hearing the capacity, the energy, the stubbornness of the Senator from New York, would really realize that the better part of valor is to allow us to have an up-or-down vote on this amendment. It seems to me, humbly stating, that this is the way this body should, in fact, function.

Mr. D'AMATO. Mr. President, I simply would like to say that I have never encountered such graciousness, such tenacity, such great dedication to a cause than the Senator from California has given to this effort for the past almost year and a half; and what a great fighter she is for all of the families of this country.

I thank her. And it is a great privilege and pleasure for me to have the opportunity to work with her in this endeavor.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2405

(Purpose: To express the sense of the Senate regarding the Indian Nuclear Tests)

Mrs. FEINSTEIN. 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 California (Mrs. FEINSTEIN), for herself, and Mr. BROWNBACK, Mr. GLENN, and Mr. BRYAN, proposes an amendment numbered 2405.

Mrs. FEINSTEIN. 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 appropriate place insert: Findings:

The Government of India conducted an underground nuclear explosion on May 18, 1974;

Since the 1974 nuclear test by the Government of India, the United States and its allies have worked extensively to prevent the further proliferation of nuclear weapons in South Asia;

On May 11, 1998, the Government of India conducted underground tests of three separate nuclear explosive devices, including a fission device, a low-yield device, and a thermo-nuclear device;

On May 13, 1998 the Government of India conducted two additional underground tests of nuclear explosive devices;

This decision by the Government of India has needlessly raised tension in the South Asia region and threatens to exacerbate the nuclear arms race in that region;

The five declared nuclear weapons states and 144 other nations have signed the Comprehensive Test Ban Treaty in hopes of putting a permanent end to nuclear testing;

The Government of India has refused to sign the Comprehensive Test Ban Treaty;

The Government of India has refused to sign the Nuclear Non-Proliferation Treaty;

India has refused to enter into a safeguards agreement with the International Atomic Energy Agency covering any of its nuclear research facilities;

The Nuclear Proliferation Prevention Act of 1994 requires the President to impose a variety of aid and trade sanctions against any non-nuclear weapons state that detonates a nuclear explosive device;

It is the sense of Senate that the Senate

(1) Condemns in the strongest possible terms the decision of the Government of India to conduct three nuclear tests on May 11, 1998 and two nuclear tests on May 13, 1998;

(2) Supports the President's decision to carry out the provisions of the Nuclear Proliferation Prevention Act of 1994 with respect to India and invoke all sanctions therein;

(3) Calls upon the Government of India to take immediate steps to reduce tensions that this unilateral and unnecessary step has caused;

(4) Expresses its regret that this decision by the Government of India will, of necessity set back relations between the United States and India;

(5) Urges the Government of Pakistan, the Government of the People's Republic of China, and all governments to exercise restraint in response to the Indian nuclear tests, in order to avoid further exacerbating the nuclear arms race in South Asia;

(6) Calls upon all governments in the region to take steps to prevent further proliferation of nuclear weapons and ballistic missiles;

(7) Urges the Government of India to enter into a safeguards agreement with the International Atomic Energy Agency which would cover all Indian nuclear research facilities at the earliest possible time.

Mrs. FEINSTEIN. Mr. President, I rise today to offer an amendment to the Department of Defense authorization bill to express the concern of this body and condemnation of the recent Indian nuclear tests.

Mr. President, this is a sense of the Senate. Before I go into the provisions of it, let me state what I understand the facts to be.

In the last 2 days, there have been five underground nuclear tests in India about 70 miles from the border of Pakistan. According to Prime Minister Vajpayee of India, there was a fission device, a low-yield device, and a thermonuclear device.

According to the Carnegie Foundation, India is estimated to have approximately 400 kilograms of weapons-usable plutonium. Given that it takes about 6 kilograms of plutonium to construct a basic plutonium bomb, this amount would be sufficient for 65 bombs. With a more sophisticated design, it is possible that this estimate could go as high as 90 bombs.

India also possesses several different aircraft capable of nuclear delivery, including the Jaguar, the Mirage 2,000, the MiG–27, and the MiG–29. India has 2 missile systems potentially capable of delivering a nuclear weapon: The Prithvi, which can carry a 1,000-kilogram payload to approximately 150 kilometers or a 500-kilometer payload to 250 kilometers; and the Agni, a two-stage, medium-range missile which can conceivably carry a 1,000-kilogram payload as far as 1,500 to 2,000 kilometers.

India, according to a report, has possibly deployed, or at the very least is storing, conventionally armed Prithvi missiles in Punjab very near the Pakistani border.

Mr. President, it is no secret that there are intense feelings between these two nations. Pakistan and India, up to late, have been very difficult adversaries. More recently—this makes these detonations even more concerning—I think there has been a kind of rapprochement. And we hopefully were seeing some improvement in the relations between these two countries.

Mr. President, I can hardly think of a more important issue to the interests of the United States than preventing the proliferation of weapons of mass destruction. As the Secretary of State said the other day, this Nation has no other agenda than peace and stability throughout the world. And that, indeed, is an agenda to which I believe this body can wholeheartedly subscribe. So each State that acquires nuclear weapons creates additional complications in maintaining international security.

In south Asia today it appears to be too late to talk about preventing the acquisition of nuclear weapons. Both countries, India and Pakistan, now clearly have nuclear capability. And ultimately India must determine for itself whether its interests are best served by ridding South Asia of weapons of mass destruction or by turning the region into a potential nuclear battleground. That, I think, is no less the decision that has to be made.

We all hope that India will choose the course of deescalation, of standing down, of beginning to reduce its nuclear arsenal and at the very least showing a willingness, now that these underground tests have been carried out, to sign the Nuclear Non-Proliferation Treaty.

And, all of us saying to the Pakistani Government, please, we urge you not to respond in kind but to show that, indeed, Pakistan understands that greatness is not indigenous to nuclear production, I believe, in the long run, will bring inordinate credibility to the Government and the people of Pakistan, and the favorable response of this body as well.

Mr. President, the amendment I submit today on behalf of Senators BROWNBACK, GLENN, BRYAN and myself essentially reports what has happened in the last 2 days. It then goes on to say that it is the sense of the Senate that we condemn in the strongest possible terms the decision of the Government of India to conduct three nuclear tests on May 11 and two on May 13 and that we support the President's decision to carry out the provisions of the Nuclear Proliferation Prevention Act of 1994 with respect to India and to invoke all sanctions therein.

I might add that the author of that act is a distinguished Member of this body, none other than Senator JOHN GLENN of the great State of Ohio. And that is a rather comprehensive statement of sanctions that in fact can be placed on India. It will effectively terminate assistance to that country under the Foreign Assistance Act of 1961 except for humanitarian assistance or food or other agricultural commodities.

It will terminate sales to that country of any defense articles, defense services or design and construction services, and licenses for the export to that country of any item on the U.S. munitions list.

It will terminate all foreign military financing for that country, and it will deny to that country credit, credit guarantees or other financial assistance by any department, agency or instrumentality of the U.S. Government, except that it will not apply to any transaction subject to the reporting requirement of title V or to humanitarian assistance.

And it will oppose, in accordance with the International Financial Institutions Act, the extension of any loan or financial or technical assistance to that country by any international financial institution and prohibit any U.S. bank from making any loan or providing any credit to the Government of that country except for loans or credits for the purpose of purchasing food or other agricultural commodities.

Finally, it will prohibit exports to that country of specific goods and technology.

My point in reading this, Mr. President, is that these, indeed, are strong sanctions. I believe all Members of this body are in support of the President's decision and this amendment gives us an opportunity to say so.

The sense of the Senate also calls upon the Government of India to take immediate steps to reduce tensions that this unilateral and unnecessary step has caused. We express our regret that this decision by the Government of India will by necessity set back relations between the United States and India, and we urge the Government of Pakistan, the Government of the People's Republic of China and all governments to exercise restraint in response to Indian nuclear tests in order to avoid further exacerbating the nuclear arms race in south Asia.

We call upon all governments in the region to take steps to prevent further proliferation of nuclear weapons and ballistic missiles, and we urge the Government of India to enter into a safeguards agreement with the International Atomic Energy Agency which would cover all Indian nuclear research facilities at the earliest possible time.

Mr. President, this is the text and sum of this sense-of-the Senate amendment before this body. I might say, for someone who has taken an interest in India, who has spent time with prior Ambassadors, both of India and Pakistan, attempting to reconcile differences between the two countries, that these tests come to me personally as a very low blow.

I did not think we would see the day when the detonation of these nuclear devices would take place. However, that is now past. We have seen that day. We hope we learn from that, and we hope, most importantly, that the governments concerned—India, Pakistan, and China—also will recognize the fact that we in this body wish to do everything we possibly can to find consensus rather than animus, to put an end to the adversarial relationships, and to have sanity and soundness prevail when it comes to nuclear weapons.

I thank the Chair. Perhaps I might ask for the yeas and nays on this amendment.

Mr. BROWNBACK addressed the Chair.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BROWNBACK. Mr. President, I would like to be heard.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. FEINSTEIN. I now see my distinguished colleague. I did not see Senator BROWNBACK. Perhaps he would like to comment as well.

The PRESIDING OFFICER. The Senator from Kansas.

PRIVILEGE OF THE FLOOR

Mr. BROWNBACK. I wish to address this body on this very important issue. Before I get started, I ask unanimous consent that Terry Williams of my staff be allowed in the Chamber.

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

Mr. BROWNBACK. Mr. President, I am a cosponsor of the Feinstein amendment. Senator FEINSTEIN and I spoke yesterday about this issue and the need to speak and to act quickly by the United States in a statement of condemnation towards India, of support towards Pakistan, to encourage the Pakistanis to stand strong as a nation and not to ignite and set forth a nuclear weapon and escalate this chain reaction. We put forward this resolution of which I am a cosponsor. I believe it is the right and appropriate step for us. She has offered it, and she has been a peacemaker and a peacekeeper for these countries, had their representatives in her home to try to get the Ambassadors of these two nations to speak together and to not further proliferate but, rather, to seek peace. And all of that to no avail as far as the action that the Indian Government has taken this week.

We had, yesterday, a hearing in my subcommittee that Senator FEINSTEIN attended where we heard of the great problems we are facing on this entire subcontinent. Indeed, this is probably the most difficult area of the world today and the most problematic, and the most probable flash point that the world is facing today with the use of nuclear weapons.

With the Indians taking this action, five being set off, and then the response in India, not being one of ''My goodness, what have we unleashed, these first devices being set off since 1974 by a nonnuclear-weapons state; my gosh, what have we released?'' the reaction in the street has been jubilation, which is greater cause for concern, for concern of what is going to happen in Pakistan, which is most likely the next place for there to be a response, whether they would step forward and set off a nuclear weapon themselves, and where do we escalate from there? These two nations have gone to war three times in the last half century. This, to me, is a grave situation we are facing today.

The world was duly horrified this week when the Government of India detonated these three nuclear devices. I think India has behaved irresponsibly and has relegated itself to the category of an outcast. It is a terrible shame for a great nation. Rather than a celebration in the streets, the people of India should be demonstrating against their government for plunging their nation into this international crisis. That is why I support this resolution.

South Asia is facing a moment of truth. India has already acted. We know Pakistan is poised to retaliate. I believe we have to have a chance—and I want to note this, just a chance—to stop Pakistan, or encourage Pakistan from taking a foolish and dangerous step. We must, as President Clinton has recognized, do all we can to persuade the Government of Pakistan to show restraint, moderation, and intelligence. Deputy Secretary of State Talbott, Assistant Secretary Inderfurth and General Zinni are in Pakistan right now. I support their efforts and wish them every success in their discussions with Prime Minister Sharif.

But I think we, too, must act in the U.S. Senate. With this resolution, I think we must demonstrate, also, our support for Prime Minister Sharif in the face of incredible pressure that he is going to have from his country to respond to India's nuclear tests. That is why I believe the Senate should do this, and I also think the Senate should go further. I think we need to take further and even more aggressive and bold action to try to encourage the Pakistanis: Don't respond in kind.

With that, I think we need to act today to repeal the Pressler amendment as an action we can take, as an overt carrot to hold out to the Pakistanis, saying, ''We believe in your cause. Please, show restraint. Don't go on forward. Don't ignite a nuclear weapon. Don't continue this chain reaction. And if you don't, we are prepared to move forward with removing something that has been a thorn in your side for some time, the Pressler amendment itself.''

This is not about rewarding Pakistan or punishing India. This is a signal to Pakistan at a crucial moment. Repealing the Pressler amendment will have little impact on the ground. Pakistan is already subject to Glenn-Symington sanctions dating back more than a decade. Those sanctions already preclude providing Pakistan any assistance under the Foreign Assistance Act.

So, in this regard I would like to send an amendment to the desk regarding the Pressler amendment and ask for its

immediate consideration. This will be in the form of an amendment to the amendment.

AMENDMENT NO. 2407 TO AMENDMENT NO. 2405

(Purpose: To repeal a restriction on the provision of certain assistance and other transfers to Pakistan)

Mr. BROWNBACK. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. BROWNBACK] proposes an amendment numbered 2407 to amendment No. 2405.

Mr. BROWNBACK. 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 of the amendment, add the following:

SEC. 1064. REPEAL OF RESTRICTION ON CERTAIN ASSISTANCE AND OTHER TRANSFERS TO PAKISTAN.

Section 620E(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2375(e)) is repealed.

Mr. BROWNBACK. Mr. President, as I pointed out, I am a cosponsor of Senator FEINSTEIN's efforts in this regard, the resolution being put forward. I think that is positive and it is a right step to do. I think we need to do that. But I think at this critical juncture we have to act even more decisively than what we are doing with this resolution, and that is why I am proposing this amendment to the resolution that I cosponsor. I think the amendment that Senator FEINSTEIN has put forward is the right thing to do.

I think, as well, at this very moment in Islamabad and throughout Pakistan they are considering: How do we respond? What do we do? Should we set off a nuclear weapon ourselves, in this escalating set of events?

If you are in Islambad and you are the Prime Minister of this country, or a parliamentarian, or somebody that's an official in this nation, you have to be sitting there saying, What do we do? Is this the time we should show strength in the form of retaliation, in the form of setting off another nuclear weapon, and we get the escalation going on? And there is pressure building in the streets, and the people in the streets say, ''We need to respond, we need to show strength in the form of detonating a nuclear weapon.''

We have to do everything we can today to try to encourage the Pakistanis not to respond in kind. We need to hold out some carrots to them, saying if you will show restraint, if you will show wisdom, if you will show moderation, we can help and we can work with you and here is a way. The Pressler amendment has been in place. It has been partially repealed over time. We can say to them, If you will show restraint, we are going to move towards lifting this; we are going to lift this Pressler amendment.

Then they have a different choice to make. They can say, You know, if we don't respond in kind we can get the onus of this off our back that we have tried to have removed for some time. If we do respond in kind, the Glenn amendment automatically hits the Pakistanis as well, and you are going to have a wider range of issues and of sanctions that will be hitting Pakistan. So now there is a carrot and a big stick sitting out there of, How do we respond? And the pressure is building in the streets in Islamabad and throughout Pakistan of, How do we respond? We have to do everything we can, near term, to stop that and provide them some option and some means and some reason not to set off a nuclear weapon.

What repealing this outdated, I think, unilateral sanction will do is bring Pakistan on the same playing field as the rest of the world and will offer them a carrot. If Pakistan detonates a nuclear weapon, as India has, it will be subject to the same sanctions as India. And believe me, I will be the first one to urge that the United States move swiftly and decisively to impose the sanctions.

It is important that we factor in several considerations as we consider this amendment. The first is that there are multiple laws in place to deal with nuclear proliferators: the Glenn-Symington amendment, the Glenn amendment, and various others. Pakistan will not, and should not, be allowed to get away with nuclear proliferation. There can be no excuse for transgressing international norms or U.S. laws.

However, we must also face an important reality. Pakistan, a long-term friend and ally of the United States, is next door to a nation of 960 million people who just tested five nuclear weapons this week. India could not have been more clear that it was sending a message to China and as well to Pakistan and the rest of the world. It is not unnatural, though it is clearly unwise, for Pakistan to consider its options.

Pakistan's conventional military abilities have been seriously eroded because of the Pressler sanctions. I believe that were Pakistan able to be more reliant on a conventional deterrent the nuclear option might seem less attractive. In addition, were Pakistan aware of the immense international support behind a policy of restraint, so, too, might they feel less threatened and feel like there is something in this for them if they show a bit of moderation and a bit of restraint.

We are at a crucial moment. Failure to take decisive action at this juncture could mean disaster in south Asia. I think time is absolutely of the essence or I would not have brought it out on this today. Decisions are being made now in Islamabad of what reaction they will take to the Indian's action, what they have done this week in detonating five nuclear weapons. Those decisions are being made now. I wish we could put this debate off for a month or 2 or 5 months, or a year, but it is now that it counts. It is now that decisions are being made. I hate to rush people towards these sorts of actions, but if we fail to act now, with all the potential we have to urge restraint in Pakistan, I am fearful we will have acted too late and the graphite rods will have been pulled out and the chain reaction continues and we have not done everything we possibly can.

This is something we can possibly do. I wish it were in another place on another vehicle. There is no other place or time to be able to do this. I think the base amendment is a good one to pass. I think this one sends the absolute positive signal to Pakistan, please, please show restraint. That is why I ask consideration of my amendment to the amendment.

At the appropriate time, if necessary, I will be asking for the yeas and nays.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, regretfully I rise to oppose this amendment which, in the current heated environment surrounding the Indian nuclear tests, seeks to repeal the Pressler amendment.

I believe that to put a repeal of the Pressler amendment on this bill and to allow the United States to resume military aid to Pakistan would be counterproductive and would contribute to a further destabilization of an already unstable South Asian security environment.

What would India do in response? I urge the Members of this body, when considering whether to vote for an imminent repeal of the Pressler amendment, to think that we are doing this before our people have even had a chance to ascertain what the particulars of this situation are. We are doing it before we have any assessment of what might be the response to this action. I think that is precipitous, and I think it is unfortunate.

Most immediately, what would be the effect? A repeal of Pressler would release 28 F–16s which Pakistan purchased in 1989, but due to the inability of the President to certify in 1990 that Pakistan does not possess a nuclear device——

The PRESIDING OFFICER. If the Senator will withhold.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the completion of this vote, the floor be restored to the Senator from California.

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

VOTE ON AMENDMENT NO. 2387

The PRESIDING OFFICER. The hour of 3 p.m. having arrived, the question is on agreeing to the motion to lay on the table amendment No. 2387. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. GORTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 24, nays 76, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—24

Akaka	Glenn	Levin
Baucus	Graham	Lugar
Biden	Grams	McConnell
Bingaman	Hagel	Murkowski
Breaux	Inouye	Reed
Cleland	Johnson	Robb
Daschle	Kennedy	Roberts
Ford	Kerrey	Rockefeller

NAYS—76

Abraham	Faircloth	McCain
Allard	Feingold	Mikulski
Ashcroft	Feinstein	Moseley-Braun
Bennett	Frist	Moynihan
Bond	Gorton	Murray
Boxer	Gramm	Nickles
Brownback	Grassley	Reid
Bryan	Gregg	Roth
Bumpers	Harkin	Santorum
Burns	Hatch	Sarbanes
Byrd	Helms	Sessions
Campbell	Hollings	Shelby
Chafee	Hutchinson	Smith (NH)
Coats	Hutchison	Smith (OR)
Cochran	Inhofe	Snowe
Collins	Jeffords	Specter
Conrad	Kempthorne	Stevens
Coverdell	Kerry	Thomas
Craig	Kohl	Thompson
D'Amato	Kyl	Thurmond
DeWine	Landrieu	Torricelli
Dodd	Lautenberg	Warner
Domenici	Leahy	Wellstone
Dorgan	Lieberman	Wyden
Durbin	Lott	
Enzi	Mack	

The motion to lay on the table the amendment (No. 2387) was rejected.

Mr. HUTCHINSON. Mr. President, I move to reconsider the vote.

The PRESIDING OFFICER. The motion to lay on the table the motion reconsider is agreed to.

The Senator from Arkansas.

VOTE ON AMENDMENT NO. 2401

Mr. HUTCHINSON. Mr. President, I, as the sponsor of the amendment, accept the second-degree amendment by Senator THOMAS, ask unanimous consent to vitiate the yeas and nays, and urge the adoption of the amendment.

The PRESIDING OFFICER. Without objection, the yeas and nays are vitiated. Without objection, the second-degree amendment is adopted.

The amendment (No. 2401) was agreed to.

Several Senators addressed the Chair.

Mr. LEVIN. Mr. President, the reason for my concern about this amendment is reflected in the statement that was sent to us by the administration. I very much support the purpose of this amendment. I think it is right on target, and I commend the Senator from Arkansas for focusing on this problem.

But the statement of the administration policy raises a concern that the requirement to disclose publicly the list of Chinese military companies operating directly or indirectly in the United States could implicate classified information that needs to be protected in the interests of national security, i.e., intelligence sources and methods. That is the basis for my concern, and therefore I will vote ''no'' on a voice vote, and I ask unanimous consent that this statement of administration policy be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, November 4, 1997.

STATEMENT OF ADMINISTRATION POLICY

H.R. 2647—MONITORING COMMERCIAL ACTIVITIES OF CHINESE MILITARY COMPANIES (FOWLER (R) FL AND 16 OTHERS)

The Administration opposes H.R. 2647 because it is unnecessary and counterproductive. In particular, the Administration opposes the requirement to disclose publicly the list of Chinese military companies operating directly or indirectly in the United States. The requirement for such disclosure could implicate classified information that needs to be protected in the interests of national security, i.e., intelligence sources and methods.

The Administration is also seriously concerned about the precedent of authorizing the exercise of authorities under the International Emergency Economic Powers Act (IEEPA) without regard to the Act's strict standards of an international threat. H.R. 2647 establishes no clear standards for invoking the IEEPA authorities against Chinese military companies and bears no relation to the effect on the United States of the commercial activities of the designated Chinese companies. If the People's Liberation Army companies, or any other foreign companies, undertake specific illegal activities, there are U.S. laws authorizing a broad range of sanctions. In cases when U.S. law is violated, the Administration can, and will, act to enforce the law.

VOTE ON AMENDMENT NO. 2387, AS AMENDED

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2387), as amended, was agreed to.

AMENDMENT NO. 2388, AS AMENDED, AS MODIFIED

Mr. WARNER. Mr. President, my understanding is the Senator from Arkansas has a second amendment.

Mr. HUTCHINSON. Mr. President, amendment No. 2388 is the second amendment. Has the amendment been modified by the Harkin amendment?

The PRESIDING OFFICER. The amendment has been modified.

Mr. HUTCHINSON. Once again, this is a good amendment. It was broadly supported in the House on a bipartisan basis. I urge its adoption.

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

Mr. LEVIN. I again commend my friend, the Senator from Arkansas, on this amendment. I think it is a good amendment. I ask unanimous consent I be listed as a cosponsor.

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

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2388), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, to advise Senators, we will not have further votes prior to the hour of 5 o'clock. My understanding is the Senator from Oklahoma has an amendment which he wishes to bring to the Senate. I am hopeful we could accommodate a few more minutes of debate, which the Senator from California had asked for, on her amendment.

Mr. LEVIN. Will the Senator from Virginia yield on that point?

Mr. WARNER. I yield.

Mr. LEVIN. I believe we did enter a unanimous consent agreement that the Senator from California be recognized after the disposition of the Hutchinson amendments, since she was in the middle of her remarks at the time that the regular order required us to begin the last votes.

I am wondering if we could just spend 30 seconds seeing if the Senator from California would like the floor.

Mr. WARNER. Mr. President, I join in that request, and then the Senate can proceed to the amendment of the Senator from Oklahoma. I ask unanimous consent that following the remarks of the Senator from California, the Senate proceed to the amendment that will be submitted by the Senator from Oklahoma.

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

Mr. LEVIN. Mr. President, I understand that the Senator from California is on her way and will be here in a few moments. 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. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescind.

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

Mr. BROWNBACK. Mr. President, I had been asked previously by the Senator from Iowa that he be listed as a cosponsor of the amendment I put forward. I ask unanimous consent that while we are waiting that he be added as a cosponsor.

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

Mr. BROWNBACK. I suggest the absence of a quorum.

Mr. LEVIN. Will the Senator withhold? Mr. President, I ask unanimous consent that the Senator from Oklahoma be recognized for 5 minutes at this time and then the Senator from California regain recognition.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Oklahoma is recognized.

Mr. INHOFE. Thank you, Mr. President.

As chairman of the Readiness Subcommittee, I want to make a couple of comments concerning the defense authorization bill of 1999 and how it affects readiness.

Over the past several years, a number of military officers have expressed deep concerns regarding the trends in the operational readiness of the Armed Forces. Last year, these trends led one military officer to state, ''The storm clouds are on the horizon.''

This was a year in which most of the Armed Forces were ready to meet their wartime mission, but in order to do so

in a resource-constrained environment, they were forced to resort to cost-saving practices which could impact negatively on our wartime readiness.

For example, the Marine Corps began using retreaded tires. This had not been done before. We have no way of knowing how these will perform in the case of some type of a Persian Gulf or Middle East desert-type of operation.

While the overall readiness of forward deployed units remains adequate, this is increasingly accomplished at the expense of nondeployed units. According to Vice Admiral Browne, Commander of the Navy's Third Fleet: ''More today than in the past, forward deployed readiness is being maintained with the slimmest of margins and at the expense of CONUS based training and increased individual PERSTEMPO.''

He went on to say: ''To get the U.S.S. *Denver* underway early as part of the Tarawa ARG amphibious readiness group, two other ships were cannibalized for parts.''

Furthermore, Colonel Bozarth of the Air Force's 388th Operations Group stated: ''The people that pay the price, though, are the folks that are back home. Because if you take a wing like ours, 5 years ago, in 1993, we were looking at full mission capable rates in the nineties. In the 1995–1997 timeframe, we are looking at mission capable rates in the eighties. Now we are down into the lower seventies.''

Unfortunately, there are reports that even the readiness of the forward deployed units is beginning to suffer. According to naval officers in the Pacific, 20 percent of the deployed planes on the carriers are grounded awaiting spare parts and other maintenance, all the time cannibalization of the aircraft is taking place. It has gone up 15 percent over the past year. In fact, Admiral Browne recently acknowledged that, ''Full mission capable rates from fiscal year 1996 to 1997 for our deployed aircraft have declined from 62 to 55 percent.''

I am very much concerned about this. Mr. President, I think this is due to two problems that we have. One is the deprived budget, insofar as our modernization program, which is leading us to have to use older equipment, and the other is the high deployment rate.

It is interesting that since 1992, we have had twice the number of deployments that we had in the entire 10 years before that. This is not for missions that are affecting our Nation's security.

I have had occasion to go to many, many, many installations throughout America and around the world. I can tell you right now, we have very serious problems. In Camp Lejeune, in talking to these guys down there—they are tough marines, but their OPTEMPO and PERSTEMPO rate, to the extent the divorce rate is up, the retention rates are down. It is a very serious problem.

I think most people realize it costs $6 million to put a guy into the cockpit of an F–16, and yet our retention rate right now has gone down 28 percent. In the Mojave Desert, the National Training Center in Twentynine Palms tells us the troops they get in for advance training are far below the level of proficiency that they were 10 years ago. Nellis Air Force Base where they have a red-flag operation, which is a very good operation for training combat pilots, they now have dropped these operations from every 12 months to 18 months. This means they go down from six to four operations each year.

What this means is, these pilots who would otherwise be going through the red-flag exercises getting this simulated training that is actually for combat are off providing missions, supporting areas like Bosnia.

I draw attention to the 21st TACON, because in this area, we have both of these problems occurring. The 21st TACON is using old equipment. Some of the 915 trucks that they use have over a million miles on them. I personally saw that they are using for loading docks old flatbeds that are wired together.

As far as the deployment is concerned, we know there are serious problems around the world. We know that Iraq is about to boil. We know we may have to send in ground troops, and yet they would have to be logistically supported by the 21st TACON. Right now they are at 100 percent capacity just supporting the Bosnia operation.

What we are dealing with in the defense authorization bill for 1999 is a budget that is not adequate and it does not put us in the state of readiness we should be in, but it is the very best we can do under the constraints that we are operating.

While it is inadequate, I do ask that our colleagues support the defense authorization bill for 1999.

Mr. COCHRAN. Mr. President, it is critically important that the United States be able to protect its troops in the field from ballistic missile attack, and this includes modern ballistic missiles of increasing range and sophistication. To do that, we need both lower tier systems like the Patriot and more capable, upper tier systems like the Theater High Altitude Air Defense, or THAAD, and Navy Theater Wide.

It is disappointing that the THAAD system has not yet achieved a successful intercept in its test program. Given the program's history of lengthy delays between flight tests, it is unlikely that a sufficient number of tests can be conducted in fiscal year 1999 to enable the program to enter into the Engineering and Manufacturing Development, or EMD, phase. Accordingly, I understand the rationale for the amendment offered today which would remove an additional $250 million from the THAAD Program. While I am disappointed that the program's lack of progress has brought about this decision, I believe the action proposed by the chairman and ranking member of the Armed Services Committee to be reasonable. And, along with everyone else, I call on the Government and the contractors supporting the program to do everything they can to ensure future success.

Let's not forget, however, that we have test programs to find and solve problems. We would move our weapons systems right from the drawing board to the field if we never expected to uncover problems during testing. While we would prefer there to be as few problems as possible, test programs are conducted to wring these problems out of our weapons systems. We should not be too quick to overemphasize the results of any one test.

The level of scrutiny being applied to the Demonstration and Validation phase of the THAAD Program is higher than that applied to any other program in its Dem-Val phase that I am aware of. In fact, the scrutiny it is undergoing is more like that normally found in the EMD phase of a program. This intense scrutiny will ultimately be beneficial in helping us get this system fielded as soon as the technology is ready. Given the EMD-like scrutiny in the THAAD Dem-Val program, Congress should examine the Department of Defense plans for the structure and length of its EMD program. It is important for this program to be long enough to ensure the THAAD system ultimately produced is the right one, but not so long as to leave U.S. forces vulnerable for a minute longer than technologically necessary.

The need for missile defense doesn't disappear because of a single flight test. Given the results of the most recent intercept attempt, it is reasonable to delay provision of THAAD EMD funding beyond fiscal year 1999. Additional reductions, however, are not warranted.

Mrs. HUTCHISON. Mr. President, I commend the Senator from Mississippi. He has shown such leadership in bringing to our attention the importance of a missile defense system for this country. We have all been shocked this week to hear what is happening across the globe with India actually testing a nuclear weapon and starting an arms race, tension that we haven't seen in a long time.

I can't think of another country in the world that would be testing its own missile defense system out in the open as we are, the THAAD missile that my colleague just talked about, but we did. Yes, it didn't work. And, yes, we are all disappointed and we are hoping that we can learn from what didn't work on that test and perfect it. But that is why we have tests of defensive systems.

But I think what Senator COCHRAN has done is, he is putting in context how important it is that we put our full force behind the priority of defending our shores and our troops, wherever they may be, anywhere in the world, against any incoming ballistic missile,

a Scud missile or an intercontinental missile. Senator COCHRAN is right. The Senate had a very important vote yesterday, and by only one vote—by only one vote in the Senate, we were not able to move and clearly say that this country's first priority is going to be a defensive system for the ballistic missiles that we know 30 countries are now in the process of perfecting.

So I commend him for the statement he just made, for the efforts he has been making over the last year, and for the future efforts that we are all going to make to continue to press this very important issue. As we are debating the defense authorization bill for our country, I can think of no higher priority than to make sure that the shores of our country are protected against an incoming ballistic missile, whether it be from a rogue nation or terrorist act. That our people would know that we would be protected is the very highest priority. We are debating right now how to fund and make sure that our troops have everything they need to do the job to protect us. They should have that same protection anywhere that they would be representing the United States of America. In any theater anywhere in the world, we should be able to have a defense against an incoming ballistic missile.

So I commend the Senator from Mississippi, and I want to say we will not rest until we have won this issue, that we would be able to deploy right now our first priority, a defensive system for incoming ballistic missiles.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I wish to thank the distinguished Senator from Texas for her kind and generous remarks. I agree with her that we need to do everything we can to study the test results, translate that into solving the problems we have in these systems for theater weapons that we have to protect our troops that are already being programmed—there are already deployment decisions that have been made, even though we haven't completed the development and the testing phase.

I hope we can see some successful tests soon and we urge the contractors and the Department to work as hard as they can to see that is done.

AMENDMENT NO. 2410

(Purpose: To provide eligibility for hardship duty pay on the basis of the nature of the duty performed instead of the location of the duty, and to repeal an exception)

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that it be in order for the Senate to consider amendment No. 2410; that the amendment be agreed to; and that the motion to reconsider be laid upon the table.

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

The amendment (No. 2410) was agreed to, as follows:

At the end of subtitle B of title VI, add the following:

SEC. 620. HARDSHIP DUTY PAY.

(a) DUTY FOR WHICH PAY AUTHORIZED.—Subsection (a) of section 305 of title 37, United States Code, is amended by striking out ''on duty at a location'' and all that follows and inserting in lieu thereof ''performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.''.

(b) REPEAL OF EXCEPTION FOR MEMBERS RECEIVING CAREER SEA PAY.—Subsection (c) of such section is repealed.

(c) CONFORMING AMENDMENTS.—(1) Subsections (b) and (d) of such section are amended by striking out ''hardship duty location pay'' and inserting in lieu thereof ''hardship duty pay''.

(2) Subsection (d) of such section is redesignated as subsection (c).

(3) The heading for such section is amended by striking out **''location''**.

(4) Section 907(d) of title 37, United States Code, is amended by striking out ''duty at a hardship duty location'' and inserting in lieu thereof ''hardship duty''.

(d) CLERICAL AMENDMENT.—The item relating to section 305 in the table of sections at the beginning of chapter 5 of such title is amended to read as follows:

''305. Special pay: hardship duty pay.''.

Mr. MCCAIN. Mr. President, this amendment will give the Secretary of Defense authority to compensate our men and women in uniform that are serving in remote areas, in very difficult situations. Specifically, this amendment amends hardship duty location pay and allows the Secretary of Defense to designate certain ''duties'' as a hardship rather than limiting the pay to hardship duty ''locations'' only. This will allow for designation of certain missions like Joint Task Force Full Accounting (JTF–FA), the POW/MIA search teams, and the Central Identification Lab (CILHI) to be designated for receipt of the hardship duty pay. These teams are exposed to the most arduous conditions while deployed to remote, isolated areas of Laos, Cambodia, Vietnam, North Korea and China to conduct excavations of crash sites and identification of remains of U.S. servicemembers.

This amendment also allows the Secretary to recognize members serving in high operation tempo missions and eliminates the restriction on members receiving sea pay and hardship duty pay simultaneously. This would allow naval members who are serving in high operations tempo units to receive the added benefit. The hardship duty pay limit of $300 per month would not be changed.

I commend my friends of the Veterans of Foreign Wars (VFW) for bringing this to my attention. Their concern for the state of the military and those that serve is unsurpassed. During a recent trip to Southeast Asia, the VFW learned that personnel deployed under the command of JTF–FA are not authorized and do not receive imminent danger pay when deployed on Joint Field Activity operations in Laos and Vietnam. They reported their concerns to me because many of the crash sites were in extremely difficult terrain, littered by unexploded munitions.

At one Joint Field Activity excavation site that they visited in western Laos, the area in which the team was conducting excavations was littered with unexploded BLU–26 cluster bomb units. Another crash site excavation was located next to sidewinder missiles. In addition, the teams are exposed to resistant strains of malaria, dengue fever, and other diseases while they are deployed in these isolated and remote areas. Furthermore, most of these sites are far removed from any modern medical facility.

Mr. President, I feel it not only the right thing to do, but that it will help the services to adequately compensate our men and women in uniform so as to entice these young Americans to stay in the service and to consider a career in the military. For the difficult and dangerous duties that they do, they deserve no less.

Mr. WARNER. Mr. President, 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. SPECTER. 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. SPECTER. I ask unanimous consent that I may speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. The Senator is informed there is an order to recognize the Senator from California. Is there objection to the request?

Mr. THURMOND. No objection.

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

RELIGIOUS PERSECUTION THROUGHOUT THE WORLD

Mr. SPECTER. Mr. President, I have sought recognition to compliment the House of Representatives on passage of legislation this afternoon to take a stand against religious persecution worldwide.

And, I compliment Congressman FRANK WOLF of Virginia for his leadership on this very important legislation.

Legislation is pending in the U.S. Senate identical with or very similar to the legislation passed in the House—I am not sure what amendments may have been crafted on the House floor this afternoon and what last-minute changes may have been made—but similar legislation has been introduced by this Senator in the U.S. Senate. And the purpose of this legislation is for the United States to take a stand against religious persecution worldwide.

We have a very unfortunate situation today where Catholic priests are being incarcerated in China, Buddhists are being persecuted in Tibet, and Evangelical Christians are being imprisoned in Saudi Arabia and in Egypt. The essence of freedom of religion is a very fundamental value in the United States and a very fundamental moral value. And, the legislation which passed the House today and which is pending in the Senate will enable the U.S. Government to take a stand against this religious persecution worldwide.

Freedom of religion is the first part of the first amendment. The United States was founded for religious freedom. The Pilgrims came here in 1607 for that purpose, as did my father Harry Specter, who literally walked across Europe with barely a ruble in his pocket in 1911 seeking a new life for himself and a family which he hoped to have, and religious freedom, because the Cossacks rode up and down the streets of Batchkurina, a small village in Ukraine, in Russia, where my father's brother, Mordechai Spectorski, had fought with the Cossacks, and they were looking for Mordechai Spectorski, who had fled the city. And, the Cossacks continued to look for members of the Specter family. My father immigrated to the United States, as did my mother Lillie Shanin, leaving a small town on the Russian-Polish border at the age of 5, coming to the United States in 1905.

The legislation which has passed the House of Representatives has some sanctions in it. It provides that there be no weapons of torture sold, and provides limitations as to what U.S. taxpayer money can be given for, other than humanitarian purposes. And, it seems to me that if the legislation is to have any effect, there have to be sanctions, there have to be weapons in the bill—teeth—in order to promote compliance.

I visited this past January in Saudi Arabia and talked to Saudi officials about concerns which I have and which others have had where Christians cannot display a Christmas tree in a window if it is visible from the outside, where Jewish soldiers are reluctant to wear their dog tags identifying themselves as being Jewish, a situation which is intolerable, where we have some 5,000 young men and women who are in Saudi Arabia to protect the Saudis.

The situation in Egypt is very serious where there are Evangelical Christians who are being persecuted, where they land in jail if there is a conversion from Islam to Christianity. I was unable to visit the Sudan because of difficulties there, but visiting in nearby Eritrea, I heard stories about the persecution of Christians in Sudan.

It is my hope that this legislation will be considered by the Senate in short order so that a firm stand will be taken to deal with the very serious issue of religious persecution worldwide.

Again, I compliment the House and chief sponsor, FRANK WOLF, and look forward to enactment of this legislation in the Senate. The bill passed by a vote of 375–41, which is well beyond the number necessary to be veto proof. The administration has been opposed to having sanctions in legislation, sanctions such as some of the ones proposed in the bill which I have offered and is pending in the U.S. Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. THURMOND. Mr. President, I ask unanimous consent that James Bynum, a Capitol Hill fellow, and Kurt Volker, a State Department fellow serving on Senator MCCAIN's staff, be granted privileges of the floor during the debate and any votes concerning S. 2057, the fiscal year 1999 National Defense Authorization bill, as well as any related amendments.

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

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

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

Mr. INHOFE. Mr. President, what is the current order?

The PRESIDING OFFICER. The current order is the Brownback amendment, No. 2407, to the Feinstein amendment, No. 2405.

Mr. INHOFE. Mr. President, I ask unanimous consent that be set aside and that I be allowed to send an amendment to the desk.

Mr. LEVIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—S. 1415

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 370, which is S. 1415, the tobacco bill, just reported from the Finance Committee.

The PRESIDING OFFICER. Is there objection?

Mr. ASHCROFT. I object.

The PRESIDING OFFICER. Objection is heard.

ADJOURNMENT

Mr. LOTT. I now move that the Senate stand in adjournment for 1 minute.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to, and at 5:07 p.m., on Thursday, May 14, 1998, the Senate adjourned until 5:08 p.m. the same day.

AFTER ADJOURNMENT

The Senate met at 5:08 p.m., pursuant to adjournment, and was called to order by the Hon. DAN COATS, a Senator from the State of Indiana.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. LOTT. I now ask that the routine requests through the morning hour be granted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNIVERSAL TOBACCO SETTLEMENT ACT—MOTION TO PROCEED

CLOTURE MOTION

Mr. LOTT. Mr. President, I now move to proceed to Calendar No. 370, S. 1415, and send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to calendar No. 370, S. 1415, regarding tobacco reform:

Trent Lott, John McCain, Ben Nighthorse Campbell, James Inhofe, Christopher Bond, Gordon Smith, Robert Bennett, Harry Reid, Ted Stevens, Richard Shelby, Mike DeWine, Susan Collins, Slade Gorton, Jay Rockefeller, John Kerry, Christopher Dodd.

Mr. LOTT. Mr. President, I want to announce, for the information of all Senators, that the vote will occur on this cloture motion Monday, May 18, at a time to be determined by the majority leader after consultation with the Democratic leader, and the mandatory quorum under rule XXII be waived.

It is anticipated this vote will occur at 5:30 Monday afternoon. We have, in the past, over the past month, tried to make Senators aware of Mondays and Fridays, that we would not be having votes. This Friday we will not be having any votes. We notified the Members of that, I think at least 3 weeks ago. But we have been saying all along on Monday, the 18th, they should expect a vote. But we will try to have it late in the afternoon, so we could conduct some business during the morning and afternoon, so Senators will have time to get back here from their respective States. We do expect that vote probably around 5:30, but we want to check with all the Senators to see if that is the best possible time. We may need to move it a little bit one way or the other.

Mr. LOTT. I now withdraw the motion I made.

The PRESIDING OFFICER. The motion is withdrawn.

DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998

Mr. LOTT. Mr. President, I ask the Senate turn to Calendar No. 358, S. 2037, regarding the WIPO treaty, which is the treaty dealing with digital copyright.

The PRESIDING OFFICER. Under the previous order, the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2037) to amend title 17, United States Code, to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to provide limitations on copyright liability relating to material online, and for other purposes.

The Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, the Senate is now considering the WIPO Copyright Treaty which has up to 1 hour under the consent agreement that was reached on May 12. Therefore, the next vote will occur shortly—hopefully in less than an hour—on passage of the WIPO copyright bill, and that will be the last vote of the day.

I know there are some Senators here who have worked on this issue who do want to be heard briefly—the Senator from Missouri, and, of course, the Senator from Utah has been working on this assiduously. We had a little problem we ran into yesterday, but we are going forward with this and we will try to work it out with the House, and I will certainly try to be helpful with that.

This is important legislation. A lot of effort has been put into it. Some of the problems have been resolved, thanks to the courtesy and leadership of Senator HATCH, working with Senator ASHCROFT. So I think we need to go ahead and do it today and we will have had, really, an incredible week on these high-tech bills.

Again, the next vote will occur on Monday—there will be no further votes after the WIPO vote tonight—and I will notify all Members as to the time of that vote.

With regard to the DOD authorization matter, I will be talking with the managers of this legislation to see what their wishes are, and we will have some further announcements of when that legislation will be brought up again.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time allocated for this debate is 60 minutes, equally divided and controlled between the Senator from Utah, Mr. HATCH, and the Senator from Vermont, Mr. LEAHY, with 15 minutes of the time of Mr. HATCH controlled by the Senator from Missouri, Mr. ASHCROFT.

The Senate will be in order.

Mr. ASHCROFT. 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. HATCH. 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. HATCH. I would like to yield to the distinguished Senator from Arizona for an amendment that he has to take care of.

Mr. MCCAIN. Mr. President, I ask unanimous consent to send to the desk an amendment that is on the DOD bill.

The PRESIDING OFFICER. The Presiding Officer will advise the Senator the DOD bill is not the pending business.

Mr. MCCAIN. Can I, by unanimous consent, send up that amendment?

Mr. LEVIN. I object. Reserving the right to object.

Mr. MCCAIN. It is an amendment that has been accepted by both sides.

Mr. LEVIN. On the DOD bill? I have to object. There are too many pending amendments. I am sorry, if the Senator can clear that——

The PRESIDING OFFICER. Objection is heard. The Senator from Utah.

Mr. HATCH. Mr. President, I ask this time not be charged.

The PRESIDING OFFICER. The amendments are submitted and will be numbered. The Senator from Utah.

Mr. HATCH. I ask that time not be charged to the present act.

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

Mr. HATCH. Mr. President, I rise to speak in support of the Digital Millennium Copyright Act of 1998, S. 2037. The DMCA is the most comprehensive bill that has come before the Senate regarding the Internet and the digital world in general.

The DMCA in Title I implements the World Intellectual Property (WIPO) treaties on copyright and on performers and phonograms, and in Title II limits the copyright infringement liability of on-line and Internet service providers (OSPs and ISPs) under certain circumstances. The DMCA also provides in Title III a minor but important clarification of copyright law that the lawful owner or lessee of a computer may authorize someone to turn on their computer for the purposes of maintenance or repair. Title IV addresses the issues of ephemeral recordings, distance education, and digital preservation for libraries and archives.

Due to the ease with which digital works can be copied and distributed worldwide virtually instantaneously, copyright owners will hesitate to make their works readily available on the Internet without reasonable assurance that they will be protected against massive piracy. Legislation implementing the treaties provides this protection and creates the legal platform for launching the global digital on-line marketplace for copyrighted works. It will facilitate making available quickly and conveniently via the Internet the movies, music, software, and literary works that are the fruit of American creative genius. It will also encourage the continued growth of the existing off-line global marketplace for copyrighted works in digital format by setting strong international copyright standards.

The copyright industries are one of America's largest and fastest growing economic assets. According to International Intellectual Property Alliance statistics, in 1996 (when the last full set of figures was available), the U.S. creative industries accounted for 3.65% of the U.S. gross domestic product (GDP)—$278.4 billion. In the last 20 years in which comprehensive statistics are available—1977–1996—the U.S. copyright industries' share of GDP grew more than twice as fast as the remainder of the economy—5.5 percent versus 2.6 percent.

Between 1997 and 1996, employment in the U.S. copyright industries more than doubled to 3.5 million workers—2.8 percent of total U.S. employment. Between 1977 and 1996 U.S. copyright industry employment grew nearly three times as fast as the annual rate of the economy as a whole—4.6 percent versus 1.6 percent. In fact, the copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector, including chemicals, industrial equipment, electronics, food processing, textiles and apparel, and aircraft.

More significantly for the WIPO treaties, in 1996 U.S. copyright industries achieved foreign sales and exports of $60.18 billion, for the first time leading all major industry sectors, including agriculture, automobiles and auto parts, and the aircraft industry. There can be no doubt that copyright is of supreme importance to the American economy. Yet, American companies are losing $18 to $20 billion annually due to the international piracy of copyrighted works.

But the potential of the Internet, both as information highway and marketplace, depends on its speed and capacity. Without clarification of their liability, service providers may hesitate to make the necessary investment to fulfill that potential. In the ordinary course of their operations service providers must engage in all kinds of acts that expose them to potential copyright infringement liability.

For example, service providers must make innumerable electronic copies in order simply to transmit information over the Internet. Certain electronic copies are made to speed up the delivery of information to users. Other electronic copies are made in order to host World Wide Web sites. Many service providers engage in directing users to sites in response to inquiries by users or they volunteer sites that users may find attractive. Some of these sites might contain infringing material. In

short, by limiting the liability of service providers, the DMCA ensures that the efficiency of the Internet will continue to improve and that the variety and quality of services on the Internet will continue to expand.

Besides the major copyright owners and the major OPSs and ISPs (e.g., the local telephone companies, the long distance carriers, America OnLine, etc.), the Committee heard from representatives of individual copyright owners and small ISPs, from representatives of libraries, archives and educational institutions, from representatives of broadcasters, computer hardware manufacturers, and consumers—and this is not an exhaustive list.

Title II, for example, reflects 3 months of negotiations between the major copyright owners and the major OSPs, and ISPs, which I encouraged and in which I participated, and which took place with the assistance of Senator ASHCROFT. Intense discussions took place on distance education too, with the participation of representatives of libraries, teachers, and educational institutions, and with the assistance of Senator LEAHY, Senator ASHCROFT, and the Copyright Office.

As a result, the Committee took substantial steps to refine the discussion draft that I laid down before the Committee through a series of amendments, each of which was adopted unanimously. For example, the current legislation contains:

(1) a provision to ensure that parents will be able to protect their children from pornography and other inappropriate material on the Internet;

(2) provisions to provide for the updating of the copyright laws so that educators, libraries, and achieves will be able to take full advantage of the promise of digital technology;

(3) important procedural protections for individual Internet users to ensure that they will not be mistakenly denied access to the World Wide Web;

(4) provisions to ensure that the current practice of legitimate reverse engineering for software interoperability may continue; and

(5) provisions to accommodate the needs of broadcasters for ephemeral recordings and regarding copyright management information.

These provisions are in addition to provisions I had already incorporated into my discussion draft, such as provisions on library browsing, provisions addressing the special needs of individual creators regarding copyright management information, and provisions exempting nonprofit archives, nonprofit educational institutions, and nonprofit libraries from criminal penalties and, in the case of civil penalties, remitting damages entirely when such an institution was not aware and had no reason to believe that its acts constituted a violation.

Consequently, the DMCA enjoys widespread support from the motion picture, recording, software, and publishing industries, as well as the telephone companies, long distance carriers, and other OSPs and ISPs. It is also supported by the Information Technology Industry Council, which includes the leading computer hardware manufacturers, and by representatives of individual creators, such as the Writers Guild, the Directors Guild, the Screen Actors Guild, and the American Federation of Television and Radio Artists. The breadth of support for S. 2037 is reflected in the unanimous roll call vote (18–0) by which the DMCA was reported out of Committee.

Mr. President, the United States started the Internet, and remains its most significant hub. No country comes close to the United States in creative output. In these areas, we are the undisputed leaders. This bill will help us maintain this edge in an increasingly competitive global market.

Mr. President, I urge my colleagues in the Senate to vote favorably for S. 2037. This bill has such important ramifications for the continued prosperity of the U.S. as we enter the next millennium and has such powerful support that it should be enacted immediately.

Finally, I would like to particularly pay tribute to the ranking member of the Senate Judiciary Committee, Senator LEAHY. I don't know of anyone who has more interest in the Internet, more interest in computers, more interest in copyright matters than Senator LEAHY, unless it is myself, and I don't think I have more. He has done a great job on this committee. It is a pleasure to work with him.

It has been a wonderful experience throughout the 22 years I have been on the committee to work with him on technical and difficult issues. I personally thank him before everybody today for his good work. Without his help, we wouldn't be this far, and we all know it. I thank him. I would also like to thank Manus Cooney, Edward Damich, Troy Dow, and Virginia Isaacson of my staff for their long hours of hard work on this issue. And I want to commend the hard work and cooperation I received from Bruce Cohen, Beryl Howell, and Marla Grossman of Senator LEAHY's staff, and Paul Clement, and Bartlett Cleland of Senator ASHCROFT's staff.

AMENDMENT NO. 2411

(Purpose: To make technical corrections)

Mr. HATCH. 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 Utah [Mr. HATCH] proposes an amendment numbered 2411.

The amendment is as follows:

On page 12, line 15 strike subsection (c) and redesignate the succeeding subsections and references thereto accordingly.

On page 17, line 4, insert ''and with the intent to induce, enable, facilitate or conceal infringement'' after ''knowingly''

On page 17, beginning on line 8, strike '', with the intent to induce, enable, facilitate or conceal infringement''

On page 17, beginning on line 21, strike paragraph (3) and insert in lieu thereof the following:

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under this title.''.

On page 19, line 4, insert the following new paragraph and redesignate the succeeding paragraphs accordingly:

''(6) terms and conditions for use of the work;''.

On page 19, line 4, strike ''of'' and insert in lieu thereof ''or''.

Mr. HATCH. This is a technical amendment, and I urge its adoption.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 2411) was agreed to.

Mr. HATCH. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my friend from Utah for his gracious comments, and I do appreciate working with him on this matter. He and I have discussed this so many times in walking back and forth to votes and in the committee room, and so on. I think the Senator from Utah and I long ago determined that if we were going to have this WIPO implementing bill passed, its best chance would be one where the Senator from Utah and the Senator from Vermont were basically holding hands on it.

The Senator from Utah may recall a time once when the then-Senator from Nevada, Senator Laxalt, and I were here and we had two pieces of legislation, a Laxalt-Leahy bill and a Leahy-Laxalt bill. One of our colleagues said, ''This is either a very good bill or one of you didn't read.''

In this case, the Hatch-Leahy-et al. piece of legislation is a very good bill, and one which the two of us have read every word. We have tried to make very clear to the Senate that the issues we are raising in this bill are not partisan issues. These are issues that create jobs in the United States. These are issues that allow the United States to go into the next century with our innovative genius in place. These are issues that allow the United States, in creating that innovative genius, to continue to lead the world. Senators, in voting for this legislation, will be voting to maintain the intellectual leadership of the United States.

The successful adoption by the World Intellectual Property Organization, what we call WIPO, in December 1996, of two new copyright treaties—one on written material and one on sound recordings—was praised in the United States. The bill that we have before us today, the DMCA, the Digital Millennium Copyright Act, will effectuate the

purposes of those treaties in the United States and, I believe, will serve as a model for the rest of the world.

The WIPO treaties will fortify intellectual property rights around the world. They will help unleash the full potential of America's most creative industries, including the movie, recording, computer software, and other copyrighted industries that are subject to online and other forms of piracy, especially in the digital age where it is easier to pirate and steal exact copies of works.

If they don't have the protection, the owners of intellectual property are going to be unwilling to put their material online. If there is no content worth reading online, then the growth and usefulness of the Internet will be stifled and public accessibility will be retarded.

Secretary Daley of the Department of Commerce said, for the most part, ''The treaties largely incorporate intellectual property norms that are already part of U.S. law.'' What the treaties will do is give American owners of copyrighted material an important tool to protect their intellectual property in those countries that become a party to the treaties.

With ever-expanding electronic commerce, trafficking the global superhighway, international copyright standards are critical to protecting American firms and American jobs. The future growth of the Internet and of digital media requires rigorous international intellectual property protections.

I have in my hand the 1998 Report on Copyright Industries in the United States Economy. This was released last week by the International Intellectual Property Alliance.

This report shows conclusively just how important the U.S. copyright industries are to American jobs and how important it is to protect that U.S. copyright industry from global piracy.

If you look at the chart over here, Mr. President, it shows that from the years 1977 to 1996, the U.S. copyright industries' share of the gross national product grew more than twice as fast as the rest of the economy.

These are the core copyright industries. Look how fast they grew as compared to the rest of the U.S. economy.

One of the things that has expanded and fueled our expanding economy is the copyright industry.

Now, during those same 20 years, job growth in the core copyright industries was nearly three times as fast as the rest of the economy. What this shows us, Mr. President, is that we are undergoing unprecedented expansion of our economy, but this is the area expanding the fastest.

These statistics underscore why, when the President transmitted the two WIPO treaties and draft legislation to implement the treaties to the U.S. Senate, I was proud to introduce the implementing legislation, S. 1121, with Senators HATCH, THOMPSON, and KOHL. We did it the same day. The legislation we have before us today is the result of years of work domestically and internationally to ensure that the appropriate copyright protections are in place around the world to foster the growth of the Internet and other digital media and networks.

The Clinton administration showed great foresight when it formed, in 1993, the Information Infrastructure Task Force, IITF, which established a Working Group on Intellectual Property Rights to examine and recommend changes to keep copyright law current with new technology. Then they released a report in 1995 explaining the importance of this effort, stating:

> The full potential of the NII will not be realized if the education, information and entertainment products protected by intellectual property laws are not protected. . .

The report said further:

> All the computers, telephones, fax machines, scanners, cameras, keyboards, televisions, monitors, printers, switches, routers, wires, cables, networks, and satellites in the world will not create a successful NII, if there is no content. What will drive the NII is the content moving through it.

The same year that report was issued, Senator HATCH and I joined together to introduce the NII Copyright Protection Act of 1995, S. 1284, which incorporated the recommendations of the Administration. That legislative proposal confronted fundamental questions about the role of copyright in the next century—many of which are echoed by the DMCA, which we consider today.

Title I of the DMCA is based on the Administration's recommendations for legislation to implement the two WIPO treaties. It makes certain technical changes to conform our copyright laws to the treaties and substantive amendments to comply with two new treaty obligations.

Specifically, the treaties oblige the signatories to provide legal protections against circumvention of technological measures used by copyright owners to protect their works, and against violations of the integrity of copyright management information (CMI). Such information is used to identify a work, its author, the copyright owner and any information about the terms and conditions of use of the work. The bill adds a new chapter to U.S. copyright law to implement the anticircumvention and CMI provisions, along with corresponding civil and criminal penalties.

Title II of the DMCA limits the liability for copyright infringement, under certain conditions, for Internet and online service providers. Title III gives a Copyright Act exemption to lawful computer owners or lessees so that independent technicians may service the machines without infringement liability.

Title IV begins a process of updating our Nation's copyright laws with respect to library archives, and educational uses of copyrighted works in the digital age.

Title I is based on the administration's recommendations, as I said.

Following intensive discussions with a number of interested parties, including libraries, universities, small businesses, ISPs and OSPs, telephone companies, computer users, broadcasters, content providers, and device manufacturers, we in the Senate Judiciary Committee were able to reach unanimous agreement.

For example, significant provisions were added to the bill in Title II to clarify the liability for copyright infringement of online and Internet service providers. The bill provides ''safe harbors'' from liability under clearly defined circumstances, which both encourage responsible behavior and protect important intellectual property rights. In addition, during the committee's consideration of this bill, an Ashcroft-Leahy-Hatch amendment was adopted to ensure that computer users are given reasonable notice when their Web sites are the subject of infringement complaints, and to provide procedures for computer users to have material that is mistakenly taken down put back online.

We have a number of provisions designed to help libraries and archives. First, libraries expressed concerns about the possibility of criminal sanctions or potentially ruinous monetary liability for actions taken in good faith. This bill makes sure that libraries acting in good faith can never be subject to fines or civil damages. Specifically, a library is exempt from monetary liability in a civil suit if it was not aware and had no reason to believe that its acts constituted a violation. In addition, libraries are completely exempt from the criminal provisions.

We have a ''browsing'' exception for libraries so they can look at encrypted work and decide whether or not they want to purchase it for their library.

Senator HATCH, Senator ASHCROFT, and I crafted an amendment to provide for the preservation of digital works by qualified libraries and archives. The ability of libraries to preserve legible copies of works in digital form is one I consider critical. Under present law, libraries are permitted to make a single facsimile copy for their collections for preservation purposes, or to replace copies in case of fire and so on. That worked back in the nondigital age. It does not work today. This gives us a chance to be up to date. We would allow libraries to transfer a work from one digital format to another if the equipment needed to read the earlier format becomes unavailable commercially.

The bill ensures that libraries' collections will continue to be available to future generations by permitting libraries to make up to three copies in any format—including in digital form. This was one of the proposals in The National Information Infrastructure (NII) Copyright Protection Act of 1995, which I sponsored with Senator HATCH in the last Congress. The Register of Copyrights, among others, has supported that proposal.

These provisions go a long way toward meeting the concerns that libraries have expressed about the original

implementing legislation we introduced.

We address distance learning. When Congress enacted the present copyright law it recognized the potential of broadcast and cable technology to supplement classroom teaching, and to bring the classroom to those who, because of their disabilities or other special circumstances, are unable to attend classes. At the same time, Congress also recognized the potential for unauthorized transmissions of works to harm the markets for educational uses of copyrighted materials. The present Copyright Act strikes a careful balance and includes a narrowly crafted exemption.

As with so many areas of copyright law, the advent of digital technology requires us to take another look at the issue.

I recognize that the issue of distance learning has been under consideration for the past several years by the Conference on Fair Use (CONFU) that was established by the Administration to consider how to protect fair use in the digital environment. In spite of the hard work of the participants, CONFU has so far been unable to forge a comprehensive agreement on guidelines for the application of fair use to digital distance learning.

We made tremendous strides in the Committee to chart the appropriate course for updating the Copyright Act to permit the use of copyrighted works in valid distance learning activities.

Senator HATCH, Senator ASHCROFT, and I joined together to ask the Copyright Office to facilitate discussions among interested library and educational groups and content providers with a view toward making recommendations for us to consider with this legislation. We incorporated into the DMCA a new section 122 requiring the Copyright Office to make broader recommendations to Congress on digital distance education within six months. Upon receiving the Copyright Office's recommendations, it is my hope that the Senate Judiciary Committee will promptly commence hearings on the issue and move expeditiously to enact further legislation on the matter. I know that all members on this Committee are as anxious as I am to complete the process that we started in Committee of updating the Copyright Act to permit the appropriate use of copyrighted works in valid distance learning activities. This step should be viewed as a beginning—and we are committed to making more progress as quickly as possible.

We have also asked the Copyright Office to examine, in a comprehensive fashion, when the actions of a university's employees might jeopardize the university's eligibility for the safe harbors set out in the bill for online service providers. This is an important and complex issue with implications for other online service providers, including libraries and archives, and I look forward to reviewing the Copyright Office's analysis of this issue.

Amendments sponsored by Senator ASHCROFT, Senator HATCH, and I were crafted to address the question of reverse engineering, ephemeral recordings, and to clarify the use of copyright management.

Finally, to assuage the concerns of the consumer, electronics manufacturers, and others, that the bill might require them to design their products to respond to a particular technological protection measure, Senator HATCH, Senator ASHCROFT, and I crafted an amendment to clarify the bill on this issue.

I mention all of these things, Mr. President, because it shows why the administration has sent a Statement of Administration policy saying the Administration supports passage of this bill. This is a well-balanced package of proposals. As we go into the next century—the creators, the consumers, those in commerce in this country need the best laws possible. The United States is the leader today. The United States will not be the leader tomorrow without adequate laws.

These laws allow the United States to continue to be the electronic and intellectual property leader of the world. We should pass this bill. We can pass it with pride.

I would like to close by praising the dedicated staff members from the Judiciary Committee who have assisted us in crafting this legislation. They appreciate the significance of this legislation for our country and its economy. In particular, I want to thank Edward Damich and Troy Dow from the Chairman's staff, and Paul Clement and Bartlett Cleland from Senator ASHCROFT's staff, for demonstrating what can be done when we put political party allegiances aside and strive to work together in a bipartisan fashion to craft the best bill possible. My hope is that the bipartisan manner in which they worked on behalf of the Chairman and Senator ASHCROFT to bridge differences rather than exacerbate them can be replicated on a number of other important issues pending in our Committee.

I would also like to thank those people on my Judiciary Committee staff—Bruce Cohen, Beryl Howell, Marla Grossman, Bill Bright and Mike Carrasco—for their work on this bill. They each put in long hours to help me find solutions to the concerns of a number of stakeholders in this bill. I could always trust their counsel to be fair and conscientious.

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

Mr. HATCH. Mr. President, let me just praise my colleague from Missouri. Senator ASHCROFT has been committed and has worked very, very hard to make this bill one that all of us can support. He has done a terrific job. He has worked on this OSP liability thing with us ad infinitum and added matters to this bill that made this a much better bill and strengthened the bill. I just could not feel better about somebody on my committee working on this bill than I do toward Senator ASHCROFT. I just wanted to say he played a significant role in this legislation. I personally thank him.

I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized to speak for 15 minutes.

Mr. ASHCROFT. Thank you, Mr. President.

I am grateful for the kind remarks of the Senator from Utah and am pleased to have the opportunity to work with him and the Senator from Vermont.

I rise today to speak in favor of one of the most important pieces of technology legislation in the 105th Congress. At its heart, this legislation is about updating the copyright laws for the digital age and preparing a sizable portion of our economy for the next century.

The affected parties include the online service providers, computer hardware and software manufacturers; every educator in America is affected by this legislation; every student; all the libraries; all the consumer electronics manufacturers and consumers of electronics; the motion picture companies, and everyone who uses the Internet. This measure will have as broad an impact on the American public as virtually any measure we will address.

The full Senate's consideration of this bill culminates an effort of updating our copyright law that I began last September when I introduced S. 1146, the Digital Copyright Clarification and Technology Education Act. S. 1146 was a comprehensive bill designed to jump-start a process that had ground to a halt and appeared to be going nowhere.

The bill addresses three basic problems. First, the liability of online service providers for copyright violations; second, the need to update the provisions of the copyright law that affect educators and libraries for the digital age; and third—and not least, of course—the need to implement the World Intellectual Property Organization, or WIPO, treaties.

The United States of America, as the generator of so much content and material—the innovator, the creator of so much of what is copywritten—stands to gain most by making sure that our copyrights are respected worldwide.

I am gratified that today the full Senate will vote on this bill that addresses all three of these concerns, especially the concerns regarding the need to implement the World Intellectual Property Organization treaties which will provide that the United States effort to protect copyrights—the intellectual property of those who are the creators in this country and develop things in this country—those treaties will protect those copyrights.

The original administration language that was introduced by Senators HATCH and LEAHY focused exclusively on the

WIPO treaties. However, through hard work, numerous amendments and the assistance of Senators HATCH and LEAHY and their staffs—and this was really a cooperative effort—we were able to fashion a comprehensive approach to updating the copyright laws for the digital age.

Many important changes were made to the bill, including amendments reinforcing on-line privacy rights, ensuring that the bill would not be read to mandate design decisions and addressing the need to update the copyright laws to permit distance education using digital technology.

When I was a professor—I won't want to admit how long ago—I used to teach a television course. The very same procedures I used in analog technology for television transmission might well have been illegal if the TV signal had been transmitted digitally. It is important that we give the capacity for distance education in the digital age the same potential that we had for distance education in the analog age.

I will focus on three important changes, one reflecting each of the three basic problems addressed by the original bill.

First, there is the issue of the liability of on-line service providers. The notion that service providers should not bear the responsibility for copyright infringements when they are solely transmitting the material is one key to the future growth of the Internet. Now, what we are really talking about is if someone illegally transmits material on the Internet, the Internet companies that provide the opportunity for people to transmit the material shouldn't be held responsible any more than the phone company should be held responsible if you were to say something illegal over the phone, or that Xerox should be held responsible if you violate a copyright by illegally copying material on the Xerox machine.

This is very important because of the way the Internet operates in terms of assembling and reassembling digital messages that they not be considered to be an illegal publisher; they, therefore, needed the protections that are provided in this bill so that we can have and continue to use the infrastructure of the Internet and allow it to operate effectively.

Proper resolution of this issue is critical to unlock the potential for the Internet. For that reason, I included a title addressing on-line service provider liability in my legislation. Make no mistake about it, clarification of on-line service provider liability was one of my fundamental concerns in the debate, and after months of negotiations the affected parties were able to agree to legislative language that protects on-line service providers, or what we call the OSPs, from liability when they simply transmit—they are not involved, they don't have any interest in the message, but they are just transmitters. If there is a violation, it is not their fault that something was transmitted in contravention of the copyright law.

Although I applauded the efforts of the affected industries to resolve the OSP liability issue, there was one issue which the industry agreement did not address—the protections that need to be given to users of the Internet. The agreement that the OSPs entered into would have protected the interests of the copyright owners, but it provided little or no protection for an Internet user who was wrongfully accused of violating copyright laws.

I think of a little girl, perhaps, who puts on her Internet site the picture of a duck she draws. We shouldn't allow Disney to say, ''We own Donald Duck. That looks too much like Donald,'' and be able to bully a little girl from having a duck on her web site. We needed protection for the small user, not just for the big content promoters.

Even though several Judiciary Committee members claimed no amendments were needed, I made sure that the industry compromise respected the rights of typical Internet users, ordinary people, by offering an amendment that provided a protection included in the original bill I had offered. It is an idea which is referred to as the ''notice and put-back'' provision. If material is wrongfully taken down from the Internet user's home page, my amendment ensures that the end user will be given notice of the action taken and gives them a right to initiate a process that allows them to put their material back on line without the need to hire a lawyer or go to court. This was a critical improvement over the industry's prior compromise agreement.

A second concern of mine throughout this process has been the need to update protections for educators and libraries already included in the copyright law to reflect the digital technology. I have already mentioned that. Having been an individual who had the privilege of teaching a college course on television I knew just how important it would be for libraries and educational institutions to be able to use digital transmissions of documents and signals in the same way that they were authorized to do so with analog signals under our copyright law as it has existed.

I did offer an amendment in committee, and it was unanimously incorporated into the bill, which will allow libraries to use digital technology for archiving and for interlibrary loans, for example. This will help libraries serve the American public.

A final issue of profound importance, ensuring that the bill did not inadvertently make it a violation of the Federal law to be a good parent. The original bill or draft of this bill took such a broad approach to outlawing any devices that could be used to gain access to a copyrighted work that it may have made it illegal to manufacture and use devices that were designed to protect children from obscenities and pornography. An amendment I offered in committee makes it clear that a parent may protect his children from pornography without running afoul of this law. I think moms and dads will want to be able to protect their children and shouldn't have to risk running afoul of the law to do so. My own belief is that when moms and dads do their jobs, governing America will be easy. If moms and dads don't do their jobs, governing this country could be impossible. We need to make it possible for parents in every instance to do their job.

The amendment recognizes that devices designed to allow such parental monitoring must be allowed. We should never allow any legislation to move forward that intentionally or unintentionally makes good parenting illegal. When the choice is between protecting our children from obscene material and perhaps allowing one machine to be diverted for unlawful use, Congress and the court should choose the protection of the children every time and then prosecute anyone who makes unlawful use of such machine.

There are a number of individuals who deserve our specific thanks here, and I want to take the time to make sure that deserving individuals and organizations are thanked. I want to take a moment to thank a few particular staff members who labored into the night over and over again and through weekends to put together this legislation. I commend my colleagues Senators HATCH and LEAHY. I want to say that a number of my concerns were accommodated because these members of the Leahy and Hatch staff were so hard-working. Ed Damich and Troy Dow with Senator HATCH were critical to moving forward on all issues, particularly by coordinating the OSP discussions.

Beryl Howell and Marla Grossman of Senator LEAHY's staff were similarly important to the process, particularly in regard to the education provisions and on drafting language for several key areas. I thank the staff. They worked very closely with two of the best staff members that I think work in any arena on Capitol Hill, and that is Bartlett Cleland of my staff and Paul Clement. They worked extremely hard with industry and with other Members of the Senate to craft a piece of legislation which I believe is going to be a tremendous asset in allowing the potential of the Internet to be realized.

Finally, I want to thank all of the individuals representing various industry and education interests who were critical not only in educating me on the myriad of technical issues addressed in this legislation, but were helping in every way to reach agreement when the time came. In the end, this is perhaps not a perfect bill. I would have favored a different approach to some issues. But this is a bill that has become a comprehensive effort to bring the copyright law into the digital age. It is an important piece of legislation which we can work together to make work for America.

Accordingly, I am happy to support this bill. I look forward to its final passage, with appreciation to the outstanding leadership of Senator HATCH and Senator LEAHY in the committee. Working with them has been one of the most gratifying experiences of a process of reaching a conclusion on legislation which I think will advance our opportunity significantly to access the advantages of electronic and digital communication for the entirety of America.

Mr. President, I want to go over some of these notions again and expand the ideas a bit further.

I rise today to speak in favor of one of the most important pieces of technology legislation in the 105th congress. At its heart, this legislation is about updating the copyright laws for the digital age and preparing a sizable portion of our economy for the next century. The affected parties include the on-line service providers, computer hardware and software manufacturers, educators students, libraries, consumer electronics manufacturers and consumers, motion picture companies, and everyone who uses the Internet. The full Senate's consideration of this bill culminates an effort at updating our copyright law that I began last September when I introduced S. 1146, the Digital Copyright Clarification and Technology Education Act. S. 1146 was a comprehensive bill designed to jump start a process that had ground to a halt and appeared to be going nowhere. The bill addressed three basic problems: (1) the liability of on-line service providers for copyright violations, (2) the need to update the provisions of the copyright law that affect educators and libraries for the digital age, and (3) the need to implement the World Intellectual Property Organization, or WIPO, treaties. I am gratified that today the full Senate will vote on a bill that addresses all three of these concerns.

The original Administration language that was introduced by Senators HATCH and LEAHY focused exclusively on the WIPO Treaties. However, through hard work, numerous amendments, and the assistance of Senators HATCH and LEAHY and their staffs, we were able to fashion a comprehensive approach to updating the copyright laws for the digital age.

The bill before the Senate today now addresses all three of the basic problems identified in my bill. First, the notion that service providers should not bear the responsibility for copyright infringements when they are providing a means of communication is a key notion for the future growth and development of digital communications and most importantly the Internet. Resolution of this issue is critical for the future development of the Internet. For that reason, I included a title regarding on-line service provider liability in my legislation. After months of negotiations, the affected parties were able to agree to legislative language that protects on-line service providers, or OSPs, from liability when they simply transmit information along the Internet.

The principles expressed in this legislation will provide a clear path for OSPs to operate without concern for legal ramifications or copyright infringement that may occur in the regular course of the operation of the Internet, or that occur without the OSPs knowledge. Without these issues being clearly delineated we would have faced a future of uncertainty regarding the growth of Internet and potentially whether it could have operated at all. Make no mistake that the clarification of on-line service provider liability was one of my fundamental concerns in this debate. While this was not the only crucial change in the legislation it is a change that I found essential for this legislation to even be considered, which is why Title I of my original legislation was devoted to clearly defining liability.

Although I was supportive of the affected industries' efforts to resolve the OSP liability issues, there was one issue which the industry agreement did not address—what protections would be given the typical users of the Internet. The agreement protected the interests of OSPs, and it protected the interests of copyright owners, but it provided little or no protection for an Internet user wrongfully accused of violating the copyright laws.

The original draft would have left these wrongly injured, innocent users with limited recourse. They would have to hire an attorney and go to court to have the court require the OSP and copyright holder to allow the web page to go back up—in other words the end user would have to go to court to prove their innocence. I found this situation to be totally unacceptable. Even though several Judiciary Committee members claimed that no amendments were needed I made sure that the industry compromise protected the rights of the typical Internet user by offering an amendment that provided protection included my original bill—an idea referred to as notice and put back. If material is wrongly taken down from an Internet user's home page because the original notice mistakenly did not take into account that the Internet user was only making a fair use of the copyrighted work, my amendment ensures that the end-user will be given notice of the action taken, and gives them a right to initiate a process that allows them to put their material back on-line, without the need to hire a lawyer and go to court. This was a critical improvement over the industry's compromise agreement.

Another modification to the OSP liability material was to guarantee that companies, such as Yahoo!, could continue to operate as they have previous to the passage of this legislation. I admire companies that can succeed in the highly competitive technology sector, and Yahoo! has done just that. In no way should Congress discourage true entrepreneurship, particularly when the better ''mouse trap'' in this case has propelled a company to the top of its market. The safe harbor should not dissipate merely because a service provider viewed a particular online location during the course of categorization for a directory. If the rule were otherwise, true consumer oriented products would be eliminated or discouraged in the marketplace.

Finally, I also insisted on language in the Committee role that recognized that the OSP liability provisions must be applied to educators and libraries with sensitivity to the special nature of those institutions and the unique relationships that exist in those settings. The report also makes it clear that the notice and put-back provision I mentioned above provides all the process that is due, so that state institutions need not worry about having to choose between qualifying for the safe harbors provided in the bill and the requirements imposed by the Due Process Clause.

The second title of my original legislation was dedicated to similar concerns of universities, libraries, schools, educators and students, and ensured that these groups would not be left out when the content providers rushed to secure their position in the digital age. This legislation now includes some of the same provisions. I worked closely with Senator LEAHY, educators, libraries and publishers to guarantee that libraries will be able to update their archives and provide materials to the public in a way that keeps pace with technology.

Additionally, this legislation begins the process to allow distance education in the digital world. We should not tolerate laws that discriminate against technology, instead we should seek to guarantee that what people can do in the analog that they can continue those actions in the digital world. A study will be undertaken to help Congress to sort out the many technological and legal challenges of updating the copyright law regarding distance education. At the beginning of the next Congress I fully expect to introduce legislation specifically on distance education and I understand that both Senators HATCH and LEAHY have agreed to support legislation based on the study conducted by the Copyright Office. In addition, I look forward to working with both the education community and the content community to pass, not block, this important legislation. Distance education is of fundamental importance to Missouri, as it is to most rural states, and of great importance to the many parents who home school their children.

A third portion of the bill addresses the means by which the WIPO treaties will be implemented in the United States, also referred to as section 1201. This issue is of fundamental importance for a vital part of our nations

economy. Piracy is a large and growing problem for many content providers, but particularly to our software industry. Billions of dollars in pirated material is lost every year and in impact is felt directly to our national bottom line.

While the overall structure of the legislation in this part is not the way I would have approached the issue I believe that I have been given enough assurance both in legislative language and in legislative history that I can support the bill. I still find troubling any approach that makes technology the focus of illegality rather than the bad conduct of a bad actor, but with the accommodations that have been given I think that the bill is workable.

One issue of profound importance to me was ensuring that parents continue to have the legal ability to be good parents. The original draft of this bill took such a broad approach to outlawing devices, that it may have inadvertently made it illegal to manufacture and use devices designed to protect children from on-line pornography. The bill, as amended recognizes that certain devices—such as devices that allow parents to protect their children from on-line pornography—must be allowed. An amendment I offered in Committee makes clear that a parent may protect their children from pornography without running afoul of this law. We should never be in the position with any legislation that intentionally or unintentionally makes good parenting illegal. When the choice is between protecting our children from obscene material and perhaps allowing one machine to be diverted for unlawful use, Congress and the courts should choose the protection of children every time.

Additionally, the protection of privacy remains a concern. While the legislation makes some effort to make clear that a person acting to protect their individual privacy should not be liable for or guilty of circumvention some further clarification is needed. One of my primary concerns has been the use of ''cookies'' and their detrimental impact for on-line privacy. I am not convinced that cookies could not be copyrighted and protected in such a way that getting rid of them or turning them off would not violate the new law. Recently my concern has been proven further by a piece of software developed by Blizzard Entertainment called StarCraft. This software rifles through the player's hard drives and sends the information found back to the company. Again, I was told by some that I should not be concerned, but I will tell you that I am concerned and everyone in this body and in the country should have similar concerns about this or any legislation that without careful thought could create a situation where an individual's privacy is jeopardized. I believe the savings clause I added to the bill will address this problem. However, if that does not prove sufficient, I will introduce legislation to deal with this problem directly and will look forward to working with all the parties that support this bill to ensure passage of such legislation.

One industry that has concerns about this legislation is the encryption industry. I sought to have included in the legislative language a provision to guarantee that the highly successful means for encryption research that are used in this country may continue to be used in the future, despite some of the prohibitions included in this bill. Unfortunately, we were not able to work out any acceptable legislative language. We were able to craft language for the report that made clear that most forms of current encryption research were left undisturbed by the bill. While I believe that this is better than nothing, I understand that there are lingering concerns, and I would certainly support efforts to try to address this issue before the House completes work on this important piece of legislation.

In discussing the anti-circumvention portion of the legislation, I think it is worth emphasizing that I could agree to support the bill's approach of outlawing certain devices because I was repeatedly assured that the device prohibitions in 1201(a)(2) and 1201(b) are aimed at so-called ''black boxes'' and not at legitimate consumer electronics and computer products that have substantial non-infringing uses. I specifically worked for and achieved changes to the bill to make sure that no court would misinterpret this bill as outlawing legitimate consumer electronics devices or computer hardware. As a result, neither section 1201(a)(2) nor section 1201(b) should be read as outlawing any device with substantial non-infringing uses, as per the tests provided in those sections.

If history is a guide, however, someone may yet try to use this bill as a basis for initiating litigation to stop legitimate new products from coming to market. By proposing the addition of section 1201(d)(2) and (3), I have sought to make clear that any such effort to use the courts to block the introduction of new technology should be bound to fail.

As my colleagues may recall, this wouldn't be the first time someone has tried to stop the advance of new technology. In the mid 1970s, for example, a lawsuit was filed in an effort to block the introduction of the Betamax video recorder. I think it useful to recall what the Supreme Court had to say in ruling for consumers and against two movie studies in that case:

> One may search the Copyright Act in vain for any sign that the elected representatives of the millions of people who watch television every day have made it unlawful to copy a program for later viewing at home, or have enacted a flat prohibition against the sale of machines that make such copying possible.

As Missouri's Attorney General, I had the privilege to file a brief in the Supreme Court in support of the right of consumers to buy that first generation of VCRs. I want to make it clear that I did not come to Washington to vote for a bill that could be used to ban the next generation of recording equipment. I want to reassure consumers that nothing in the bill should be read to make it unlawful to produce and use the next generation of computers or VCRs or whatever future device will render one or the other of these familiar devices obsolete.

Another important amendment was added that makes clear that this law does not mandate any particular selection of components for the design of any technology. I was concerned that this legislation could be interpreted as a mandate on product manufacturers to design products so as to respond affirmatively to effective technical protection measures available in the marketplace. In response to this concern I was pleased to offer an amendment, with the support of both the Chairman and the Ranking Member of the Committee, to avoid the unintended effect of having design requirements imposed on product and component manufacturers, which would have a dampening effect on innovation, and on the research and development of new products. Accordingly, my amendment clarified that product designers need not design consumer electronics, telecommunications, or computing products, nor design and select parts or components for such products, in order to respond to particular technological protection measures.

This amendment reflects my belief that product manufacturers should remain free to design and produce consumer electronics, telecommunications and computing products without the threat of incurring liability for their design decisions under this legislation. Nothing could cause greater disaster and a swifter downfall of our vibrant technology sector than to have the federal government dictating the design of computer chips or mother boards. By way of example, during the course of our deliberations, we were made aware of certain video boards used in personal computers in order to allow consumers to receive television signals on their computer monitors which, in order to transform the television signal from a TV signal to one capable of display on a computer monitor, remove attributes of the original signal that may be associated with certain copy control technologies. I am acutely aware of this particular example because I have one of these video boards on my own computer back in my office. It is quite useful as it allows me to monitor the Senate floor, and occasionally ESPN on those rare occasions when the Senate is not in session. My amendment makes it clear that this legislation does not require that such transformations, which are part of the normal conversion process rather than affirmative attempts to remove or circumvent copy control technologies, fall within the proscriptions of chapter

12 of the copyright law as added by this bill.

Further, concerns were voiced during the Committee's deliberations that because 1201 applies not only to devices but to parts and components of devices, it could be interpreted broadly to sweep in legitimate products such as personal computers and accessories and video and audio recording devices. While the manufacturers of these products were understandably concerned, it was quite apparent to me that it was not the Committee's intention that such useful multipurpose articles of commerce be prohibited by 1201 on the basis that they may have particular parts or components that might, if evaluated separately from such products, fall within the proscriptions of 1201(a)(2) or (b). My amendment adding sections 1201(d)(2) and (3) was intended to address these concerns.

Another issue of concern is that unless product designers are adequately consulted on the design and implementation of technological protection measures and means of preserving copyright management information, such measures may have noticeable and recurring adverse effects on the authorized display or performance of works. Under such circumstances, certain adjustments to specific products may become necessary after sale to a consumer to maintain the normal, authorized functioning of such products. Such adjustments, when made solely to mitigate the adverse effects of the measure on the normal, authorized operation of a manufacturer's product, device, component, or part thereof, would not, in my view, constitute conduct that would fall within the proscriptions of this legislation.

The problems described may occur at a more fundamental level—with noticeable and recurring adverse effects on the normal operation of products that are being manufactured and sold to consumers. The best way to avoid this problem is for companies and industries to work together to seek to avoid such problems to the maximum extent possible. I am pleased to note that multi-industry efforts to develop copy control technologies that are both effective and avoid such noticeable and recurring adverse effects have been underway over the past two years in relation to certain copy protection measures. I join my colleagues in strongly encouraging the continuation of these efforts, since, in my view, they offer substantial benefits to copyright owners who add so much to the economy and who obviously want devices that do not interfere with the other normal operations of affected products.

The truth of the matter is that Congress ought to operate contemporaneously with industry to solve problems. Anytime the affected industries beat government to the solution they ought to be praised. In many respects I invite the private sector to be there first and get it done well. If they are there first, they will often solve the problem. Even when they cannot solve the problem, the private sector problem solving process will at least narrow the issues for the government to address. Getting a law passed is very difficult, getting it changed is sometimes even more difficult, and so relying on government really elevates the need to have no garbage in, to result in the right output.

I would encourage the content community and the device and hardware manufacturers to work together to avoid situations in which effective technological measures and copyright management information affect display quality. There is no reason why the interested parties cannot resolve these issues to ensure both optimal protection of content and optimal picture quality. To the extent that a particular technological protection measure or means of applying or embedding copyright management information to or in a work is designed and deployed into the marketplace without adequate consultation with potentially affected manufacturers, the proprietor of such a measure or means and those copyright owners using it must be aware that product adjustments by a manufacturer to avoid noticeable and recurring adverse effects on the normal, authorized operation of affected products are foreseeable, legitimate and commercially necessary. Such actions by manufacturers may not, therefore, be proscribed by this chapter.

Again, several individuals and organizations deserve thanks from everyone involved in this debate. I want to take a moment to thank those few particular staff who labored into the night and over weekends to put together this legislation and to accommodate some of my concerns. Ed Damich and Troy Dow with Senator HATCH's office were critical to moving forward on all issues particularly by coordinating the OSP discussions. Beryl Howell and Marla Grossman were similarly important to the process particularly in regards to the education provisions and on drafting language for several key areas. I would like to thank all of the individuals representing various industry and educational interests who were critical not only in educating me on the myriad issues but also on copyright law in general. Finally, I would again like to thank the members of my own staff, Bartlett Cleland and Paul Clement who worked so well to produce a piece of legislation that could guide this country to a digital future.

In the end, this is not a perfect bill. I would have favored a different approach to some issues. However, this bill is an important step forward in bringing the copyright law into the digital age. I am happy to support this bill and look forward to its final passage.

Mr. KOHL. Mr. President, I rise to express my support for the Digital Millennium Copyright Act of 1998. In my view, we need this measure to stop an epidemic of illegal copying of protected works—such as movies, books, musical recordings, and software. The copyright industry is one of our most thriving businesses. But we still lose more than $15 billion each year due to foreign copyright piracy, according to some estimates.

This foreign piracy is out of control. For example, one of my staffers investigating video piracy on a trip to China walked into a Hong Kong arcade and bought three bootlegged computer games—including ''Toy Story'' and ''NBA '97''—for just $10. These games normally sell for about $100. Indeed, the manager was so brazen about it, he even agreed to give a receipt.

Illegal copying has been a longstanding concern to me. I introduced one of the precursors to this bill, the Motion Picture Anti-Piracy Act, which in principle has been incorporated into this measure. And I was one of the original cosponsors of the original proposed WIPO implementing legislation, the preliminary version of this measure.

In my opinion, this bill achieves a fair balance by taking steps to effectively deter piracy, while still allowing fair use of protected materials. It is the product of intensive negotiations between all of the interested parties—including the copyright industry, telephone companies, libraries, universities and device manufacturers. And every major concern raised during that process was addressed. For these reasons, it earned the unanimous support of the Judiciary Committee.

I am confident that this bill has the best approach for stopping piracy and strengthening one of our biggest export industries. It deserves our support. Thank you.

Mr. GRASSLEY. Mr. President, I wanted to make a few brief remarks on S. 2037, the Digital Millennium Copyright Act of 1998, which would implement the World Intellectual Property Organization treaties. The amendments adopted in Committee make some significant improvements to the original bill. For example, the bill now includes provisions clarifying educational institution and library liability and use exemptions, as well as provisions dealing with distance learning. The Committee also adopted provisions addressing concerns regarding pornography and privacy. Further, I worked with Senator KYL to make sure that our law enforcement and intelligence people are able to carry out their duties in the best, and most effective, manner possible.

It was important to me that the bill be clarified to ensure that parents are not prohibited from monitoring, or limiting access to, their children in regard to pornography and other indecent material on the Internet. I don't believe anyone wants to restrict parents' rights to take care of their children, or to take away tools that might be helpful for parents to ensure that their kids aren't accessing sites containing pornography. The interests of the copyright owners had to be balanced with the needs of consumers and

families. I think that the Committee made a significant improvement to the bill in defense of this important protection for our families.

Also, the Committee worked on changes which protect individuals' right to privacy on the Internet. I've heard concerns about software programs, probes, contaminants and ''cookies,'' and how they obtain personal and confidential information on Internet users and then convey it to companies for commercial purposes, sometimes without the users even knowing that this is happening. Even if users are aware a ''cookie'' or one of these other techniques has been sent to them, I think we'd all agree that Internet users should have a choice on whether to give up their personal information or not. While some argue that this is a non-issue because ''cookies'' and ''cookie-cutting'' do not violate the provisions of the bill, I've heard otherwise. In fact, I've heard about a case where a computer game company admitted that it surreptitiously collected personal information from users' computers when they were playing the game via the Internet. So I was not convinced that there did not need to be a clarification in the bill on this subject. The intent behind the bill is now clear that an Internet user can protect his or her privacy by disabling programs that transmit information on that user to other parties, or by utilizing software programs like ''cookie-cutters'' to do this.

I'd also like to make a few remarks on the clarification Senator KYL and I worked on dealing with the law enforcement exceptions in the bill. The changes Senator KYL and I made substantially improve the bill's language by making it clear that the exceptions will protect officers, agents, employees, or contractors of, or other persons acting at the direction of, a law enforcement or intelligence agency of the United States, a State, or a political subdivision of a State, who are performing lawfully authorized investigative, protective, or intelligence activities. Further, the bill's language was clarified to indicate that the exceptions also apply to officers, agents, employees, or contractors of, or other persons acting at the direction of, any element or division of an agency or department of the United States, a State, or a political subdivision of a State, which does not have law enforcement or intelligence as its primary function, when those individuals are performing lawfully authorized investigative, protective, or intelligence activities. I'd like to note that the Committee report makes clear that these exceptions only apply when the individuals are performing these activities within the scope of their duties and in furtherance of lawfully authorized activities. Our law enforcement and intelligence people must have the opportunity and the tools to carry out their duties effectively. This language was crafted with the input and support of representatives from the law enforcement community, the Administration, as well as the content providers and other parties. I'd like to especially thank Senator KYL and his fine staff for their hard work on this important clarification to the bill.

I want to thank Senator ASHCROFT and his staff for all the hard work and long hours they put into this difficult negotiations process to improve this bill. Their efforts in working for a balance of interests in the bill are to be commended. I'd also like to thank Chairman HATCH and Senator LEAHY, and their staffs, for their hard work on the bill.

Mrs. BOXER. Mr. President I am proud to support the Digital Millennium Copyright Act (DMCA) of 1998 which I believe is an important step in the evolution of international digital commerce. The DMCA accomplishes two important goals—it implements the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty. Both treaties include provisions that respond to the challenges of digital technology.

Although the treaties contain little that is not already covered by U.S. law, the treaties will provide U.S. copyright holders the worldwide protections they need and deserve. In addition, the treaties will go along way towards standardizing international copyright practice.

Intellectual property, including copyright, is an integral part of the U.S. economy. The core copyright industries accounted for $238.6 billion in value added to the U.S. economy, accounting for approximately 3.74 percent of the Gross Domestic Product. In addition, between 1977 and 1993, employment in the core copyright industries doubled to 3 million workers, about 2.5 percent of total U.S. employment. The copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector including aircraft, textiles and apparels or chemicals.

Intellectual property is a particularly integral part of the economy of my home state of California. California is the leading producer of movies, computer software, recordings, video games, and other creative works. California's movie and television industries employed approximately 165,000 Californians in 1995 and the combined payroll of those industries was $7.4 billion. Similarly, the California pre-packaged computer software industry employs more than 25,000 Californians.

Finally Mr. President, I want to note the importance of this bill to Online Service Providers (OSPs) and to Internet Service Providers (ISPs). I believe it is important to update our copyright laws to comport with the digital electronic age in which we now operate. This bill appropriately balances the interests of copyright holders and OSPs/ISPs. It ensures that creative works receive the protection they deserve while also assuring that OSPs/ISPs are not held liable for unknowingly posting infringing material or for merely providing the physical facilities used to upload infringing material.

I think this is a good bill, a balanced and fair bill, and I am proud to support it.

Mr. THOMPSON. Mr. President, I am pleased to support S. 2037, the Digital Millennium Copyright Act. This legislation implementing the World Intellectual Property Organization Treaty is of vital importance to the American economy.

No nation benefits more from the protection of intellectual property than the United States. We lead the world in the production and export of intellectual property, including the many forms of artistic intellectual property and computer software. These industries are among the fastest growing employers in our country. When the owners of intellectual property are not fairly compensated, that hurts Americans and it decreases incentives for creating additional intellectual property that educates, entertains, and does business for us.

New technology creates exciting opportunities for intellectual property, but the digital environment also poses threats to this form of property. Unscrupulous copyright violators can use the Internet to more widely distribute copyrighted material without permission. To maintain fair compensation to the owners of intellectual property, a regime for copyright protection in the digital age must be created. Technology to protect access to copyrighted work must be safeguarded. Copyright management information that identifies the copyright owner and the terms and conditions of use of the copyrighted material must be secured.

There are new issues with respect to copyright in the digital age that never were issues before. The bill addresses such issues as on-line service provider liability in a way that is fair to all parties. And it governs a number of other issues that have been accommodated in the new era.

Passage of this bill is important if American intellectual property is to be protected in other countries. I was pleased to be an original co-sponsor of the initial bill, and to have supported the bill in the Judiciary Committee and now on the floor. I strongly support its enactment.

Mrs. FEINSTEIN. Mr. President, it is with great pleasure that I rise today to speak on passage of S. 2037, the Digital Millennium Copyright Act. This Act implements two treaties adopted by the World Intellectual Property Organization, or WIPO, in December, 1996—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Passage of this important legislation will clear the way for ratification of these treaties, which are in the paramount interest of the United States—

and of the State of California, in particular. These treaties are intended to ensure that foreign countries give intellectual property to the same high level of protection that we afford it here in the U.S.

The United States is the world's leader in intellectual property, the home of the most creative and dynamic individuals and enterprises in the world—the majority of whom are located in California. This industry constitutes a very important sector of the U.S. economy, and contributes greatly to our global economic position: American creative industries grew twice as fast as the rest of the U.S. economy from 1987–94; more than 3 million Americans worked in the core copyright industries as of 1994; exports of U.S. intellectual property were more than $53 billion in 1995; and the Business Software Alliance reports that 50–60 percent of its revenues come from overseas.

It is vital that we do everything we can to protect and defend this important sector of the economy from foreign piracy, especially in this new digital age, when the potential exists for thousands of absolutely perfect, priated copies of American intellectual property to be made almost instantly, at the tough of a button: American copyright owners lose $15 billion in overseas sales to piracy every year; the digital gaming industry loses $3.2 billion per year to priacy—almost one third of its $10.1 billion annual sales; and the recording industry's domestic business is flat and they need a strong export market for sales growth.

Indeed, some countries, such as Argentina, have said that computer programs aren't even protected by copyright; ratifying WIPO will ensure that they are. Foreign countries have been waiting for the U.S., as the world's largest producer of intellectual property, to take the lead in WIPO ratification before the ratify the WIPO treaty, so this is an important step we are taking today.

The bill which we crafted in the Judiciary Committee is a truly impressive achievement. We worked together with a plethora of diverse industries, academic interests, and law enforcement to forge a bill which advances everybody's interest.

Title I of the bill implements the WIPO treaties, and outlaws so-called ''black boxes'': devices designed to accomplish the perfect digital piracy which I have mentioned. By protecting against this piracy and paving the way for ratification of the WIPO treaties, this title provides immense help to America's creative industries, including authors, composers, publishers, performers, movie-makers, the recording industry, and the software industry.

Title II of the bill provides for protection from copyright infringement liability for on-line service providers who act responsibly. This title provides much-desired protection for on-line service providers, such as Yahoo! from my State of California, telecommunications companies, and educational institutions.

Title II includes a provision which I authored, section 204 of the bill, which requires the Copyright Office to take a comprehensive look at the issue of the liability of schools and universities for the acts of their students and faculty who may use their network to post infringing materials, and to make recommendations for legislation.

Among the factors which the Copyright Office is to consider are: What is the direct, vicarious, and contributory liability of universities for infringement by: faculty, administrative employees, students, graduate students, and students who are employed by the university.

What other users of university computers universities may be responsible for; the unique nature of the relationship between universities and faculty; what policies should universities adopt regarding copyright infringement by university computer users; what technological measures are available to monitor infringing uses; what monitoring of the computer system by universities is appropriate; what due process should the universities afford in disabling access by allegedly infringing computer users; should distinctions be drawn between open computer systems, closed computer systems, and open systems with password-protected parts; and taking into account the tradition of academic freedom.

I want to thank the Chairman, Senator HATCH, and the Ranking Member, Senator LEAHY, for working with me on this provision.

It is my hope and expectation that copyright content providers and the educational community will get together and work cooperatively to address these issues during the course of the Copyright Office study.

Title III of the bill ensures that computer maintenance and repair providers will not be found liable for copyright infringement for performing their ordinary services.

Title IV of the bill provides additional copyright exemptions for libraries, archives and broadcasters, and another study, of distance learning, which could benefit educational institutions.

So this bill helps an incredibly broad spectrum of American interests: authors, telecommunications, universities, computer makers, movies, software, broadcasters, and on and on. No small number of these industries are centered or have very substantial presence in, and immense importance to the economy of, my state of California.

Thus, it is with great pleasure that I applaud the passage of this legislation, and urge the House to protect America's economy and rapidly pass it as well.

Mr. KYL. Mr. President: I rise today to speak about a section in the Digital Millennium Copyright Act that I am particularly proud of, and that is the law enforcement exception in the bill. At the Judiciary Committee mark-up, Senator GRASSLEY and I, along with the assistance of Chairman HATCH and Senator ASHCROFT worked to strengthen the law enforcement exception in the bill. We received input on the language from the copyright community and the administration: the National Security Agency (NSA), the Central Intelligence Agency (CIA), the Departments of Commerce and Justice, and the Office of Management and Budget (OMB).

The law enforcement exception ensures that the government continues to have access to current and future technologies to assist in their investigative, protective, or intelligence activities. I am concerned that the tools and resources of our intelligence and law enforcement communities are preserved—and more importantly, not limited, by passage of S. 2037. Under this bill, a company who contracts with the government can continue to develop encryption/decryption devices under that contract, without having to worry about criminal penalties.

Because much of our leading technologies come from the private sector, the government needs to have access to this vital resource for intelligence and law enforcement purposes.

The law enforcement exception recognizes that oftentimes governmental agencies work with non-governmental entities—companies, in order to have access to and develop cutting edge technologies and devices. Such conduct should not be prohibited or impeded by this copyright legislation.

Mr. BIDEN. Mr. President, I commend my colleagues for their hard work on this legislation—which implements the two world intellectual property organization copyright treaties adopted by the 1996 Geneva diplomatic conference.

As is the practice on such intellectual property matters, we are first seeking to pass the implementing legislation. This, I believe, will pave the way for the Foreign Relations Committee—and the full senate—to ratify the treaties, which the administration submitted last July.

The WIPO treaties and the implementing legislation will update intellectual property law to deal with the explosion of the Internet and other forms of electronic communications. Delegates from the United States and 160 other member nations agreed to give authors of ''literary and artistic works,'' including books, computer programs, films, and sound recordings, the exclusive right to sell or otherwise make their work available to the public.

The treaties give tougher international protection to software makers and the recording industry—the U.S. Government's biggest goal. The U.S. wanted—and got—tough international protection for sound recordings in order to stop pirating of music compact discs overseas. The treaties protect literary and artistic works from

digital copying, but do not make it illegal to use the Internet in the normal way.

To give a concrete example of what passage and implementation of the WIPO treaties will mean—before the treaty it was illegal to photocopy the contents of an entire book or copy a videotape without permission, but it was not clear whether it was illegal to e-mail copies of a digital book or movie to 500 friends all over the world. Passage of this bill and the WIPO treaties will ensure that both will be illegal—both domestically and overseas.

I am pleased that this bill contains provisions to clarify the actions Internet service providers—as well as libraries and educational institutions—will be legally required to take when confronted with evidence of copyright violations by users of their services.

I am also pleased that this bill contains language intended to preserve the ability of consumer electronics manufacturers—and computer manufacturers and software developers—to continue research and development of innovative devices and hardware products.

These provisions in my view strike an appropriate balance between the rights of copyright holders and the need to encourage continuing expansion of access to digital information to greater numbers of users throughout the world.

Therefore, I commend my Judiciary Committee colleagues for their hard work on this bill and I look forward to its passage by the Congress.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, we are prepared to yield back the remainder of our time. First, I understand that the Senator from Illinois would like up to 2 minutes. We will yield that time to him, and then we will yield the remainder of the time and go to a vote.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, many good reasons have been stated on the floor for the passage of this important legislation. I hold in my hand convincing evidence. It is an unsolicited e-mail sent to my Senate computer a few weeks ago. It boasts that they will offer for me to purchase 500 different bootleg video games from a person who says in this solicitation, ''All the games I sell are pirated. I do not sell originals.'' This business is operating across the United States, Canada, England, Australia, and claims to trade copies made in Hong Kong.

When you think of the importance of intellectual property to America's exports and the importance of this business in terms of the United States and the world, it is clear that we need this legislation to stop this type of flagrant abuse, which I received and I am sure many others could receive if they surf the Internet.

I commend Senators HATCH, LEAHY, ASHCROFT, and so many others. I urge its unanimous passage and yield the remainder of my time.

Mr. HATCH. Mr. President, on behalf of Senator LEAHY and myself, I yield the remainder of our time. The yeas and nays have been ordered.

The PRESIDING OFFICER. All time having been yielded, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is on passage of the bill, as amended. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—99

Abraham	Faircloth	Lott
Akaka	Feingold	Lugar
Allard	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Hagel	Reed
Bryan	Harkin	Reid
Bumpers	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hollings	Rockefeller
Campbell	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Coats	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kempthorne	Smith (OR)
Coverdell	Kennedy	Snowe
Craig	Kerrey	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Thomas
DeWine	Kyl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Enzi	Lieberman	Wyden

NOT VOTING—1

Gregg

The bill (S. 2037), as amended, was passed, as follows:

S. 2037

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Digital Millennium Copyright Act of 1998''.

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—WIPO TREATIES IMPLEMENTATION

Sec. 101. Short title.
Sec. 102. Technical amendments.
Sec. 103. Copyright protection systems and copyright management information.
Sec. 104. Conforming amendment.
Sec. 105. Effective date.

TITLE II—INTERNET COPYRIGHT INFRINGEMENT LIABILITY

Sec. 201. Short title.
Sec. 202. Limitations on liability for Internet copyright infringement.
Sec. 203. Conforming amendment.
Sec. 204. Liability of educational institutions for online infringement of copyright.
Sec. 205. Effective date.

TITLE III—COMPUTER MAINTENANCE OR REPAIR

Sec. 301. Limitation on exclusive rights; computer programs.

TITLE IV—EPHEMERAL RECORDINGS; DISTANCE EDUCATION; EXEMPTION FOR LIBRARIES AND ARCHIVES

Sec. 401. Ephemeral recordings.
Sec. 402. Limitations on exclusive rights; distance education.
Sec. 403. Exemption for libraries and archives.

TITLE I—WIPO TREATIES IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998''.

SEC. 102. TECHNICAL AMENDMENTS.

(a) Section 101 of title 17, United States Code, is amended—

(1) by deleting the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin' of a Berne Convention work'', by deleting ''The 'country of origin' of a Berne Convention work,'', capitalizing the first letter of the word ''for'', deleting ''is the United States'' after ''For purposes of section 411,'', and inserting ''a work is a 'United States work' only'' after ''For purposes of section 411,'';

(3) in paragraph (1)(B) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''treaty party or parties'' and deleting ''nation or nations adhering to the Berne Convention'';

(4) in paragraph (1)(C) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(5) in paragraph (1)(D) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(6) in subsection (3) of the definition of ''The 'country of origin' of a Berne Convention work'', by deleting ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.'';

(7) after the definition for ''fixed'', by inserting ''The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland on October 29, 1971.'';

(8) after the definition for ''including'', by inserting ''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party.'';

(9) after the definition for ''transmit'', by inserting ''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(10) after the definition for ''widow'', by inserting ''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(11) after the definition for ''The 'WIPO Copyright Treaty', by inserting ''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland on December 20, 1996.''; and

(12) by inserting, after the definition for ''work for hire'', ''The 'WTO Agreement' is the Agreement Establishing the World Trade Organization entered into on April 15, 1994. The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10) respectively of section 2 of the Uruguay Round Agreements Act.''.

(b) Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)(1), by deleting ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(2) in subsection (b)(2) by deleting ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(3) by renumbering the present subsection (b)(3) as (b)(5) and moving it to its proper sequential location and inserting a new subsection (b)(3) to read:

''(3) the work is a sound recording that was first fixed in a treaty party; or'';

(4) in subsection (b)(4) by deleting ''Berne Convention work'' and inserting ''pictorial, graphic or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party'';

(5) by renumbering present subsection (b)(5) as (b)(6);

(6) by inserting a new subsection (b)(7) to read:

''(7) for purposes of paragraph (2), a work that is published in the United States or a treaty party within thirty days of publication in a foreign nation that is not a treaty party shall be considered first published in the United States or such treaty party as the case may be.''; and

(7) by inserting a new subsection (d) to read:

''(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by deleting ''(A) a nation adhering to the Berne Convention or a WTO member country; or (B) subject to a Presidential proclamation under subsection (g),'' and inserting—

''(A) a nation adhering to the Berne Convention;

''(B) a WTO member country;

''(C) a nation adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

''(E) subject to a Presidential proclamation under subsection (g)'';

(2) paragraph (3) is amended to read as follows:

''(3) the term 'eligible country' means a nation, other than the United States that—

''(A) becomes a WTO member country after the date of enactment of the Uruguay Round Agreements Act;

''(B) on the date of enactment is, or after the date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g).'';

(3) in paragraph (6)(C)(iii), by deleting ''and'' after ''eligibility'';

(4) at the end of paragraph (6)(D), by deleting the period and inserting ''; and'';

(5) by adding the following new paragraph (6)(E):

''(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.'';

(6) in paragraph (8)(B)(i), by inserting ''of which'' before ''the majority'' and striking ''of eligible countries''; and

(7) by deleting paragraph (9).

(d) Section 411 of title 17, United States Code, is amended—

(1) in subsection (a), by deleting ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) in subsection (a), by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) Section 507(a) of title 17, United States Code, is amended by adding at the beginning, ''Except as expressly provided elsewhere in this title,''.

SEC. 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding the following new chapter:

''CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''Sec.
''1201. Circumvention of copyright protection systems.
''1202. Integrity of copyright management information.
''1203. Civil remedies.
''1204. Criminal offenses and penalties.
''1205. Savings Clause.

''§ 1201. Circumvention of copyright protection systems

''(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL PROTECTION MEASURES.—(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under this title.

''(2) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under this title;

''(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under this title; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological protection measure that effectively controls access to a work protected under this title.

''(3) As used in this subsection—

''(A) to 'circumvent a technological protection measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological protection measure, without the authority of the copyright owner; and

''(B) a technological protection measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

''(2) As used in this subsection—

''(A) to 'circumvent protection afforded by a technological protection measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure; and

''(B) a technological protection measure 'effectively protects a right of a copyright owner under this title' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

''(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

''(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component or part thereof.

''(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological protection measure, so long as such part or component or the product, in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

''(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1). A copy of a work to which access has been gained under this paragraph—

''(A) may not be retained longer than necessary to make such good faith determination; and

''(B) may not be used for any other purpose.

''(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

''(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

''(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

''(B) shall, for repeated or subsequent offenses, in addition to the civil remedies

under section 1203, forfeit the exemption provided under paragraph (1).

''(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology which circumvents a technological protection measure.

''(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

''(A) open to the public; or

''(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

''(e) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of an officer, agent or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with such entities.

''(f) Notwithstanding the provisions of subsection (a)(1), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological protection measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

''(g) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent for the identification and analysis described in subsection (f), or for the limited purpose of achieving interoperability of an independently created computer program with other programs, where such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

''(h) The information acquired through the acts permitted under subsection (f), and the means permitted under subsection (g), may be made available to others if the person referred to in subsections (f) or (g) provides such information or means solely for the purpose of achieving interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title, or violate applicable law other than this title.

''(i) For purposes of subsections (f), (g), and (h), the term ''interoperability'' means the ability of computer programs to exchange information, and for such programs mutually to use the information which has been exchanged.

''(j) In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service or device, which (i) does not itself violate the provisions of this chapter and (ii) has the sole purpose to prevent the access of minors to material on the Internet.

''§ 1202. Integrity of copyright management information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement—

''(1) provide copyright management information that is false, or

''(2) distribute or import for distribution copyright management information that is false.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under this title.

''(c) DEFINITION.—As used in this chapter, 'copyright management information' means the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form—

''(1) the title and other information identifying the work, including the information set forth on a notice of copyright;

''(2) the name of, and other identifying information about, the author of a work;

''(3) the name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright;

''(4) with the exception of public performances of works by radio and television broadcast stations the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work;

''(5) with the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work;

''(6) terms and conditions for use of the work;

''(7) identifying numbers or symbols referring to such information or links to such information; or

''(8) such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

''(d) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with such entities.

''(e) LIMITATIONS ON LIABILITY.—

''(1) ANALOG TRANSMISSIONS.—In the case of an analog transmission, a person who is making transmissions in its capacity as a radio or television broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if—

''(A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and

''(B) such person did not intend, by engaging in such activity, to induce, enable, facilitate or conceal infringement.

''(2) DIGITAL TRANSMISSIONS.—

''(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of radio or television broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in subsection (e)(1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if—

''(i) the placement of such information by someone other than such person is not in accordance with such standard; and

''(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate or conceal infringement.

''(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category or works, a person identified in subsection (e)(1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, where the activity that constitutes such violation is not intended to induce, enable, facilitate or conceal infringement, if—

''(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

''(ii) the transmission of such information by such person would conflict with—

''(I) an applicable government regulation relating to transmission of information in a digital signal;

''(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this section; or

''(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of radio or television broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

''§ 1203. Civil remedies

''(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

''(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is

in the custody or control of the violator or has been impounded under paragraph (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this chapter, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

''(B) statutory damages, as provided in paragraph (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—

''(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—

''(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

''(B) NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTIONS.—In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.

''§ 1204. Criminal offenses and penalties

''(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

''(1) shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both for the first offense; and

''(2) shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both for any subsequent offense.

''(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTION.—Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.

''(c) STATUTE OF LIMITATIONS.—Notwithstanding section 507(a) of this title, no criminal proceeding shall be brought under this section unless such proceeding is commenced within five years after the cause of action arose.

''§ 1205. Savings Clause

''Nothing in this chapter abrogates, diminishes or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.''.

SEC. 104. CONFORMING AMENDMENT.

The table of chapters for title 17, United States Code, is amended by adding at the end the following:

''12. Copyright Protection and Management Systems ..... 1201''.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) paragraph (5) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(8) of this title.

(B) the amendment made by section 102(a)(10) of this title;

(C) subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this title; and

(D) subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this title.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) paragraph (6) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(8) of this title.

(B) the amendment made by section 102(a)(11) of this title;

(C) the amendment made by section 102(b)(7) of this title;

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(2) of this title; and

(E) the amendment made by section 102(c)(4) of this title; and

(F) the amendment made by section 102(c)(5) of this title.

TITLE II—INTERNET COPYRIGHT INFRINGEMENT LIABILITY

SEC. 201. SHORT TITLE.

This title may be cited as the ''Internet Copyright Infringement Liability Clarification Act of 1998''.

SEC. 202. LIMITATIONS ON LIABILITY FOR INTERNET COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

''§ 512. Liability of service providers for online infringement of copyright

''(a) DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or the intermediate and transient storage of such material in the course of such transmitting, routing or providing connections, if—

''(1) it was initiated by or at the direction of a person other than the service provider;

''(2) it is carried out through an automatic technical process without selection of such material by the service provider;

''(3) the service provider does not select the recipients of such material except as an automatic response to the request of another;

''(4) no such copy of such material made by the service provider is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to the anticipated recipients for a longer period than is reasonably necessary for the communication; and

''(5) the material is transmitted without modification to its content.

''(b) SYSTEM CACHING.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the intermediate and temporary storage of material on the system or network controlled or operated by or for the service provider, where (i) such material is made available online by a person other than such service provider, (ii) such material is transmitted from the person described in clause (i) through such system or network to someone other than that person at the direction of such other person, and (iii) the storage is carried out through an automatic technical process for the purpose of making such material available to users of such system or network who subsequently request access to that material from the person described in clause (i), provided that:

''(1) such material is transmitted to such subsequent users without modification to its content from the manner in which the material otherwise was transmitted from the person described in clause (i);

''(2) such service provider complies with rules concerning the refreshing, reloading or other updating of such material when specified by the person making that material available online in accordance with an accepted industry standard data communications protocol for the system or network through which that person makes the material available; provided that the rules are not used by the person described in clause (i) to prevent or unreasonably impair such intermediate storage;

''(3) such service provider does not interfere with the ability of technology associated with such material that returns to the person described in clause (i) the information that would have been available to such person if such material had been obtained by such subsequent users directly from such person, provided that such technology—

''(A) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

''(B) is consistent with accepted industry standard communications protocols; and

''(C) does not extract information from the provider's system or network other than the information that would have been available to such person if such material had been accessed by such users directly from such person;

''(4) either—

''(A) the person described in clause (i) does not currently condition access to such material; or

''(B) if access to such material is so conditioned by such person, by a current individual pre-condition, such as a pre-condition based on payment of a fee, or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have been so authorized and only in accordance with those conditions; and

''(5) if the person described in clause (i) makes that material available online without the authorization of the copyright owner, then the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing

upon notification of claimed infringements described in subsection (c)(3); provided that the material has previously been removed from the originating site, and the party giving the notification includes in the notification a statement confirming that such material has been removed or access to it has been disabled or ordered to be removed or have access disabled.

''(c) INFORMATION STORED ON SERVICE PROVIDERS.—

''(1) IN GENERAL.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

''(A)(i) does not have actual knowledge that the material or activity is infringing,

''(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent, or

''(iii) if upon obtaining such knowledge or awareness, the service provider acts expeditiously to remove or disable access to, the material;

''(B) does not receive a financial benefit directly attributable to the infringing activity, where the service provider has the right and ability to control such activity; and

''(C) in the instance of a notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

''(2) DESIGNATED AGENT.—The limitations on liability established in this subsection apply only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by substantially making the name, address, phone number, electronic mail address of such agent, and other contact information deemed appropriate by the Register of Copyrights, available through its service, including on its website, and by providing such information to the Copyright Office. The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats.

''(3) ELEMENTS OF NOTIFICATION.—

''(A) To be effective under this subsection, a notification of claimed infringement means any written communication provided to the service provider's designated agent that includes substantially the following:

''(i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

''(ii) identification of the copyrighted work claimed to have been infringed, or, if multiple such works at a single online site are covered by a single notification, a representative list of such works at that site;

''(iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;

''(iv) information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available an electronic mail address at which the complaining party may be contacted;

''(v) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, or its agent, or the law; and

''(vi) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party has the authority to enforce the owner's rights that are claimed to be infringed.

''(B) A notification from the copyright owner or from a person authorized to act on behalf of the copyright owner that fails substantially to conform to the provisions of paragraph (3)(A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent, provided that the provider promptly attempts to contact the complaining party or takes other reasonable steps to assist in the receipt of notice under paragraph (3)(A) when the notice is provided to the service provider's designated agent and substantially satisfies the provisions of paragraphs (3)(A) (ii), (iii), and (iv).

''(d) INFORMATION LOCATION TOOLS.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the provider referring or linking users to an online location containing infringing material or activity by using information location tools, including a directory, index, reference, pointer or hypertext link, if the provider—

''(1) does not have actual knowledge that the material or activity is infringing or, in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent;

''(2) does not receive a financial benefit directly attributable to the infringing activity, where the service provider has the right and ability to control such activity; and

''(3) responds expeditiously to remove or disable the reference or link upon notification of claimed infringement as described in subsection (c)(3); provided that for the purposes of this paragraph, the element in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate such reference or link.

''(e) MISREPRESENTATIONS.—Any person who knowingly materially misrepresents under this section (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by the service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

''(f) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.—

''(1) Subject to paragraph (2) of this subsection, a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

''(2) Paragraph (1) of this subsection shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

''(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

''(B) upon receipt of a counter notice as described in paragraph (3), promptly provides the person who provided the notice under subsection (c)(1)(C) with a copy of the counter notice, and informs such person that it will replace the removed material or cease disabling access to it in ten business days; and

''(C) replaces the removed material and ceases disabling access to it not less than ten, nor more than fourteen, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

''(3) To be effective under this subsection, a counter notification means any written communication provided to the service provider's designated agent that includes substantially the following:

''(A) a physical or electronic signature of the subscriber;

''(B) identification of the material that has been removed or to which access has been disabled and the location at which such material appeared before it was removed or access was disabled;

''(C) a statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;

''(D) the subscriber's name, address and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notice under subsection (c)(1)(C) or agent of such person.

''(4) A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

''(g) IDENTIFICATION OF DIRECT INFRINGER.—The copyright owner or a person authorized to act on the owner's behalf may request an order for release of identification of an alleged infringer by filing (i) a copy of a notification described in subsection (c)(3)(A), including a proposed order, and (ii) a sworn declaration that the purpose of the order is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of this title, with the clerk of any United States district court. The order shall authorize and order the service provider receiving the notification to disclose expeditiously to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged direct infringer of the material described in the notification to the extent such information is available to the service provider. The order shall be expeditiously issued if the accompanying notification satisfies the provisions of subsection (c)(3)(A) and the accompanying declaration is properly executed. Upon receipt of the order, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), a service provider shall expeditiously give to the

copyright owner or person authorized by the copyright owner the information required by the order, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

''(h) CONDITIONS FOR ELIGIBILITY.—

''(1) ACCOMMODATION OF TECHNOLOGY.—The limitations on liability established by this section shall apply only if the service provider—

''(A) has adopted and reasonably implemented, and informs subscribers of the service of, a policy for the termination of subscribers of the service who are repeat infringers; and

''(B) accommodates and does not interfere with standard technical measures as defined in this subsection.

''(2) DEFINITION.—As used in this section, ''standard technical measures'' are technical measures, used by copyright owners to identify or protect copyrighted works, that—

''(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

''(B) are available to any person on reasonable and nondiscriminatory terms; and

''(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

''(i) INJUNCTIONS.—The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies by operation of this section:

''(1) SCOPE OF RELIEF.—

''(A) With respect to conduct other than that which qualifies for the limitation on remedies as set forth in subsection (a), the court may only grant injunctive relief with respect to a service provider in one or more of the following forms:

''(i) an order restraining it from providing access to infringing material or activity residing at a particular online site on the provider's system or network;

''(ii) an order restraining it from providing access to an identified subscriber of the service provider's system or network who is engaging in infringing activity by terminating the specified accounts of such subscriber; or

''(iii) such other injunctive remedies as the court may consider necessary to prevent or restrain infringement of specified copyrighted material at a particular online location, provided that such remedies are the least burdensome to the service provider that are comparably effective for that purpose.

''(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

''(i) an order restraining it from providing access to an identified subscriber of the service provider's system or network who is using the provider's service to engage in infringing activity by terminating the specified accounts of such subscriber; or

''(ii) an order restraining it from providing access, by taking specified reasonable steps to block access, to a specific, identified, foreign online location.

''(2) CONSIDERATIONS.—The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider:

''(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

''(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

''(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

''(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

''(3) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this subsection shall not be available without notice to the service provider and an opportunity for such provider to appear, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

''(j) DEFINITIONS.—

''(1)(A) As used in subsection (a), the term ''service provider'' means an entity offering the transmission, routing or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

''(B) As used in any other subsection of this section, the term ''service provider'' means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in the preceding paragraph of this subsection.

''(2) As used in this section, the term ''monetary relief'' means damages, costs, attorneys' fees, and any other form of monetary payment.

''(k) OTHER DEFENSES NOT AFFECTED.—The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

''(l) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

''(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity except to the extent consistent with a standard technical measure complying with the provisions of subsection (h); or

''(2) a service provider accessing, removing, or disabling access to material where such conduct is prohibited by law.

''(m) RULE OF CONSTRUCTION.—Subsections (a), (b), (c), and (d) are intended to describe separate and distinct functions for purposes of analysis under this section. Whether a service provider qualifies for the limitation on liability in any one such subsection shall be based solely on the criteria in each such subsection and shall not affect a determination of whether such service provider qualifies for the limitations on liability under any other such subsection.''.

SEC. 203. CONFORMING AMENDMENT.

The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

''512. Liability of service providers for online infringement of copyright.''.

SEC. 204. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR ONLINE INFRINGEMENT OF COPYRIGHT.

(a) Not later than six months after the date of enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners and nonprofit educational institutions, shall submit to the Congress recommendations regarding the liability of nonprofit educational institutions for copyright infringement committed with the use of computer systems for which such an institution is a service provider, as that term is defined in section 512 of title 17, United States Code, (as amended by this Act), including recommendations for legislation the Register of Copyrights considers appropriate regarding such liability, if any.

(b) In formulating recommendations, the Register of Copyrights shall consider, where relevant—

(1) current law regarding the direct, vicarious, and contributory liability of nonprofit educational institutions for infringement by faculty, administrative employees, students, graduate students, and students who are employees of a nonprofit educational institution;

(2) other users of their computer systems for whom nonprofit educational institutions may be responsible;

(3) the unique nature of the relationship between nonprofit educational institutions and faculty;

(4) what policies nonprofit educational institutions should adopt regarding copyright infringement by users of their computer systems;

(5) what technological measures are available to monitor infringing uses;

(6) what monitoring of their computer systems by nonprofit educational institutions is appropriate;

(7) what due process nonprofit educational institutions should afford in disabling access by users of their computer systems who are alleged to have committed copyright infringement;

(8) what distinctions, if any, should be drawn between computer systems which may be accessed from outside the nonprofit educational systems, those which may not, and combinations thereof;

(9) the tradition of academic freedom; and

(10) such other issues relating to the liability of nonprofit educational institutions for copyright infringement committed with the use of computer systems for which such an institution is a service provider that the Register considers appropriate.

SEC. 205. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—COMPUTER MAINTENANCE OR REPAIR

SEC. 301. LIMITATION ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding'';

(2) by striking ''Any exact'' and inserting the following:

''(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact''; and

(3) by adding at the end the following new subsections:

''(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for an owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

''(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

''(2) with respect to any computer program or part thereof that is not necessary for that

machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

''(d) DEFINITIONS.—For purposes of this section—

''(1) the 'maintenance' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

''(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.''.

TITLE IV—EPHEMERAL RECORDINGS; DISTANCE EDUCATION; EXEMPTION FOR LIBRARIES AND ARCHIVES

SEC. 401. EPHEMERAL RECORDINGS.

Section 112 of title 17, United States Code is amended by—

(1) redesignating section 112(a) as 112(a)(1), and renumbering sections 112(a) (1), (2), and (3) as sections 112(a)(1) (A), (B), and (C), respectively;

(2) in section 112(a)(1), after the reference to section 114(a), add the words ''or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission that broadcasts a performance of a sound recording in a digital format on a nonsubscription basis,'';

(3) adding new section 112(a)(2) as follows:

''(2) Where a transmitting organization entitled to make a copy or phonorecord under section 112(a)(1) in connection with the transmission to the public of a performance or display of a work pursuant to that section is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, such copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord within the meaning of that section, provided that it is technologically feasible and economically reasonable for the copyright owner to do so, and provided further that, if such copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under section 112(a)(1).''.

SEC. 402. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION.

(a) Not later than six months after the date of enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the foregoing objective.

(b) In formulating recommendations, the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can and/or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition to eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2);

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

SEC. 403. EXEMPTION FOR LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a) by—

(A) striking ''Notwithstanding'' and inserting ''Except as otherwise provided and notwithstanding'';

(B) inserting after ''no more than one copy of phonorecord of a work'' the following: ''except as provided in subsections (b) and (c),''; and

(C) by inserting after ''copyright'' in clause (3) the following: ''if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section, or a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section'';

(2) in subsection (b) by—

(A) striking ''a copy or phonorecord'' and inserting in lieu thereof ''three copies or phonorecords'';

(B) striking ''in facsimile form''; and

(C) striking ''if the copy or phonorecord reproduced is currently in the collections of the library or archives.'' and inserting in lieu thereof ''if—

''(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

''(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public outside the premises of the library or archives in that format.''; and

(3) in subsection (c) by—

(A) striking ''a copy or phonorecord'' and inserting in lieu thereof ''three copies or phonorecords'';

(B) striking ''in facsimile form'';

(C) inserting ''or if the existing format in which the work is stored has become obsolete,'' after ''stolen,''; and

(D) striking ''if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.'' and inserting in lieu thereof ''if—

''(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

''(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format except for use on the premises of the library or archives in lawful possession of such copy.'';

(E) adding at the end the following: ''For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.''.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi.

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business until 7 p.m., with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO REAR ADMIRAL KENDELL PEASE, USN

Mr. LOTT. Mr. President, I want to recognize and honor Rear Admiral Kendell Pease, United States Navy, as he prepares to retire upon completion of more than 34 years of faithful service to our great nation.

A Boston native, Rear Admiral Pease grew up in Natick, Massachusetts, enlisted in the United States Navy in 1963 and was selected to attend the United States Naval Academy. Upon graduation in 1968, he was commissioned an Ensign and began a distinguished career as a Public Affairs Officer. He initially served in the Republic of Vietnam and had follow-on public affairs assignments in Charleston, South Carolina; Naples, Italy; and Norfolk, Virginia. He served as the Public Affairs Officer for the Navy's Atlantic Fleet, the Naval Academy, and was assigned to multiple tours in Washington including the Department of Defense, the On-Site Inspection Agency and the Department of the Navy.

Since 1992, Rear Admiral Pease served as the Navy's Chief of Information. In this capacity, he has been instrumental in educating the American public about the Navy's role in protecting American interests around the world. During his watch, he led hundreds of successful efforts to communicate Navy operations in areas from A to Z, Albania to Zaire, including Bosnia, the Persian Gulf and Somalia. He also deserves tremendous credit for his efforts to communicate the need for very important Navy programs such as the SEAWOLF and NSSN submarine programs; CVN 77 and CVX; DDG 51 and DD 21; and Super Hornet. He accomplished all of this while navigating the Navy through a number of contentious issues, earning deep respect for his style of aggressively and honestly communicating all of the facts.

Most significantly, Rear Admiral Pease served as a passionate advocate for the Sailors in the Fleet—the men and women who serve far from home

anywhere, anytime, 24 hours a day, seven days a week. Their welfare was always his number one priority, for he truly understood that Sailors are the backbone of our nation's strategy of forward presence, and providing them with better internal communication would make for a more successful Sailor. He focused on improving the Navy's internal communication tools and methods—including improvements to the fleet-wide internal magazine (All Hands), the television program ''Navy and Marine Corps News'' shown each week aboard ships at sea, and a new program to take satellite television direct to Sailors at sea. Rear Admiral Pease made it his mission to ensure that opinion leaders and decision makers understood the special needs of Sailors and their families.

An individual of exceptional character and uncommon vision, this great Nation and our military are indebted to Rear Admiral Pease for his many years of outstanding service. I am proud, Mr. President, to thank him for his honorable service in the United States Navy and to wish him ''fair winds and following seas'' as he closes his distinguished military career.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Thank you, Mr. President.

NATIONAL PEACE OFFICERS MEMORIAL DAY

Mr. KEMPTHORNE. Mr. President, I stand today as the sponsor of Senate Resolution 201 designating May 15, 1998, as National Peace Officers Memorial Day.

This is the fifth year in a row that I have sponsored this resolution and I am proud to be joined this year by 62 of my Senate colleagues in honoring the brave men and women who serve this country as peace officers.

Mr. President, tomorrow we will be adding the names of 159 officers to the National Law Enforcement Officers Memorial. Since the inception of this memorial, 14,662 peace officers names have been inscribed on the wall. I am also pleased to share with my Colleagues that tomorrow, at the State Police complex in Meridian, Idaho, the State will dedicate its own Law Enforcement Memorial to those Idahoans who have paid the ultimate sacrifice.

These memorials, and others around the nation, serve as proof that the individuals who serve this nation as our guardians of peace do so at great personal risk. There are few communities in America that have not been touched by the senseless death of a peace officer by violent means. Last year, two communities in Idaho experienced the tragic deaths of two very talented and brave officers. I would like to share with you the sacrifices these men gave to protect the sanctity of their communities. It is my hope that while I relay their stories each of us would realize the important role that peace officers play in our everyday lives.

While searching for the body of an 18 month old infant who had been lost in the Salmon River, William Inman, a Lemhi County deputy Sheriff, was killed when his hyper-light aircraft struck an unmarked power line and he tragically plunged into the river.

Deputy Inman devoted his entire life to being an excellent police officer. He was a Sergeant in the police force in Peoria, Illinois, where he retired in order to become the Chief of Police in Farmington. After retiring from the Farmington force he moved to Salmon, Idaho, where he went to work as Sheriff's Deputy for Lemhi County. After his death deputy Inman was inducted posthumously into the American Police Hall of Fame.

William Inman was a father of four children: Maria, Tracy, Jeff and Jennifer and was a loving husband to his wife Donna. Along with spending as much time with his family as he could, Bill was an avid outdoorsman.

Bill Inman will be greatly missed by many, many people.

The second tragedy struck Idaho's capital city of Boise in the early morning hours of September 20, 1997. Boise Police Officer Mark Stall pulled over a car bearing Pennsylvania plates that had committed a traffic violation. The driver and passenger of the vehicle refused to cooperate with Officer Stall's requests, when the driver suddenly removed a gun from under his coat and shot Officer Stall. Officer Stall, inflicted with a mortal gunshot wound, fell back to his patrol vehicle for cover and continued firing at the men in order to protect other Bosie officers in the ensuing gunfight. Both Officer Mark Stall and the two assailants were killed. Mark Stall's sacrifice protected not only the officers at the scene but the entire community, when a search of the suspect's residence revealed an arsenal of guns and explosive materials. You know it was not for peaceful purposes.

Officer Stall was an exemplary police officer and set the standard for other officers both in Boise and around the nation. He was a loving father to his daughters Jonelle and Julia, and a devoted husband and best friend to his wife, Cheryl. Officer Stall was committed to his family, his community, his job and above all his God. I would like to share with you an excerpt from an Idaho Statesman article that outlines the lives of Idaho Peace Officers. In the article Officer Heath Compton characterized his hero, Mark Stall. ''One night quite a while back, I was driving down State Street in my patrol car, when a Boise police officer shined his spotlight in my face. I stopped to talk with him. I had never met the officer before, but realized quickly that he was very likable. He introduced himself as Mark Stall. Over the next several months, I got to know Mark quite well. What I learned was that Mark loved God, his family, the people he worked for and with. He always had a smile on his face and a good word.''

The bravery and commitment to community that these men possessed will be carried on by their families. I am pleased to say that I have had the opportunity to spend time with the families of both officers.

I met with the Inman family this morning, and yesterday I met with the Stall family, with his wife and his daughters and also with his mother and father, with his mother-in-law and father-in-law, brothers and sisters and all of their children. What a beautiful family. The only thing that was missing was Mark. But you can see the blessing that Mark had given to that family because of the wonderful memories of a great man. He will be missed greatly by his community and by his family, but every life that Mark touched will be blessed because of his being here.

The strength and perseverance that is exemplified by each of them is an inspiration to me. My thoughts and prayers go out to these families and others that have been devastated by this type of senseless loss.

This resolution is not the answer to the meaningless violence that occurs in our communities but it is a small attempt to celebrate and memorialize the lives of the officers who serve and protect us. I would like to thank my colleagues for their cosponsorship and would like to again thank the officers and the families that have come from all fifty states to our Nation's capital on this special day to eulogize these officers that have given the greatest sacrifice of all—their lives—in the performance of their duties.

Mr. President, I know I speak for all Senators and for Americans when I salute the peace officers of America in all the communities, large and small. When they perform their duties, they are not sure what the outcome will be. They are never sure if it is going to be a peaceful stop or one that ends in violence and the loss of life.

I know many of the police officers throughout my State of Idaho. I am proud to know each and every one of them, and I pray for their safety and that the officers will return safely to their families.

It is an honor to serve here, with all of the police officers on Capitol Hill who we come to know personally. Again, they are an outstanding group of peace officers, as they are throughout this Nation.

Today, Mr. President, I thank the Senate for properly acknowledging the role of peace officers and saying to the Inman family and to the Stall family, thank you for your sacrifice. God bless you and may you have peace in the days that follow.

Thank you, Mr. President.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, May 13, 1998, the federal debt

stood at $5,492,157,484,525.10 (Five trillion, four hundred ninety-two billion, one hundred fifty-seven million, four hundred eighty-four thousand, five hundred twenty-five dollars and ten cents).

One year ago, May 13, 1997, the federal debt stood at $5,337,495,000,000 (Five trillion, three hundred thirty-seven billion, four hundred ninety-five million).

Five years ago, May 13, 1993, the federal debt stood at $4,247,269,000,000 (Four trillion, two hundred forty-seven billion, two hundred sixty-nine million).

Ten years ago, May 13, 1988, the federal debt stood at $2,510,149,000,000 (Two trillion, five hundred ten billion, one hundred forty-nine million).

Fifteen years ago, May 13, 1983, the federal debt stood at $1,258,087,000,000 (One trillion, two hundred fifty-eight billion, eighty-seven million) which reflects a debt increase of more than $4 trillion—$4,234,070,484,525.10 (Four trillion, two hundred thirty-four billion, seventy million, four hundred eighty-four thousand, five hundred twenty-five dollars and ten cents) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING MAY 8TH

Mr. HELMS. Mr. President, the American Petroleum Institute's report for the week ending May 8, disclosed that the U.S. imported 8,772,000 barrels of oil each day, an increase of 1,206,000 barrels over the 7,566,000 imported every day during the same week a year ago.

Americans relied on foreign oil for 57.9 percent of their needs last week. There are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Politicians had better give consideration to the the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 8,772,000 barrels a day.

MESSAGES FROM THE HOUSE

At 5:34 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 10. An act to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

H.R. 2431. An act to establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 10. An act to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–400. A resolution adopted by the Society of Guerrillas and Scouts International relative to benefits for Filipino-American World War II veterans; to the Committee on Veterans' Affairs.

POM–401. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Environment and Public Works.

SENATE JOINT RESOLUTION NO. 85

Whereas, the people of the Commonwealth of Virginia revere the deeds of men and women on both sides who struggled through four years of conflict, 1861–1865; and

Whereas, Virginia's Civil War battlefields are places of contemplation, reverence, and education, and are of incalculable value to the health and identity of the Commonwealth and the nation; and

Whereas, the preservation of these hallowed places is critical to a tourism industry that attracts millions of visitors and supports thousands of jobs across the Commonwealth; and

Whereas, many of Virginia's battlefields sit astride important historic transportation corridors that link or traverse rapidly-growing areas; and

Whereas, a critical need exists to modernize, expand, and modify many of the roadways and transportation systems on or near these historic battlefields; and

Whereas, the continued health and vitality of Virginia's Civil War tourism industry depends upon better long-range transportation planning and greater cooperation and dialogue among the various stakeholders in the nation's historic resources and Virginia's transportation system, including private property owners and local governments; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That Congress, the Governor of the Commonwealth of Virginia, and local governing bodies of those jurisdictions where major Civil War battlefields are located be urged to identify, fund, and implement policies and programs to address transportation needs within the historic battlefields in Virginia. In developing legislation, administrative policies and regulations affecting the National Park Service, the U.S. Department of Transportation, the Commonwealth Transportation Board, and local transportation agencies, the Congress, the Governor, and affected local governing bodies are encouraged to undertake cooperative and integrated long-range transportation planning, particularly for the construction of new highways affecting historic battlefields in Virginia and to jointly seek new and innovative transportation strategies that will (i) meet the long-term transportation needs of Virginia's citizens, (ii) respect the interests of all levels of government and the rights of private property owners, and (iii) minimize the impact on Virginia's Civil War battlefields; and, be it

Resolved further, That the Clerk of the Senate transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, the members of the Congressional Delegation of Virginia, and the Governor in order that they may be apprised of the sense of the Virginia General Assembly in this matter.

POM–402. A joint resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Rules and Administration.

HOUSE JOINT RESOLUTION 21

Whereas, the voters and citizens of the state of New Hampshire demand and are entitled to the highest level of integrity in the electoral and legislative processes; and

Whereas, the general court has enacted laws to limit political contributions and political expenditures to improve the integrity of the electoral and legislative processes; and

Whereas, the general court has also enacted laws requiring disclosure of contributions to candidates and gifts to elected officials to improve the integrity of the electoral and legislative processes; and

Whereas, notwithstanding the desires of the voters and the citizens of the state of New Hampshire, the United States Congress, relying upon article I, section 4 of the United States Constitution, has preempted the power of the states to regulate campaign financing in connection with elections for the United Senate and House of Representatives; and

Whereas, article I, section 4 of the United States Constitution was never intended to deprive the states of the authority to regulate campaign financing; and

Whereas, recent hearings conducted by the United States Senate have established that political parties receive large contributions of ''soft money'' in order to ''buy'' direct access to Congress and to the President; and

Whereas, the revelations concerning these contributions foster voter cynicism; and

Whereas, the use of ''soft money'' by the major parties has undermined the utility of New Hampshire's voluntary limitations on political expenditures laws; and

Whereas, ''soft money'' contributions undermine the campaign disclosure laws because the source of the contributions is untraceable, thereby making it impossible for the voter to determine the likelihood of improper influence on policy decisions; now, therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the general court of the state of New Hampshire hereby urges the United States Congress to take such actions as are necessary to return to the states the power to regulate campaign financing in connection with elections for the United States Senate and House of Representatives and to take immediate action to adequately regulate ''soft money'' donations to political committees of political parties; and

That, if the United States Congress has not taken such action prior to the commencement of the filing period for the New Hampshire presidential primary election, the secretary of state is directed to deliver to each presidential candidate a copy of this resolution and a declaration to be executed by the candidate stating whether the candidate supports or opposes this resolution; and

That copies of this resolution be sent by the clerk of the house of representatives to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representative, and to each member of the New Hampshire Congressional delegation.

POM–403. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the proposed ''Safety Advancement for Employees Act''; to the Committee on Labor and Human Resources.

POM–404. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the proposal entitled ''Child Care That Strengthens American Families''; to the Committee on Labor and Human Resources.

POM–405. A resolution adopted by the Superintendent and Board of Education of Lauderdale County (Alabama) relative to public schools; to the Committee on Labor and Human Resources.

POM–406. A joint resolution adopted by the General Assembly of the State of Georgia; to the Committee on Labor and Human Resources.

SENATE RESOLUTION 766

Whereas, Congress is considering legislation to exempt insurance arrangements offered by associations and multiple employer welfare arrangements from state insurance reform standards; and

Whereas, this proposal would allow associations and multiple employer welfare arrangements to be regulated by the federal government under inadequate federal standards; and

Whereas, Congress explicitly gave states the authority to regulate multiple employer welfare arrangements in 1983 after numerous cases of fraud, abuse, and insolvency regarding multiple employer welfare arrangements; and

Whereas, the states, as the primary regulators of the local insurance market, are better able to ensure effective regulation of those entities than the federal government; and

Whereas, federal preemption would undermine efforts states have made to protect consumers through establishing minimum standards for health plans; and

Whereas, federal preemption would undermine state insurance reforms passed in recent years at the urging of business groups to improve access and affordability for small employers; and

Whereas, this exemption would seriously erode the funding mechanisms of access measures for the uninsured and for uncompensated care enacted by the states: now, therefore, be it

Resolved by the General Assembly of Georgia, That the members of this body urge the Georgia congressional delegation and the United States Congress to reject any legislation that would exempt health plans sponsored by associations and multiple employer welfare arrangements from state insurance standards and oversight; be it further

Resolved, That the Secretary of the Senate is authorized and directed to transmit appropriate copies of this resolution to each member of the Georgia congressional delegation, the Speaker of the United States House of Representatives, and the President of the United States Senate.

POM–407. A resolution adopted by the Senate of the Legislature of the State of Alaska; to the Committee on Foreign Relations.

Whereas, when the Nazis came to power in Germany more than half a century ago, many European Jews and other individuals frantically sent their valuables to secret bank accounts in neutral Switzerland, trusting their possessions would be safe; and

Whereas Swiss bank deposits made by Jews and other individuals later murdered in the Holocaust have not all been made available to heirs or to the world Jewish community; and

Whereas all Americans have a responsibility to ensure that justice is done; and

Whereas it is appropriate for Alaska to join other states in the effort to encourage Swiss banking institutions to release information that will bring closure to the painful chapter in history we know as the Holocaust and justice to those who lost everything, even their lives, to the actions of the Nazi Germans and the Swiss banks; and

Whereas the establishment of two commissions by the Swiss government to investigate Switzerland's wartime dealings reflects Swiss recognition of a moral obligation to uncover the truth, especially in light of the advanced age of the Holocaust survivor population; be it

Resolved, That the Senate expresses its gratitude to the members of the Swiss government and banking officials who have cooperated thus far in allowing investigations to be carried out because, without their assistance, these investigations would not be possible and none of the assets in question would be recoverable by their rightful owners or their heirs; and be it further

Resolved, That the Senate requests the government of Switzerland and the Swiss banking industry to compensate Holocaust survivors, their heirs, and Jewish communities in Switzerland and throughout the world for denying their property for more than 50 years.

Copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to the seven members of the Federal Council, or Bundesrat, of the Swiss government.

POM–408. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations.

SENATE JOINT RESOLUTION NO. 28

Whereas, the Republic of Poland, the Republic of Hungary, and the Czech Republic are free, democratic, and independent nations with long and proud histories and cultures; and

Whereas, their recently attained freedom was achieved following decades of struggle under the repressive yoke of brutal Communist regimes; and

Whereas, the North Atlantic Treaty Organization (NATO) is a defense alliance comprised of democratic states and is dedicated to the preservation and security of its member nations; and

Whereas, the Republic of Poland, the Republic of Hungary, and the Czech Republic desire to share in both the benefits and obligations of NATO in pursuing the development, growth, and promotion of democratic institutions and ensuring free market economic development; and

Whereas, article 10 of the North Atlantic Treaty provides the opportunity for NATO to accept as new members those nations that will promote the high standards of the Alliance and will contribute to the strengthening of the North Atlantic region; and

Whereas, Poland's, Hungary's, and the Czech Republic's democratic governments and free market economies place them in full compliance with the membership criteria in accordance with Article 10 of the North Atlantic Treaty as well as the ''Study on the Expansion of NATO''; and

Whereas, Poland's, Hungary's and the Czech Republic's economies are the fastest growing and most robust of the eastern European nations, their economic ties to the United States overall, and in particular to California, have broadened significantly from year to year, and the 1990 United States Census indicates that well over 750,000 Californians claim Polish, Hungarian, or Czech ancestry; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California expresses its complete support for full inclusion of the Republic of Poland, the Republic of Hungary, and the Czech Republic into the North Atlantic Treaty Organization; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take all actions necessary to support inclusion of the Republic of Poland, the Republic of Hungary, and the Czech Republic as full members of the North Atlantic Treaty Organization; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the United States Senate to promptly ratify the proposed amendment to the North Atlantic Treaty to include the Republic of Poland, the Republic of Hungary, and the Czech Republic as full members of the North Atlantic Treaty Organization; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Majority Leader of the United States Senate, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM–409. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations.

ASSEMBLY JOINT RESOLUTION NO. 47

Whereas, the State of Israel was founded on the 19th century Zionist vision of Theodor Herzl and came into existence on May 14, 1948, as a homeland for Jewish people from all parts of the world; and

Whereas, for half a century, Israel has been one of America's closest allies and has served as a stable, democratic anchor in a turbulent region; and

Whereas, Israel has shared America's perspective in advancing democracy and free markets worldwide and in offering humane treatment to refugees fleeing religious persecution; and

Whereas, Israel has served as an invaluable ally against both unstable, anti-Western states and terrorists, and has worked well with America's military, sharing key technological advances; and

Whereas, the longstanding and close emotional ties between Israel and the United States have forged an unshakable cultural bond between the two nations; and

Whereas, with the launching of the Middle East peace process, the United States looks forward to continuing its uniquely intimate relationship with the State of Israel in a new context characterized by peace, stability, and prosperity; and

Whereas, many Californians hold close personal ties to Israel and many more share the dream of a peaceful and prosperous Israel; and

Whereas, the State of Israel has been and continues to be a vital economic partner with this state in areas ranging from high technology to agriculture; and

Whereas, a year-long celebration of Israel's 50th anniversary, involving art exhibits, conferences, festivals, films, lectures, concerts, parties, religious services, and organized trips to Israel, has begun throughout the state; and

Whereas, when looking back upon the accomplishments of the State of Israel during its first 50 years, Americans should expect this special relationship with Israel to continue long into the foreseeable future; now, therefore, be it

Resolved, by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby acknowledges the 50th anniversary of independence for the State of Israel and looks forward to the celebration of the centurion in the Jewish calendar year 5808; and be it further

Resolved, That the Legislature hereby extends its heartiest congratulations to the State of Israel and the entire Jewish and pro-Israel community throughout California upon the occasion of Israel's 50th anniversary of its founding and reaffirms the link of common culture and values between the Israeli and American peoples; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM–410. A resolution adopted by the House of the Legislature of the State of Arizona; to the Committee on Foreign Relations.

HOUSE MEMORIAL 2001

Whereas, in December, 1997, the United Nations framework convention on climate change met at Kyoto, Japan and adopted a treaty that commits the United States to reducing carbon dioxide emissions to seven percent below 1990 levels; and

Whereas, fears of global warming due to increased levels of carbon dioxide are not based on sound scientific evidence; and

Whereas, studies of past records of carbon dioxide levels in the atmosphere show no correlation to global temperatures; and

Whereas, the general circulation models that have been developed to predict future global temperatures based on atmospheric levels of carbon dioxide have failed to produce credible results when compared to past records of global temperatures; and

Whereas, the adoption of the Kyoto treaty may lead to government control of industry through the imposition of carbon production permits, rationing and a tax levy on consumer carbon emissions, resulting in sharply increased costs and the loss of thousands of jobs; and

Whereas, many major countries, including certain Latin American and Asian nations, are exempt from the restrictions of the Kyoto treaty, putting the United States at a severe competitive disadvantage in the global economy.

Wherefore your memorialist, the House of Representatives of the State of Arizona, prays:

1. That the members of the Senate of the United States not ratify the Kyoto treaty adopted by the United Nations framework convention on climate change under its present terms and enact legislation prohibiting the adoption of an executive order or regulation attempting to make effective any provision of the treaty.

2. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the Senate of the United States and to each Member of Congress from the State of Arizona.

POM–411. A resolution adopted by the Legislature of the State of Alabama; to the Committee on Finance.

HOUSE JOINT RESOLUTION 227

Whereas, private activity tax-exempt bonds finance many worthy projects with a public benefit such as environmental infrastructure projects, including sewage facilities, solid waste disposal facilities, hazardous waste disposal facilities, industrial development projects, student loans, and low-income housing project; and

Whereas, in 1988, Congress lowered the volume cap on the issuance of such bonds to $50 per person, even though this cap is lower than the 1986 cap originally established, which fails to factor in the passage of time and inflation; and

Whereas, many of these worthy projects are not going forward due to the lack of available financing; and

Whereas, while taxable financing may be available, the cost of such financing can make a project economically unfeasible because most of these projects do not provide a positive rate of return; and

Whereas, the allocation of these bonds in Alabama has been oversubscribed for many years, and in 1997, applications exceeded allocations by a large percentage; and

Whereas, demand for private activity bond cap allocation will certainly continue to increase, given Alabama's growing economy, but the $50 per person allocation will decrease in real value over time, increasing demand relative to the available ceiling; and

Whereas, unless Congress increases the volume cap and provides an inflation adjustment for the future, there will be fewer and fewer of these projects that will receive financing; and

Whereas, as entities decide to delay or cancel planned investments, economic growth will necessarily slow, causing negative ripple effects throughout the economy; and

Whereas, legislation has been introduced in the Congress of the United States that would increase the volume caps and index them for inflation in the future; now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That we hereby respectfully request the Congress of the United States to enact legislation that would increase the volume caps on private activity tax-exempt bonds.

Resolved further, That we request Congress to consider the impact of inflation in any future legislation concerning this issue.

Resolved further, That we request Congress to consider the funds for this program that are not used by other states should be allowed to be allocated to oversubscribed states such as Alabama.

Resolved further, That copies of this resolution be provided to the President of the United States, the Speaker of the House of Representatives and the President of the Senate of the United States Congress, and to all the members of the Alabama delegation to Congress with the request that this resolution be officially entered on the Congressional Record as a memorial to the Congress of the United States of America.

POM–412. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Finance.

HOUSE RESOLUTION NO. 211

Whereas, over the past quarter century, mortgage revenue bonds have helped many families in our state and across the country realize their goal of purchasing their first home. Mortgage revenue bonds help people of modest means gain a greater stake in their communities through home ownership. As many as 125,000 lower income families buy their first home each year through programs in the states financed with mortgage revenue bonds; and

Whereas, the cap on the amount of money the states can use for home ownership programs based on mortgage revenue bonds was last adjusted a decade ago. As a result, annual demand exceeds supply for mortgage revenue bond money by approximately $2 billion; and

Whereas, mortgage revenue bonds help finance mortgages for buyers with nearly 80 percent of the national median income, with the average price of the homes also approximately 80 percent of average conventionally financed, first-time homes. The programs' requirements for income levels and the safeguards against abuse make this one of the most successful initiatives for home ownership in our country; and

Whereas, there are two bills currently before Congress that seek to raise the cap for mortgage revenue bonds. These bills, H.R. 979 and S. 1251, would amend the Internal Revenue Code to raise the cap. An important feature of the proposal is that this amount would be indexed to inflation, beginning in 1999. This is an approach that is long overdue; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to raise the cap on mortgage revenue bonds; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–413. A resolution adopted by the Legislature of the State of Minnesota; to the Committee on Finance.

RESOLUTION NO. 7

Whereas, seventy-four percent of working-age adults with severe disabilities are unemployed; and

Whereas, many people with disabilities are highly dependent on local, state, and federal assistance for support and survival, particularly for necessary health care; and

Whereas, a 1995 Lou Harris poll reported that two-thirds of unemployed people with disabilities are eager to work; and

Whereas, advances in technology, the civil rights protections of the Americans with Disabilities Act, and the current labor shortage are opening up many new employment opportunities for people with disabilities; and

Whereas, current government policies, particularly those relating to Medicaid, discourage people with disabilities from working; and

Whereas, existing Medicaid work incentives are flawed and are completely unavailable to people with disabilities who do not qualify for the SSI 1619(b) program; and

Whereas, removing policy barriers to employment would enable more people with disabilities to reduce their dependence on Social Security, Medicaid, Medicare, subsidized housing, food stamps, and other state, local, and federal government programs; and

Whereas, becoming employed allows individuals with disabilities to contribute to society by becoming taxpayers themselves; and

Whereas, employer-based health care and government programs, such as Medicare, Minnesota Comprehensive Health Association, and MinnesotaCare, do not typically cover long-term supports needed by people with disabilities: Now, therefore, be it

Resolved by the Legislature of the State of Minnesota, That it urges the Congress of the United States to adopt Medicaid buy-in legislation that would allow people with permanent disabilities to retain Medicaid coverage to address unmet health needs when they become employed; be it further

Resolved, That such Medicaid buy-in legislation should require individuals to take advantage of employer-based health coverage,

if available and affordable, and should further require individuals to purchase needed Medicaid coverage on a sliding fee scale, based on their ability to pay; and be it further

Resolved, That the Secretary of State of the State of Minnesota is directed to prepare copies of this memorial and transmit them to the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, and Minnesota's Senators and Representatives in Congress.

POM–414. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Finance.

HOUSE JOINT MEMORIAL 4030

Whereas, Medicaid has emerged as the most important governmental program to provide health and long-term care services to low-income persons and such program has continued to grow substantially placing an ever-growing demand on budgets of the national and state governments, and if the spiraling costs of Medicaid is left unchecked it will continue to have a detrimental effect on the social and economic viability of our communities; and

Whereas, Although it is well accepted by the people and most policymakers that public programs can be more effective and efficiently administered in our states and communities without excessive regulations, Medicaid remains highly bureaucratic granting flexibility to states sparingly and only after an extensive and costly waiver process; and

Whereas, The recent success of welfare reform is closely associated with the degree of flexibility granted states in administering that program and that similar success can be realized in Medicaid if states are given the same authority;

Now, therefore, Your Memorialists respectfully pray that the President submit and Congress quickly pass legislation that grants states extensive flexibility in the use of Medicaid funding for acute and long-term care services.

Be It Resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington, and the Secretary of the United States Department of Health and Human Services.

POM–415. A resolution adopted by the House of the Legislature of the Commonwealth of Pennsylvania; to the Committee on Finance.

HOUSE RESOLUTION NO. 358

Whereas, four domestic producers of stainless steel products have filed a complaint with the Department of Commerce alleging that the subsidies and other practices of several foreign companies have allowed foreign companies to sell stainless steel products in the American marketplace at prices well below what they are being sold for in their home markets; and

Whereas, preliminary findings released by the Department of Commerce indicate that the allegations of dumping relating to certain stainless steel products have merit; therefore be it

Resolved, That the House of Representatives memorialize the Congress of the United States to urge the Department of Commerce to continue in a timely fashion this ongoing investigation and to take the matter before the International Trade Commission for the imposition of appropriate sanctions; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–416. A resolution adopted by the Legislature of the State of Alabama; to the Committee on the Judiciary.

HOUSE JOINT RESOLUTION 261

Whereas, separation of powers is fundamental to the United States Constitution and the power of the federal government is strictly limited; and

Whereas, under the United States Constitution, the states are to determine public policy; and

Whereas, it is the duty of the judiciary to interpret the law, not to create law; and

Whereas, our present federal government has strayed from the intent of our founding fathers and the United States Constitution through inappropriate federal mandates; and

Whereas, these mandates by way of statute, rule, or judicial decision have forced state governments to serve as the mere administrative arm of the federal government; and

Whereas, federal district courts, with the acquiescence of the United States Supreme Court, continue to order states to levy or increase taxes to comply with federal mandates, in violation of the United States Constitution and the legislative process; and

Whereas, the time has come for the people of this great nation and their duly elected representatives in state government, to reaffirm, in no uncertain terms, that the authority to tax under the Constitution of the United States is retained by the people who, by their consent alone, do delegate such power to tax explicitly to those duly elected representatives in the legislative branch of government whom they choose, such representatives being directly responsible and accountable to those who have elected them; and

Whereas, several states have petitioned the United States Congress to propose an amendment to the Constitution of the United States of America which was previously introduced in Congress; and

Whereas, the amendment seeks to prevent federal courts from levying or increasing taxes without representation of the people and against the people's wishes; now therefore,

Be It Resolved by the Legislature of Alabama, both Houses thereof concurring, as follows:

1. That we hereby urge the Congress of the United States to prepare and submit to the several states an amendment to the Constitution of the United States to add a new article providing as follows:

''Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or a political subdivision thereof, or an official of such a state or political subdivision, to levy or increase taxes.''

2. That this resolution constitutes a continuing application in accordance with Article V of the Constitution of the United States.

3. That we urge the legislatures of each of the several states comprising the United States that have not yet made a similar request to apply to the United States Congress requesting enactment of an appropriate amendment to the United States Constitution, and apply to the United States Congress to propose such an amendment in the United States Constitution.

4. That copies of this resolution be provided to the President and Vice President of the United States, the presiding officer in each house of the legislature in each of the states in the union, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the Alabama Congressional Delegation.

POM–417. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on the Judiciary.

SENATE CONCURRENT RESOLUTION NO. 41

Whereas, the National Crime Victimization Survey from the Bureau of Justice Statistics, United States Department of Justice reports that in 1992 and 1993, nearly five million women age twelve or older were victims of violent crimes annually; and

Whereas, these acts of violence included homicide, rape, sexual assault, robbery, aggravated assault, and simple assault; and

Whereas, domestic violence is not just a household, home, or family problem but is a societal problem; and

Whereas, over the past twenty years there has been an increased acknowledgment of violence against women; and

Whereas, each year violence against women continues to be a major cause of injury to women:

(1) more than one thousand women, about four every day, die as a result of domestic violence;

(2) domestic violence continues to be a leading cause of homicide in our states,

(3) fifty percent of the men who abuse their female partners also abuse their children; and

Whereas, more than half of the female children who witness violence in the home become victims of domestic violence as adults; and

Whereas, in 1994, the Congress passed the Violence Against Women Act (Public Law No. 103–322, 42 U.S.C. §3796, et seq.) which gave states funding to create programs to help improve the responses of victim service providers and law enforcement authorities to violence against women and provided for vigorous apprehension and prosecution of persons committing crimes against women; and

Whereas, Congress will be considering reauthorization of this Act under the Violence Against Women Act of 1998 which seek funding to continue the important programs originally enacted in the first Violence Against Women Act of 1994; additional funding for new programs to address other issues including child custody, insurance discrimination, legal services eligibility, medical training, workplace safety, and campus crime; and funding for training programs for social service providers and law enforcement officials to target violence against older women, disabled women, and provisions to address the special needs of battered immigrant women; therefore, be it

Resolved That the Legislature of Louisiana memorializes the Congress of the United States to support reauthorization of and funding for the Violence Against Women Act of 1998; be it further

Resolved That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation.

POM–418. A resolution adopted by the Board of Trustees, Northville Township, Michigan relative to land use zoning authority; to the Committee on the Judiciary.

POM–419. A resolution adopted by the Council of the City of Romulus, Michigan relative to land use zoning authority; to the Committee on the Judiciary.

POM–420. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on the Judiciary.

SENATE JOINT RESOLUTION NO. 63

Whereas, Article V of the United States Constitution provides two methods by which the Constitution may be amended: by presentation of an amendment by Congress to the states for ratification and by Constitutional Convention, convened at the request of the state legislatures; and

Whereas, to date, the Constitution has been amended only by means of the first method, with many experts suggesting that a Constitutional Convention contains the inherent danger of altering the Constitution more extensively than the proponents of the Convention might have intended; and

Whereas, by providing both methods of amending the Constitution, the Framers clearly intended to provide a mechanism by which the several states could initiate the Constitutional amendment process but did not anticipate the later reluctance to convene a Constitutional Convention; and

Whereas, House Joint Resolution No. 84, introduced in the 105th Congress by Virginia Congressman Tom Bliley and cosponsored by Virginia Congressman Virgil Goode, proposes a process by which the states could initiate the amending process without the perils of a Constitutional Convention; and

Whereas, under the proposal, ''two thirds of the legislatures of the several states may propose an amendment to the Constitution by enacting identical legislation in each such legislature proposing the amendment''; and

Whereas, if two-thirds of the House and Senate did not vote to disapprove of the proposed amendment, it would be submitted to the states for ratification, and upon ratification by three-fourths of the state legislatures, the amendment would become part of the Constitution; and

Whereas, Congressman Bliley's Constitutional Amendment is a reasonable and prudent proposal to provide the states with a means of modifying the Constitution of the United States, thus providing the states an option that the Framers clearly intended; now, therefore, be it

Resolved By the Senate, the House of Delegates concurring, That the General Assembly hereby urge the Congress to approve House Joint Resolution No. 84, which proposes an amendment to the United States Constitution to provide a means by which the states can initiate the amendment process without the necessity of a Constitutional Convention; and, be it further

Resolved, That the Clerk of the Senate transmit copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Congressional delegation of Virginia so that they may be apprised of the sense of the General Assembly of Virginia.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance, with amendments:

S. 1415: A bill to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

By Mr. STEVENS, from the Committee on Appropriations: Special Report entitled ''Allocation to Subcommittees on Budget Totals From the Concurrent Resolution for Fiscal Year 1999'' (Rept. 105–191).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources:

Douglas S. Eakeley, of New Jersey, to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1999. (Reappointment)

Jeanne Hurley Simon, of Illinois, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2002. (Reappointment)

Cyril Kent McGuire, of New Jersey, to be Assistant Secretary for Educational Research and Improvement, Department of Education.

William James Ivey, of Tennessee, to be Chairperson of the National Endowment for the Arts for a term of four years.

Raymond L. Bramucci, of New Jersey, to be an Assistant Secretary of Labor.

Seth D. Harris, of New York, to be Administrator of the Wage and Hour Division, Department of Labor.

Robert H. Beatty, Jr., of West Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term expiring August 30, 2004. (Reappointment)

Thomas Ehrlich, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years. (Reappointment)

Dorothy A. Johnson, of Michigan, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years.

Rita R. Colwell, of Maryland, to be Director of the National Science Foundation for a term of six years.

(The above nominations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SMITH of Oregon (for himself, Mr. HATCH, Mr. GRAMS, Mr. ABRAHAM, Mr. WYDEN, and Mr. HUTCHINSON):

S. 2079. A bill to amend the Internal Revenue Code of 1986 to replace the dependent care credit for children age 5 and under with an increase in the amount of the child tax credit for such children; to the Committee on Finance.

By Mr. HELMS (for himself, Mr. LOTT, Mr. MACK, Mr. GRAHAM, Mr. TORRICELLI, Mr. COVERDELL, Mr. D'AMATO, Mr. REID, Mr. LIEBERMAN, Mr. HATCH, Mr. ROTH, Mr. THURMOND, Mr. NICKLES, Mr. GRASSLEY, Mrs. HUTCHISON, Mr. ASHCROFT, Mr. FAIRCLOTH, Mr. INHOFE, Mr. SMITH of New Hampshire, Mr. HOLLINGS, Mr. DEWINE, and Mr. THOMPSON):

S. 2080. A bill to provide for the President to increase support to the democratic opposition in Cuba, to authorize support under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 for the provision and transport of increased humanitarian assistance directly to the oppressed people of Cuba to help them regain their freedom, and for other purposes; to the Committee on Foreign Relations.

By Mr. BINGAMAN (for himself, Mr. SANTORUM, and Mr. LIEBERMAN):

S. 2081. A bill to guarantee the long-term national security of the United States by investing in a robust Defense Science and Technology Program; to the Committee on Armed Services.

By Mr. COCHRAN:

S. 2082. A bill to amend chapter 36 of title 39, United States Code, to provide authority to fix rates and fees for domestic and international postal services, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself and Mr. KOHL):

S. 2083. A bill to provide for Federal class action reform, and for other purposes; to the Committee on the Judiciary.

By Mrs. BOXER (for herself, Mr. SARBANES, Mr. ROBB, Mr. LAUTENBERG, Mrs. MURRAY, and Mr. GRAHAM):

S. 2084. A bill to amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to cease mineral leasing activity on submerged land of the Outer Continental Shelf that is adjacent to a coastal State that has declared a moratorium on mineral exploration, development, or production activity in adjacent State waters; to the Committee on Energy and Natural Resources.

By Mr. HUTCHINSON:

S. 2085. A bill to assist small businesses and labor organizations in defending themselves against Government bureaucracy; to protect the right of employers to have a hearing to present their case in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LAUTENBERG (for himself and Mr. SPECTER):

S. Con. Res. 96. A concurrent resolution expressing the sense of Congress that a postage stamp should be issued honoring Oskar Schindler; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH of Oregon (for himself, Mr. HATCH, Mr. GRAMS, Mr. ABRAHAM, Mr. WYDEN, and Mr. HUTCHINSON):

S. 2079. A bill to amend the Internal Revenue Code of 1986 to replace the dependent care credit for children age 5 and under with an increase in the amount of the child tax credit for such children; to the Committee on Finance.

CHILD TAX CREDIT LEGISLATION

Mr. SMITH of Oregon. Mr. President, colleagues, and ladies and gentlemen, I rise today to introduce legislation to change the Tax Code to put stay-at-home moms and dads on an equal footing with two-income families. My legislation is cosponsored by Senators HATCH, GRAMS, WYDEN, and ABRAHAM. This legislation that we introduce will

increase the current $500-per-child credit to $1,500 per child for children up to 6 years of age. This credit would replace the current dependent care tax credit with real money that directly benefits families and restores equality and fairness in child care.

Mr. President, there are many proposals to reduce tax burdens, many of which I wholeheartedly support, such as the elimination of the marriage penalty. But I must confess some frustration that I felt on the night our President gave his State of the Union Address when he spoke at great length about child care. He made a proposal, about $20 billion worth, that contained many laudable provisions and parts of which I could support. But it contained a very glaring omission, in my view. The Clinton administration policy is both a direct and indirect subsidy to the marketplace day care industry. The administration seeks to help only a small portion of working parents, ruling out those who wish to stay at home to take care of their child and those who do not want to use marketplace day care. Government policy ought not to discriminate in this manner against the best form of child care where the child is taken care of by his or her own parents or family member.

A few months ago Renée Anderson of Medford, OR, sent me an e-mail commenting that government spending will not give tax relief to parents of preschoolers who take care of their own children.

Here is her letter, Mr. President. I ask unanimous consent it be printed in the RECORD.

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

MEDFORD, OR,
March 7, 1998.

Re the President's National Day Care Plan.

DEAR SENATOR GORDON SMITH: Please do all you can to squelch Bill and Hillary Clinton's $21.7 billion National Day Care Plan.

It is loaded with a number of government-controlled programs.

New spending will not give tax relief to parents of preschoolers who take care of their own children.

Not one penny of relief will help increase the amount of time parents will have available to spend with their children.

This is ''day care,'' not ''child care.'' Child care is something that every family does. Day care is the activity, undertaken out of preference or necessity, that some families choose.

There is a rampant prejudice against stay-at-home parents.

Here's what's at stake: the continued importance of parental care of children and through that care, passing on the values that families hold dear.

Commercial day care is often avoided if at all possible because there is a lack of personalized attention and affection. Plus there is a greater exposure to childhood diseases and many other sicknesses.

Surely this new public policy is very characteristic of today's government arrogance.

I strongly oppose this $21.7 billion national day care plan. It is an alarming example of government encroachment.

Sincerely,

RENÉE ANDERSON.

Mr. SMITH of Oregon. Renée, like many mothers and fathers, sees most government spending as ''day care'' and not ''child care.'' Child care, she says, is something that every family does. Day care is the activity undertaken out of either preference or necessity that some families are able to choose or forced to choose.

A recent Wirthlin poll shows that care by a child's own parent or immediate family member is rated as the most desirable form of child care, with child care by a family's mother ranking the highest.

Census Bureau statistics show that many families—nearly half of those with children under 6 years of age—pass up a second income and care for their children themselves, and yet where is the tax relief to help ease the burden of child care expenses for families that choose to take care of their children in their homes? It simply is not there. This legislation will eliminate the current discriminatory tax policy and replace it with one that is fair to all families regardless of the child care choices they make.

I hope many of my colleagues can join in supporting this legislation. I know it competes with many other proposals, but I, frankly, can think of no greater priority that we ought to have than helping mothers and fathers take care of their children, for truly the hand that rocks the cradle is the hand that controls the future. There is no more important responsibility that any of us as mortals undertake than to rear a child. So the Federal Government ought to not get in the way of that but ought to reduce its take and leave more resources to mothers and fathers to leave them at home where they can serve real human and child needs.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2079

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPLACEMENT OF DEPENDENT CARE CREDIT FOR CHILDREN UNDER AGE 6 WITH INCREASE IN CHILD TAX CREDIT.

(a) INCREASE IN CHILD TAX CREDIT.—Subsection (a) of section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) is amended by striking ''an amount equal to $500'' and all that follows through the period and inserting the following: ''an amount equal to—

''(1) $1,500 in the case of a qualifying child who is 5 years of age or less, and

''(2) $500 in the case of all other qualifying children.''.

(b) COORDINATION OF DEPENDENT CARE CREDIT.—Section 21 of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended by inserting ''over the age of 5 and'' before ''under the age of 13'' each place it appears in subsections (b)(1)(A) and (e)(5)(B).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

By Mr. HELMS (for himself, Mr. LOTT, Mr. MACK, Mr. GRAHAM, Mr. TORRICELLI, Mr. COVERDELL, Mr. D'AMATO, Mr. REID, Mr. LIEBERMAN, Mr. HATCH, Mr. ROTH, Mr. THURMOND, Mr. NICKLES, Mr. GRASSLEY, Mrs. HUTCHISON, Mr. ASHCROFT, Mr. FAIRCLOTH, Mr. INHOFE, Mr. SMITH of New Hampshire, Mr. HOLLINGS, Mr. DEWINE, and Mr. THOMPSON):

S. 2080. A bill to provide for the President to increase support to the democratic opposition in Cuba, to authorize support under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 for the provision and transport of increased humanitarian assistance directly to the oppressed people of Cuba to help them regain their freedom, and for other purposes; to the Committee on Foreign Relations.

THE CUBAN SOLIDARITY ACT OF 1998 (SOLIDARIDAD)

Mr. HELMS. Mr. President, immediately upon his return from Cuba, Pope John Paul II gave an audience at the Vatican where he discussed his historic Cuban pilgrimage. While Fidel Castro and others were working hard to distort the purpose of his visit, the Pope was unambiguous about the aims and purposes of his visit in Cuba.

His Holiness said: ''I wish for our brothers and sisters on that beautiful island that the fruits of this pilgrimage will be similar to the fruits of that pilgrimage in Poland,'' referring to his June 1979 visit to his native Poland—a visit which is widely credited with inspiring the Polish people to throw off the shackles of their oppression, and embrace their God-given spiritual and political freedom.

That visit marked the beginning of the end for Poland's communist dictatorship—just as, I believe, the Pope's historic visit to Cuba has marked the beginning of the end of Fidel Castro's despotic rule.

With his Cuban pilgrimage, John Paul II has sown the seeds of spiritual and political liberation in the Cuban mind. The United States must now help the Cuban people to cultivate those seeds of liberation which His Holiness had planted in Cuba—just as the United States worked with him in helping the Polish people in their struggle against communist oppression nearly two decades ago.

That is why today—along with more than 20 of my Senate colleagues—I am introducing legislation that will bring new energy and focus to the U.S. Cuba policy—''The Cuban Solidarity Act of 1998'' or ''SOLIDARIDAD'' Act.

The buttons we are all wearing may look familiar to many watching today. Our buttons bear the logo of the Polish Solidarity movement—but with a Cuban twist. You see, we are calling this legislation the ''Cuban Solidarity Act'' for a reason. Our goal is to do today for the people of Cuba, what the United States did for the Solidarity

movement in Poland during the 1980s: Give the Cuban people the resources they need to build a free, functioning civil society within the empty shell of Castro's bankrupt communist ''revolution.''

The Cuban Solidarity Act proposes to authorize $100 million over four years in U.S. government humanitarian assistance to the Cuban people—donations of food and medicine, to be delivered through the Catholic Church and truly independent relief organizations in Cuba like Caritas.

The legislation we are introducing today will authorize direct humanitarian flights to deliver both private and U.S. government donations to Cuba. And it will mandate a proactive U.S. policy to support the internal opposition in Cuba, just as the U.S. supported the Solidarity movement in Poland during the 1980s.

This legislation is not about the Cuban embargo. It does not tighten the embargo; it does not loosen the embargo. What it does is add a new dimension to the U.S. policy regarding Cuba: With the enactment of this legislation, U.S. policy will no longer be simply to isolate the Castro regime, but to actively support those working to bring about change inside Cuba.

As Secretary of State Madeline Albright recently put it, there are two embargoes in Cuba today: The U.S. embargo on the Castro regime, and Castro's embargo on his own people. We must, Secretary Albright said, maintain the first, while breaking the second.

This legislation is designed to break Fidel Castro's brutal embargo on the Cuban people. The Cuban Solidarity Act has four central objectives:

First, this bill will provide free food and medicine to Cubans most in need—those who cannot possibly afford to buy the necessities of life because they have no access to U.S. dollars.

Second, it will strengthen those institutions delivering this aid by giving them the resources they need to expand their space in Cuba and nurture a nascent civil society on the island.

Third, this bill will undermine the Castro regime's ability to stifle dissent through the denial of work and basic necessities. In Cuba today, anyone who dares to speak out against Castro's despotic rule can lose his or her job (or be thrown in jail) and thus lose their ability to feed their families. This bill will help undermine Castro's ability to maintain social control through deprivation, by helping build alternative sources of food and medicine in Cuba.

And finally, this bill will take away Fidel Castro's excuses, by neutralizing Castro's propaganda which falsely blames the U.S. embargo for the hardships suffered by the Cuban people.

This legislation puts Castro in a no-win situation. There is no way for him to be on the right side of denying the Cuban people access to free food and medicine from the United States.

If Castro allows this food and medicine into Cuba, it will bring relief to millions of Cubans who cannot afford to buy basic necessities; it will remove his ability to use deprivation as a tool of oppression; and it will help independent institutions create space for themselves in Cuba society.

But if he does not allow the food and medicine in, them 11 million Cubans will know exactly who is responsible for their daily suffering. They will know that the American people wanted to send them $100 million in food and medicine, but that Castro said ''No''.

In addition to this humanitarian relief, the Cuban Solidarity Act also instructs the President to take a series of steps intended to hasten the liberation of the Cuban people. Among other provisions:

The bill instructs the President to increase all forms of U.S. government support for ''democratic opposition groups in Cuba,'' who risk life and limb each day to challenge the regime.

The bill also urges the President to seek a U.N. Security Council resolution calling on Fidel Castro to ''immediately respect all human rights, free all political prisoners, legalize independent political parties, allow independent trade unions, and conduct freely contested elections.''

The Cuban Solidarity Act also calls for creative measures to overcome Castro's blockade on information coming into Cuba instructing the President to commence ''freedom broadcasting'' through Radio and TV Marti from the U.S. naval base at Guantanamo, and other suitable sites around Cuba.

The bill also requires the Administration to produce a series of reports on the plight of average Cubans, including conditions of human rights, workers' rights, and the apparent policy of coercing abortions among poor, less-educated Cuban women.

And the bill will authorize increased personnel in the Treasury and Commerce Departments to facilitate licenses for American medical sales to Cuba—which have been fully legal since 1992—taking away Castro's excuses for his failure to provide American medicine and medical equipment for his people.

The Cuban Solidarity Act is a bill that could and should be supported by all U.S. Senators, those for the Cuban embargo, and those opposed.

All of us should unite behind a policy of providing free food and medicine to those trapped in Castro's Orwellian economy. I cannot imagine that anyone would disagree with the notion that the United States should bring the same intense commitment to its Cuba policy that made the difference in Poland's struggle with communist tyranny.

Now some have suggested that we should not give the Cuban people free food and medicine—rather, we should sell it to them. My question is this: What exactly will they use to buy this American food and medicine? Soviet rubles?

The Cuban people can't afford to buy American food and medicine! Today, in Cuba, food and medicine is available everywhere. In Havana, there are bakeries overflowing with fresh bread, pharmacies stocked with Western medicines, grocery stores brimming with foods. But these products are completely out of reach to most Cubans.

Why? Castro allows them to be sold only for dollars, which the vast majority of Cubans don't have. Castro pays them in worthless Cuban pesos. The only Cubans who can afford to shop in these exclusive stores are cronies of the Castro regime, and those few lucky Cubans who get dollars from abroad—or those poor Cuban women and girls who are forced to prostitute themselves to foreign tourists from Canada and Europe in order to survive.

Instead of trading with the Castro regime (and thus subsidizing the brutal state security apparatus which keeps him in power), our call today is: Let us unite to circumvent this monstrous system Castro has built; Let's give food and medicine directly to the Cuban people.

The Cuban Solidarity Act will also encourage and facilitate increased private donations to Cuba. There are many in the private sector who have been enormously generous in their humanitarian efforts for the Cuban people, and we will be encouraging them to redouble their efforts.

But we will also be issuing a challenge to all of our big-hearted friends in the corporate community who have been lobbying to lift the Cuban embargo. Since they claim to have so much concern for the Cuban people, we will be asking them: What are you willing to donate to help suffering Cubans who cannot afford to buy food and medicine for themselves? We'll see if the floodgates of generosity open up, showing corporate America's concern for Cuba's suffering people.

Fidel Castro will never change his stripes. The Cuban Solidarity Act is based on the belief that we must do more than wait for Fidel Castro to die or ''get religion.'' We must do what was done for Lech Walesa and his courageous Polish brothers; that is, we must undertake a proactive policy under which the United States will lend decisive support to the cause of freedom in Cuba.

The Pope's visit planted the seeds of liberation in Cuba. The Cuban Solidarity Act is the American people's way of cultivating those seeds for the benefit of Cubans and freedom-loving people everywhere.

Let's get about it.

Mr. GRAHAM. Mr. President, I am proud to join Senators HELMS, LOTT, MACK, and nearly twenty other Senators in introducing the Cuban Solidarity Act. This bill will capitalize on the historic opportunity provided by Pope John Paul II's visit to Cuba this past January. It provides for $100 million in humanitarian assistance directly to the Cuban people over four years, and does so in a way that will strengthen

the Catholic Church and other independent organizations in Cuba. We must seize this opportunity to help our Cuban brothers and sisters who have suffered under Castro's brutal rule for far too long.

Communism has collapsed around the world, and the only countries that maintain this economic sytsem—Cuba and North Korea—are crumbling under their own weight. This failed system has created shortages of food and medicine, and Castro has denied the basic freedoms that we take for granted to millions of ordinary Cubans.

In addition to providing humanitarian assistance to Cuba, this bill also directs the administration to expedite the licensing of sales of medicine and medical supplies to Cuba. Since 1992, the embargo has been lifted on the sale of medicines, medical equipment, and medical supplies to Cuba. While Castro continues to claim that the United States is responsible for Cubans' lack of access to much needed medicines, the truth is that we are doing everything we can to ensure that the Cuban people can get the medical supplies denied them by the Castro government.

Pope John Paul II called the world's attention to the suffering of the Cuban people during his visit to Cuba in January. I feel the time is right to make assistance to oppressed Cubans more easily available through organizations such as the Catholic Church and other independent groups. Targeting additional aid in this matter will have three important effects. First, it will provide humanitarian assistance directly to the Cuban people who have suffered under communism. Second, it will strengthen the position of the Catholic Church as a more independent, viable institution in Cuba. Finally, it will help to undermine Castro's policy of denying food and medicine as a means of political control.

Pope John Paul II asked the world to open up to Cuba, and asked Cuba to open itself to the world. This bill will begin that process by providing humanitarian assistance to the Cuban people. We hope that Castro will respond by opening Cuba to the world.

Just yesterday, Cuban Cardinal Ortega expressed concern that the Castro regime was not making an effort to open Cuba to the world—specifically regarding the political prisoners that continue to fill Cuban jails. Four of these political prisoners are in particularly desperate condition—Marta Beatriz Roque, Vladimiro Roca, Felix Bonne, and Rene Gomez Manzano—and Castro has refused appeals by the Pope and Canadian Prime Minister Jean Chretien to release them on humanitarian grounds. In fact, Marta Beatriz Roque is very ill with breast cancer and is being denied medical attention in jail. I hope that these political prisoners, as well as thousands of others, live to see a time when expressing one's political ideas does not mean a death sentence.

This legislation will provide an upwelling of support for the advocates of freedom and human rights in Cuba. A number of periodic reports on exploitative labor conditions and the plight of political prisoners in Cuba will help bring the world's attention to the reality of Castro's oppression. Democracy efforts in Cuba will be bolstered through pro-active U.S. support for the Cuban opposition. Direct mail delivery from the U.S. to Cuba and additional Radio and TV Marti broadcasts will allow the Cuban people to receive uncensored news from the outside world, breaking Catro's monopoly on the dissemination of information.

Let us not forget that U.S. support for the democracy movements of Eastern Europe helped millions of people there win the freedom to express their ideas, live without fear, and create better lives for their children. We should not turn our backs on the Cuban people now, when they need our help more than ever. The Castro government does not need food and medicine: the Cuban people do. We must ensure that our aid does not go to those who torture and kill. The Cuban Solidarity Act works to give food and medicine to those who are forgotten by Castro's regime—the poor mothers who need prenatal care, the children who need bread and milk, the elderly who die of easily curable diseases.

Mr. President, the 11 million Cubans imprisoned by Castro's reign of terror are counting on us to enact this vital and historic piece of legislation. I hope that all of my colleagues will join Senators HELMS, LOTT, MACK, myself, and nearly twenty others in supporting this effort to provide a lifeline to the Cuban people.

Mr. THURMOND. Mr. President, I rise as an original cosponsor of the Cuban Assistance and Solidarity (SOLIDARIDAD) Act that my distinguished friend and Chairman of the foreign Relations Committee, Senator HELMS, is introducing today. I commend the Chairman for his leadership on this issue and strongly support him in this endeavor.

The intent of this legislation is very simple * * * to actively assist the repressed Cuban people and those dedicated to ending the regime of Fidel Castro.

This Act will authorize $100 million in humanitarian assistance over four years for food, medicine, and medical supplies, donated by the U.S. government. In addition, direct flights to deliver this humanitarian aid will be authorized and monitored to ensure that all aid is directly delivered to the Cubans who need it most, those who are unable to afford to make purchases in the Castro controlled dollar-only stores.

Mr. President, this is an important piece of legislation. This bill will eliminate Castro's claims that the U.S. embargo is the cause of the hardships suffered by the Cuban people. It effectively creates a Catch-22 for him. If he allows the aid, he loses his control by deprivation. If he prohibits the aid, he will no longer be able to prevent the people from receiving food and medicine without the knowledge that he is responsible for their pain and suffering, not the United States.

Further, this bill requires the President to take several timely and appropriate pro-democracy steps regarding Cuba, such as strengthening support for democratic opposition within Cuba; seeking a U.N. Security Council resolution on free elections; beginning ''freedom broadcasting'' through Radio and TV Marti; producing a series of reports on the plight of average Cubans; authorizing increased personnel to expedite American medical sales licenses; and obtaining the International Court of Justice indictment in the downing of two unarmed planes and the murder of four people in 1996.

Mr. President, I urge all of my colleagues to take a proactive stand for the people of Cuba and support the SOLIDARIDAD Act.

By Mr. BINGAMAN (for himself, Mr. SANTORUM, and Mr. LIEBERMAN):

S. 2081. A bill to guarantee the long-term national security of the United States by investing in a robust Defense Science and Technology Program; to the Committee on Armed Services.

THE NATIONAL DEFENSE SCIENCE AND TECHNOLOGY ACT OF 1998

Mr. BINGAMAN. Mr. President, I am pleased to introduce today the National Defense Science and Technology Investment Act of 1998. In line with the clear bipartisan support for Defense research I am very pleased to be joined by Senator SANTORUM and LIEBERMAN in introducing this important bill.

The National Defense Science and Technology Investment Act of 1998 will lay the fiscal framework for the Defense research needed to achieve, early in the next century, what the Department of Defense call ''Full Spectrum Dominance''—the ability of our armed forces to dominate potential adversaries in any conceivable military operation, from humanitarian operations through the highest intensity conflict. The bill creates a plan that would achieve the equivalent of at least a $9 billion Defense Science and Technology Program budget in today's dollars within the next 10 years—an increase of 16% over today. The bill also sets similar increases for the non-proliferation research of the Department of Energy.

Much of the technology that gave the United States a quick victory with so few casualties in Desert Storm came from DoD's research of the 1960s and 1970s. More Defense research is needed today to prepare for the next century for a number of reasons.

First, as the DoD has noted, the two key enablers of ''Full Spectrum Dominance'' will be information superiority and technological innovation. The DoD has been the preeminent federal agency funding the disciplines undergirding these enablers, for example, supporting

roughly 80% of the federally sponsored research in electrical engineering, and 50% of that in computer science and mathematics. No other organizations, public or private, can be expected to substitute for the unique role of the DoD in these research areas. Second, the global spread of advanced technology and a nascent revolution in military affairs are creating new threats to the United States which will challenge our ability to achieve Full Spectrum Dominance. These include: information warfare; cheap precise cruise missiles; and the spread of weapons of mass destruction. Finally, we are now in a relatively secure interlude in our international relations, a time when we can afford to work on transforming our military forces. While the world is still a dangerous place, it will be even more dangerous in the future. So now is the time to undertake the Defense research needed to secure our future.

Yet, the DoD's current Science and Technology budget plans do not reflect these realities. The outyear budgets are basically flat in real terms out to 2003, at a level $200 million lower than 1998's level. This money pays for the research and concept experimentation needed to invent and experiment with new military capabilities. Worse yet, the Department of Energy's budget for non-proliferation research will decline by around 20% in real terms by 2003. Simply put, Mr. President, these budget plans are just not consistent with the vision of Full Spectrum Dominance, the threats on the horizon, and the opportunity we have today.

National Defense Science and Technology Investment Act creates budget plans that are consistent with the vision, threats, and opportunity. Starting with fiscal year 2000, the Act calls on the Secretary of Defense to increase the Defense Science and Technology budget request by at least 2% a year over inflation until fiscal year 2008. The end result will be a Defense Science and Technology budget that reaches at least $9 billion in today's dollars by 2008, an increase of $1.2 billion or 16% over today's level. The Department of Energy's non-proliferation research would also increase the same 2% over inflation yearly.

These budget increases are significant for research, yet modest and achievable; they will be an excellent investment. While they may require some shifting of funds within DoD's budget, the total amount shifted will be around half a percent of that total budget over ten years. I am extremely confident that the Secretary of Defense will be able to make this gradual shift in the budget without damaging other priorities. I am also quite sure its something we need to do.

Imagine, if you will, a large company in the most ferociously competitive high tech business in the world—a company that has done very well over the years, but faces downstream a series of new, highly aggressive, innovative and unpredictable competitors. Would we, as shareholders, say that shifting half a percent of its revenue into research over ten years would be something it couldn't afford to do? No. It would be clear that is something it couldn't afford not to do. I suggest the DoD is in a similar position.

Technological supremacy has been a keystone of America's security strategy since World War II. Supporting that supremacy has been Defense research, one of the highest return investments this nation makes. This coming decade is the time to start increasing this investment in our national security. The National Defense Science and Technology Investment Act of 1998 is a modest approach to making this investment, but one, I am sure, which will yield immodest returns to our military.

Mr. President, I urge my colleagues to join Senators SANTORUM, LIEBERMAN, and myself in support of this important bill.

Mr. President, I ask unanimous consent that the text of the bill be placed in the RECORD.

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

S. 2081

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Defense Science and Technology Investment Act of 1998.''

SEC. 2. FINDINGS.

The Congress of the United States finds the following:

(1) To provide for the national security of the United States in the 21st century, the U.S. military must be able to dominate the full range of military operations, from humanitarian assistance to full-scale conflict. The keys to achieving this ''Full Spectrum Dominance,'' as described in the Department of Defense's ''Joint Vision 2010,'' are technological innovation and information superiority.

(2) The global spread of advanced technology is transforming the military threats faced by the United States and will challenge our ability to achieve Full Spectrum Dominance. Some of the major technological challenges our military face include information warfare; proliferating weapons of mass destruction; inexpensive, precise, cruise missiles; and increasingly difficult operations in urban environments.

(3) The United States is now in a relatively secure interlude in its international relations, but the future security environment is very uncertain. Thus, now is the time to focus our Defense investments on the research and experimentation needs to meet new and undefined threats and achieve Full Spectrum Dominance.

(4) The Department of Defense has been the preeminent federal agency supporting research in engineering, mathematics, and computer science, and a key supporter of research in the physical and environmental sciences. These disciplines remain critical to achieving information superiority and maintaining technological innovation in our military. The Department of Energy has played a critical role in supporting the research needed to limit the spread of weapons of mass destruction. No other organizations, public or private, can be expected to substitute for the role of the Department of Defense and Department of Energy in these research areas.

(5) However, the current budget plan for the Defense Science and Technology Program is essentially flat in real terms through fiscal year 2003. The planned budget for nonproliferation science and technology activities at the Department of Energy will decline.

(6) These budget plans are not consistent with the vision of Full Spectrum Dominance, the threats or uncertainties on the horizon, or the opportunity presented by the current state of international relations. The planned level of investment could pose a serious threat to our national security in the next 15 years, given the usual time it takes from the start of Defense research to achieving new military capabilities.

(7) Consequently, the Congress must act to establish a long-term vision for the Defense Science and Technology Program's funding if the United States is to encourage the research and experimentation needed to seize the current opportunity and begin transforming our military to meet the new threats and achieve Full Spectrum Dominance early in the next century.

(8) The Congress must also act to establish a robust long-term vision and funding plan in support of nonproliferation science and technology activities at the Department of Energy.

SEC. 3. PURPOSE AND FUNDING REQUIREMENTS.

(a) PURPOSE.—The purpose of this Act is to create a ten-year budget plan to support the disciplines, research, and concept of operations experimentation that will transform our military and reduce the threat from weapons of mass destruction early in the next century.

(b) FUNDING REQUIREMENTS.—

(1) DEFENSE SCIENCE AND TECHNOLOGY PROGRAM BUDGET.—For each year from fiscal year 2000 until fiscal year 2008, it shall be an objective of the Secretary of Defense to increase the Defense Science and Technology Program budget by no less than 2.0 percent over inflation greater than the previous fiscal year's budget requests.

(2) NONPROLIFERATION SCIENCE AND TECHNOLOGY ACTIVITIES BUDGET.—For each year from fiscal year 2000 until fiscal year 2008, it shall be an objective of the Secretary of Energy to increase the budget for nonproliferation science and technology activities by no less than 2.0 percent a year over inflation greater than the previous fiscal year's budget request.

SEC. 4. GUIDELINES FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.

(a) SYNERGISTIC MANAGEMENT OF RESEARCH AND DEVELOPMENT.—The Secretary of Defense may allocate a combination of funds from Department of Defense 6.1, 6.2, or 6.3 accounts in supporting any individual project or program of the Defense Science and Technology Program.

(b) RELATIONSHIP OF THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO COMMERCIAL RESEARCH AND TECHNOLOGY.—

(1) In supporting projects within the Defense Science and Technology Program, the Secretary of Defense shall attempt to leverage commercial research, technology, products, and processes for the benefit of the Department of Defense to the maximum extent practicable.

(2) Funds made available to the Defense Science and Technology Program must only be used to benefit the Department of Defense, which includes—

(A) the development of defense unique technology;

(B) the development of military useful, commercially viable technology; or

(C) the adaption of commercial technology, products, or processes for military purposes.

(c) RELATIONSHIP OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO UNIVERSITY RESEARCH.—The following shall be key objectives of the Defense Science and Technology Program—

(1) the sustainment of research capabilities in scientific and engineering disciplines critical to the Department of Defense;

(2) the education and training of the next generation of scientists and engineers in disciplines relevant to future Defense systems, particularly through the conduct of basic research; and

(3) the continued support of the Defense Experimental Program to Stimulate Competitive Research and research programs at Historically Black Colleges and Universities and Minority Institutions.

SEC. 5. DEFINITIONS.

As used in this Act—

(1) DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.—The term ''Defense Science and Technology Program'' means work funded in Department of Defense accounts 6.1, 6.2, or 6.3; and

(2) NONPROLIFERATION SCIENCE AND TECHNOLOGY ACTIVITIES.—The term ''nonproliferation science and technology activities'' means work related to preventing and countering the proliferation of weapons of mass destruction that is funded by the Department of Energy under the following programs and projects of the Department's Office of Nonproliferation and National Security and Office of Defense Programs:

(A) the Verification and Control Technology program within the Office of Nonproliferation and National Security;

(B) projects under the ''Technology and Systems Development'' element of the Nuclear Safeguards and Security program within the Office of Nonproliferation and National Security;

(C) projects relating to a national capability to assess the credibility of radiological and extortion threats, or to combat nuclear materials trafficking or terrorism, under the Emergency Management program within the Office of Nonproliferation and National Security;

(D) projects relating to developing or integrating new technology to respond to emergencies and threats involving the presence, or possible presence, of weapons of mass destruction; radiological emergencies; and related terrorist threats, under the Office of Defense Programs; and

(E) program direction costs for the programs and projects funded under subparagraphs (A) through (D).

Mr. LIEBERMAN. Mr. President, I am pleased to introduce, along with Senators BINGAMAN and SANTORUM, the National Defense Science and Technology Investment Act of 1998. I have been concerned for some time now that our investments in defense R&D are not commensurate with the opportunity that new technology developments afford. I recognize, Mr. President, that relative to the procurement budget, defense R&D has fared well in recent years. While the ratio of R&D funding relative to procurement was an appropriate benchmark during the Cold War, I would argue that it is a misleading indicator in the current environment.

We find ourselves in a comparatively peaceful historical interlude in which we face no peer military competitors. How likely is it that this set of circumstances will last? We don't know the answer to that question. The future is uncertain and, if history is our guide, will be considerably more dangerous than today. At the same time, the ongoing technology revolution is creating revolutionary new capabilities that will change the nature of warfare itself. These new capabilities would enable our forces to engage an enemy in a coordinated fashion across an entire theater of operations and thereby rapidly and totally dominate the battlespace. By aggressively exploiting the new capabilities that technology has to offer, the U.S. can assure its decisive military superiority over any potential adversary, even with numerically smaller forces than are fielded today. Our ability to realize this vision of the future, however, depends on the research and development we conduct today.

All of the assessments, both internal and external, of our nation's defense posture concur that we must transform our force structure through greatly accelerated rates of technology insertion. The transformed military force envisioned in, for example, General Shalikashvili's Joint Vision 2010 requires a much higher level of research, development, prototyping, and testing than we are engaged in today. Our current defense R&D budgets simply don't support the accelerated rates of technology insertion and integration that these assessments imply.

Mr. President, I realize that our military has many needs today that compete for scarce defense dollars. But we cannot mortgage our future security to short-term demands. Increased funding for our nation's defense R&D enterprise is essential if we are to realize the vision of a transformed force structure that takes advantage of the new opportunities that the high-tech revolution has to offer. The National Defense Science and Technology Investment Act of 1998 would put us on the path of higher defense R&D budgets by outlining a plan for real increases of 16% over ten years. This is a modest proposal, Mr. President, and one that holds the promise of very significant future returns. I urge my colleagues to join Senator BINGAMAN, SANTORUM, and me and support this important piece of legislation.

By Mr. COCHRAN:

S. 2082. A bill to amend chapter 36 of title 39, United States Code, to provide authority to fix rates and fees for domestic and international postal services, and for other purposes; to the Committee on Governmental Affairs.

THE INTERNATIONAL POSTAL SERVICES ACT OF 1998

Mr. COCHRAN. Mr. President, today I am introducing the International Postal Services Act of 1998. This bill would amend section 3621 of title 39 of the U.S. Code, dealing with the authority of the Board of Governors of the U.S. Postal Service to establish rates and classes of postal services, by subjecting international postal services to review by the Postal Rate Commission.

At present, the Board of Governors' and Postal Rate Commission's authority to collect and review Postal Service data on costs, volumes, and revenues extends only to domestic mail. Therefore, the regulators and Congress, and the public, cannot require data to support statements by the Postal Service that international mail is covering its attributable costs.

Allegations have been made that the Postal Service uses its revenues from first class mail to subsidize its international postal services. The Postal Service denies this, and reminds its competitors that the Postal Reorganization Act prohibits the Postal Service from using the revenues from one service to reduce the price of another.

When Congress drafted, and later passed, the postal Reorganization Act of 1970, no specific language was included that would grant the Postal Rate Commission jurisdiction over international postal services—as it was granted for all domestic postal services. I believe this was an oversight by Congress, and I believe it would be best if, for the purposes of establishing classes and rates for mail, international postal services were to be treated the same as domestic postal services are treated.

I invite Senators to consider this proposal and support this effort to bring harmony to the treatment of international and domestic postal services.

By Mr. GRASSLEY (for himself and Mr. KOHL):

S. 2083. A bill to provide for Federal class action reform, and for other purposes; to the Committee on the Judiciary.

THE CLASS ACTION FAIRNESS ACT

Mr. GRASSLEY. Mr. President, I rise today to introduce a bill that will help fight class action lawsuit abuses. This bill, which Senator KOHL and I are introducing today, will go a long way toward ending class action lawsuit abuses where the plaintiffs receive very little and their lawyers receive a whole lot. It will also preserve class action lawsuits as an important toll that bring representation to the unrepresented and result in important discrimination and consumer decisions.

My Judiciary Subcommittee held a hearing last Fall that exposed and discussed the problem of certain class action lawsuit settlements. Let me give you an example of a class action lawsuit settlement that I find particularly disturbing. In an antitrust case settled in the Northern District of Illinois in 1993, the plaintiff class alleged that multiple domestic airlines participated in pricefixing beginning at least as early as January 1, 1988. This pricefixing resulted in plaintiffs paying more for airline tickets that they otherwise would have had to pay.

The settlement in this case gave a coupon book to all of the plaintiffs. These coupons varied in amount and

number, according to how many plane tickets the plaintiffs had purchased. These coupons can be used toward the purchase of future airline tickets. The catch is that the plaintiff still has to pay for the majority of any new airline ticket out of his or her own pocket. This means that only $10 worth of coupons can be used towards the purchase of a $100 dollar ticket; up to $25 worth of coupons can be used towards the purchase of a $250 ticket; up to $50 worth of coupons can be used towards the purchase of a $500 ticket, and so on. In addition, these coupons cannot be used on certain blackout dates, which seem to include all holidays and peak travel times.

The attorneys, interestingly enough, did not get paid in coupons. The plaintiffs' attorneys got paid in cash. They got paid $16 million dollars in cash. If the coupons were good enough for their clients, I wonder why coupons were not good enough for the lawyers.

Another egregious class action lawsuit settlement was discussed by one of the witnesses in my subcommittee hearing. Ms. Martha Preston was a member of the class in Hoffman versus BancBoston, where some of the plaintiffs received under $10 dollars each in compensation for their injuries, yet were docked around $75 or $90 for attorneys' fees. This means that attorneys that they had never met, who were supposed to be representing their best interests, agreed to a settlement that cost some of the plaintiffs more money than they received in compensation for being wronged.

These lawsuit abuses happen for a number of reasons. One reason is that plaintiffs' lawyers negotiate their own fees as part of the settlement. This can result in distracting lawyers from focussing on their clients' needs, and settling or refusing to settle based on the amount of their own compensation.

During our hearing, evidence was presented that at least one group of plaintiffs' lawyers meets regularly to discuss initiating class action lawsuits. They scan the Federal Register and other publications to get ideas for lawsuits, and only after they have identified the wrong, do they find clients for their lawsuits. Rather than having clients complaining of harms, they find harms first, and then recruit clients with the promise of compensation.

The defendants are not always innocent, though. Plaintiffs' lawyers say that they are approached by lawyers from large corporations who urge them to find a class and sue the corporation. The corporations may use this as a tool to limit their liability. Once this suit is initiated and settled, no member of the class may sue based on that claim. In other words, if a corporation settles a class action lawsuit by paying all class members $10 as compensation for a faulty car door latch, the plaintiffs can no longer sue for any harm caused by the faulty door latch. this is one way of buying immunity for liability.

The Preliminary Results of the Rand Study of Class Action Litigation states that, ''It is generally agreed that fees drive plaintiffs' attorneys' filing behavior, that defendants' risk aversion in the face of large aggregate exposures drives their settlement behavior. . . . In other words, the problems with class actions flow from incentives that are embedded in the process itself.''

The Glassley/Kohl Class Action Fairness Act does the following:

PLAIN ENGLISH

Notice of proposed settlements (as well as all class notices) in all class actions must be in clear, easily understood English and must include all material settlement terms, including the amount and source of attorney's fees. One thing that I knew before our hearing, but that witness testimony confirm, is that the notice most plaintiffs receive are written in small print and confusing legal jargon. Even one of the lawyers testifying before my subcommittee said that he couldn't understand the notice he received as a plaintiff in a class action lawsuit. Since plaintiffs are giving up their right to sue, it is imperative that they understand what they are doing and the ramifications of their actions.

NOTICE TO STATE ATTORNEYS GENERAL

The Class Action Fairness Act requires that State Attorneys General be notified of any proposed class settlement that would affect residents of their states. The notice give a state AG the opportunity to object if the settlement terms are unfair.

ATTORNEYS' FEES BASED ON ACTUAL DAMAGES

Our bill requires that attorney's fees in all class actions must be a reasonable percentage of actual damages and actual costs of complying with the terms of a settlement agreement.

REMOVAL OF MULTISTATE CLASS ACTIONS TO FEDERAL COURT

This bill provides that class acting lawsuits may be removed to a federal court by a defendant or unnamed class member if the total damages exceed $75,000 and parties include citizens from multiple states. Currently, only defendants can seek removal, and only if each name plaintiff has at minimum a $75,000 claim and complete diversity exists between all named plaintiffs and defendants, even if only one class members is from the same state as a defendant. The bill also eliminates the ability of a lone class action defendant to veto removal, and it forecloses class attorneys from avoiding removal by raising a class action claim for the first time only after the suit already has been pending for a year. Removal still must be sought within 30 days from when there is notice of the class claim.

MANDATORY SANCTIONS FOR FRIVOLOUS SUITS.

This section of our bill will reduce frivolous lawsuits by requiring that a violation of Rule 11 of the Federal Rules of Civil Procedure, which penalizes frivolous filings, will require the imposition of sanctions. The nature and extent of sanctions will remain discretionary.

We need this bill. We need this reform. Both plaintiffs and defendants are calling for reform in his area. This bill is not just procedural reform; this is substantive reform of our courts system. This bill will remove the conflict of interest that lawyers face in class action lawsuits, and ensue the fair settlement of these cases.

Mr. KOHL. Mr. President, Senator GRASSLEY and I today introduce the Class Action Fairness Act of 1998. This legislation addresses a growing problem in class action litigation—too many class lawyers put their self-interest above the best interests of their clients, often resulting in unfair and abusive settlements that shortchange class members while the class lawyers line their pockets with high fees.

Let me share with you just a few disturbing examples.

One of my constituents, Martha Preston of Baraboo, Wisconsin, was an unnamed member of a class action lawsuit against her mortgage company that ended in a settlement. While at first she got four dollars and change in compensation, a few months later her lawyers surreptitiously took $80—twenty times her compensation—from her escrow account to pay their fees. In total, her lawyers managed to pocket over $8 million in fees, but never explained that the class—not the defendant—would pay the attorneys' fees. Naturally outraged, she and others sued the class lawyers. Her lawyers turned around and sued her in alabama—a state she had never visited—and demanded an unbelievable $25 million. So not only did she lose $75, she was forced to defend herself from a $25 million lawsuit.

Class lawyers and defendants often engineer settlements that leave plaintiffs with small discounts or coupons unlikely ever to be used. Meanwhile class lawyers reap big fees based on unduly optimistic valuations. For example, in a settlement of a class action against major airlines, most plaintiffs received less than $80 in coupons while class attorneys received $14 million in fees based on a projection that the discounts were worth hundreds of millions. In a suit over faulty computer monitors, class members got $13 coupons, while class lawyers pocketed $6 million. And in a class action against Nintendo, plaintiffs received $5 coupons, while attorneys took almost $2 million in fees.

Competing federal and state class actions engage in a race to settlement, where the best interests of the class lose out. For example, in one state class action the class lawyers negotiated a small settlement precluding all other suits, and even agreed to settle federal claims that were not at issue in state court. Meanwhile, a federal court found that the federal claims could be worth more than $1 billion, while accusing the state class lawyers of ''hostile representation'' that ''surpassed inadequacy and sank to the level of subversion;'' ''vigorous disparagement'' of the value of the federal claim in order to sell the settlement to

the state court; and pursuit of self-interest in ''getting a fee'' that was ''more in line with the interests of [defendants] than those of their clients.''

Class actions are often filed in state courts that are more likely to certify them without adequately considering whether a class action would be fair to all class members. On several occasions, a state court has certified a class action although federal courts rejected certification of the same case. And in several Alabama state courts, 38 out of 43 classes certified in a three-year period were certified on an ex parte basis, without notice and hearing. One Alabama judge acting ex parte certified 11 class actions last year alone. Comparably, only an estimated 38 class actions were certified in federal court last year (excluding suits against the U.S. and suits brought under federal law). This lack of close scrutiny appears to create a big incentive to file in state court, especially given the recent findings of a Rand study that class actions are increasingly concentrated in state courts.

Class lawyers often manipulate the pleadings in order to avoid removal of state class actions to federal court, even by minimizing the potential claims of class members. For example, state class actions often seek just over $74,000 in damages per plaintiff and forsake punitive damage claims, in order to avoid the $75,000 floor that qualifies for federal diversity jurisdiction. Or they defeat the federal requirement of complete diversity by making sure at least one named class member is from the same state as a defendant, even if every other class member is from a different state.

Out-of-state defendants are often hauled into state court to address nationwide class claims, although federal courts are a more appropriate and more efficient forum. For example, an Alabama court is now considering a class action—and could establish a national policy—in a suit brought against the big three automakers on behalf of every American who bought a dual-equipped air bags in the past eight years. The defendants failed in their attempt to remove to federal court based on an application of current diversity law. And, unlike federal courts, states are unable of consolidate multiple class actions that involve the same underlying facts.

These examples show that abuse of the class action system is not only possible, but real. And part of the problem are the incentives and realities created by the current system.

A class action is a lawsuit in which an attorney not only represents an individual plaintiff, but, in addition, seeks relief for all those individuals who suffered a similar injury. For example, a suit brought against a pharmaceutical company by a person suffering from the side effects of a drug can be expanded to cover all individuals who used the drug. A class action claim may proceed only if a court certifies the class, and certification is permitted only if the class procedure will be fair to all class members. Prospective class members are usually sent notice about the class action, and are presumed to join it, unless they specifically ask to be left out.

Often, these suits are settled. The settlement agreements provide money and/or other forms of compensation. The attorneys who brought the class action also get paid for their work. All class members are notified of the terms of the settlement, and given the chance to object if they don't think the settlement is fair. A court must ultimately approve a settlement agreement.

The vast majority of these suits are brought and settled fairly and in good faith. Unfortunately, the class action system does not adequately protect class members from the few unscrupulous lawyers who are more interested in big attorneys' fees than compensation for their clients, the victims. The primary problem is that the client in a class action is a diffuse group of thousands of individuals scattered across the country, which is incapable of exercising meaningful control over the litigation. As a result, while in theory the class lawyers must be responsive to their clients, the lawyers control all aspects of the litigation.

Moreover, during a class action settlement, the amount of the attorney fee is negotiated between plaintiffs' lawyers and the defendants, just like other terms of the settlement. But in most cases the fees come at the expense of class members—the only party that does not have a seat at the bargaining table.

In addition, defendants may use class action settlements to advance their own interests. A settlement will generally preclude all future claims by class members. So defendants have ample motivation to give class lawyers the fees they want as the price for settling all future liabilities.

In light of the incentives that are driving the parties, it is easy to see how class members are left out in the cold. Class attorneys and corporate defendants sometimes reach agreements that satisfy their respective interests—and even the interests of the named class plaintiffs—but that sell short the interests of any class members who are not vigilantly monitoring the litigation. And although the judge is supposed to determine whether the settlement is fair before approving it, class lawyers and defendants ''may even put one over on the court, a staged performance. The lawyers support the settlement to get fees; the defendants support it to evade liability; the court can't vindicate the class's rights because the friendly presentation means that it lacks essential information.'' *Kamilewicz* v. *Bank of Boston Corp.*, 100 F.3d 1348, 1352 (Easterbrook, J., dissenting) (7th Cir. 1996).

Although class members get settlement notices and have the opportunity to object, they rarely do so, especially if they have little at stake. Not only is it expensive to get representation, but also it can be extremely difficult to actually understand what the settlement really does. Settlements are often written in long, finely printed letters with incomprehensible legalese, which even well trained attorneys are hard pressed to understand. And settlements often omit basic information like how much money will go towards attorney's fees, and where that money will come from. In Martha Preston's case, one prominent federal judge found that ''the notice not only didn't alert the absent class members to the pending loss but also pulled the wool over the state judge's eyes.''

We all know that class actions can result in significant and important benefits for class members and society, and that most class lawyers and most state courts are acting responsibly. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursue claims that collectively would otherwise be too expensive to litigate.

The difficulty in any effort to improve a basically good system is weeding out the abuses without causing undue damage. The legislation we propose attempts to do this. It does not limit anyone's ability to file a class action or to settle a class action. It seeks to address the problem in several ways. First, it requires that State attorneys general be notified about proposed class action settlements that would affect residents of their states. With notice, the attorneys general can intervene in cases where they think the settlements are unfair.

Second, the legislation requires that class members be notified of a potential settlement in clear, easily understood English—not legal jargon.

Third, it limits class attorneys' fees to a reasonable percentage of the actual damages received by plaintiffs and the actual costs of complying with settlement agreements. This will deter class lawyers from using inflated values of coupon settlements to reap big fees, even if the settlement doesn't offer much practical value to victims. Some courts have already embraced this standard, which parallels the recent securities reform law.

Fourth, it permits removal to federal court of class actions involving citizens of multiple states, at the request of unnamed class members or defendants. This provision eliminates gaming by class lawyers to keep cases in state court. It reinforces the legitimate role for diversity jurisdiction—to establish the federal courts as the proper forum for lawsuits directly affecting residents from diverse states. Diversity jurisdiction makes little sense if a $76,000 claim by one out-of-state plaintiff qualifies for federal jurisdiction but a

multimillion dollar class action bundling thousands of $74,000 claims by out-of-state citizens cannot be brought in federal court, and if remote state courts can make decisions affecting nationwide classes of citizens.

Finally, it amends Rule 11 of the Federal Rules of Civil Procedures to require the imposition of sanctions for filing frivolous lawsuits, although the nature and extent of sanctions remains discretionary. This provision will deter the filing of frivolous class actions.

Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not require that State attorneys general do anything with the notice they receive. We do not deny reasonable fees for class lawyers. And we do not mandate that every class action be brought in federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

We are aware that some are critical of provisions in this bill. For example, there is concern that attorneys' fee provision does not adequately address settlements which offer primarily injunctive relief. For this reason, this bill should be viewed as a point of departure, not a final product.

But Mr. President, right now, people across the country can be dragged into lawsuits unaware of their rights and unarmed on the legal battlefield. What our bill does is give regular people back their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that good people like Martha Preston don't get ripped off.

Mr. President, Senator GRASSLEY and I believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. It is both pro-consumer and pro-defendant. We believe it will make a difference.

By Mrs. BOXER (for herself, Mr. SARBANES, Mr. ROBB, Mr. LAUTENBERG, Mrs. MURRAY, and Mr. GRAHAM):

S. 2084. A bill to amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to cease mineral leasing activity on submerged land of the Outer Continental Shelf that is adjacent to a coastal State that has declared a moratorium on mineral exploration, development, or production activity in adjacent State waters; to the Committee on Energy and Natural Resources.

THE COASTAL STATES PROTECTION ACT

Mrs. BOXER. Mr. President, today, I am introducing the Coastal States Protection Act—legislation which I also introduced in the 104th Congress. This act will provide necessary protection for the nation's Outer Continental Shelf (OCS) from the adverse effects of offshore oil and gas development by making management of the federal OCS consistent with state-mandated protection of state waters. I am pleased that Representatives CAPPS and MILLER are introducing the House version of this legislation.

After many years of hard work to prevent further oil drilling in the Outer Continental Shelf (OCS), I am very pleased to see the broad bi-partisan support that now exists for this issue. I began fighting for ocean protection on the Marin County Board of Supervisors, continued during my 10 years in the House of Representatives, and as a United States Senator representing California.

Simply put, my bill says that when a state establishes a drilling moratorium on part or all of its coastal water, that protection would be extended to adjacent federal waters.

It does a state little good to protect its own waters which extend three miles from the coast only to have drilling from four miles to 200 miles in federal waters jeopardizing the entire state's coastline—including the state's protected waters.

An oil spill in federal waters will rapidly foul state beaches, contaminate the nutrient rich ocean floor upon which local fisheries depend, and endanger habitat on state tidelands.

My legislation simply directs the Secretary of Interior to cease leasing activities in federal waters where the state has declared a moratorium on such activities thus coordinating federal protection with state protection.

The bill has a very fundamental philosophy—do no harm to the magnificent coastlines of America and respect state and local laws.

I also want to express my strong support for the current protection of our precious marine resources.

The major portions of fragile California coastline is currently protected from the dangers of oil and gas drilling in offshore waters by several provisions of law. The State has a permanent moratorium on oil and gas leasing, which covers state waters up to three miles out. U.S. waters, up to 200 miles out, have been protected by a succession of one-year leasing and drilling moratoria enacted by Congress each year since 1982.

In addition, in 1990, President George Bush issued a statement directing his Secretary of the Interior to cancel several existing leases and withhold any further leases in California waters for 10 years. With this directive, President Bush showed his commitment to prohibiting offshore drilling in areas where environmental risks outweigh the potential energy benefits to the Nation.

The strongest protection would be a permanent ban on further offshore oil and gas leases in California waters, and I have asked the President to consider this.

California, and the rest of the nation, need a clear statement of coastal policy to provide industries, small businesses, homeowners and fishermen more certainty than can be provided by yearly moratoria. Annual battles over the moratoria make long-range business planning difficult, divert resources and attention from the real need for national energy security planning, and send confusing signals to both industry and those concerned about the impacts of offshore development.

I understand that some feel that we are losing revenue because of these moratoria. I have two things to say about that. First, the public strongly supports the moratorium. And second, if the oil companies paid the royalties that they currently owe the federal government we could make up for the so-called ''lost revenue'' caused by the moratorium. Oil companies currently owe the federal government millions upon millions of dollars. It does not make sense to give oil companies access to more federal oil when they are already cheating the American taxpayer out of millions of dollars.

As we celebrate the United Nations Year of the Ocean, we have a prime opportunity to strengthen our commitment to environmental protection by giving Americans a long lasting legacy of coastal protection.

We must recognize that the resources of the lands offshore California, and the rest of the country, are priceless. We must recognize that renewable uses of the ocean and OCS lands are irreplaceable elements of a healthy, growing economy. These moratoria recognize that the real costs of offshore fossil fuel development far outweigh any benefits that might accrue from those activities.

I am very pleased that Senators MURRAY, SARBANES, ROBB, LAUTENBERG, and GRAHAM are original co-sponsors of this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Coastal States Protection Act''.

SEC. 2. STATE MORATORIA ON OFFSHORE MINERAL LEASING.

Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following:

''(p) STATE MORATORIA.—When there is in effect with respect to lands beneath navigable waters of a coastal State a moratorium on oil, gas, or other mineral exploration, development, or production activities established by statute or by order of the Governor, the Secretary shall not issue a lease for the exploration, development, or production of minerals on submerged lands of the outer Continental Shelf that are seaward of or adjacent to those lands.''.

Mr. GRAHAM. Mr. President, I am very pleased to join my colleague Senator BOXER in introducing the ''Outer Continental Shelf Lands Act.'' It is a key step forward in Florida's long battle to preserve our beautiful coastal and marine ecosystems.

Floridians oppose offshore oil drilling because it poses a tremendous threat to one of our state's greatest natural and economic resources—our coastal environment. Florida's beaches, fisheries, and wildlife draw millions of tourists each year from around the globe. Tourism directly or indirectly supports millions of jobs all across Florida, and the travel industry generates billions of dollars in economic activity every year.

The Florida coastline boasts some of the richest estuarine areas in the world. These brackish waters, with their mangrove forests and seagrass beds, are an irreplaceable link in the life cycle of many species, both marine and terrestrial. Florida's commercial fishing industry relies on these estuaries because they support the nurseries for the most commercially harvested fish. Perhaps the most environmentally delicate regions in the Gulf, estuaries could be damaged beyond repair by even a relatively small oil spill.

Over the years, we have met with some success in our effort to protect Florida's OCS. In 1995, the lawsuit surrounding the cancellation of the leases around the Florida Keys was settled, removing the immediate threat of oil and gas drilling from what is an extremely sensitive area.

In June of 1997, Senator MACK and I introduced the Florida Coast Protection Act to cancel six leases in an area 17 miles off the coast of Pensacola. This bill would have provided leaseholders with the absolute right to just compensation from the federal government in order to recover their investment in these leases, while simultaneously protecting the Florida coastline that is so critical to our economy.

Luckily, it was never necessary. Less than a week after we introduced our legislation, Mobil Oil announced that it was ending its drilling operation off the Northwest Florida coast and cancelling its exploratory leases. While Mobil's action did not completely eliminate the threats posed by oil and gas drilling, it did mean that the residents of Florida's Gulf Coast faced one fewer environmental catastrophe-in-the-making.

The Florida delegation has also been successful in blocking other attempts to search for energy resources off our state's precious coastline. We've worked—and will continue to work—in a united, bipartisan fashion to maintain the federal moratorium on drilling in sensitive coastal areas.

Mr. President, the bill that Senator BOXER has introduced today will provide further protection to all coastal states that have taken action to prevent offshore oil drilling by issuing a state moratorium on oil, gas, or mineral exploration, development, or production within state waters. Florida will benefit greatly from this bill, and I urge its speedy passage.

By Mr. HUTCHINSON:

S. 2085. A bill to assist small businesses and labor organizations in defending themselves against Government bureaucracy; to protect the right of employers to have a hearing to present their cases in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers; to the Committee on Labor and Human Resources.

THE FAIRNESS FOR SMALL BUSINESS AND EMPLOYEES ACT OF 1998

Mr. HUTCHINSON. Mr. President, I am pleased to introduce today an important piece of legislation which would restore fairness to small businesses and their employees in the nation's labor laws, and ensure freedom of choice in the marketplace. ''The Fairness for Small Business and Employees Act of 1998'' will achieve these goals, and improve fairness in the National Labor Relations Board (NLRB) process.

Small businesses are facing a serious and devastating problem. They are the targets of unethical attempts to manipulate the law in order to injure or destroy the competition. We cannot allow any group with an ulterior and destructive motive to use coercive governmental power just to harass small businesses and their workers.

Frivolus charges cost companies significant time, money, and resources to defend themselves against complaints that have no merit. Small businesses, in particular, need these resources to secure more work opportunities, invest in better equipment, and create more jobs.

The bill I am introducing today consists of three separate small business bills, which I have previously introduced in the Senate: ''The Truth in Employment Act,'' ''The Fair Hearing Act,'' and ''The Fair Access to Indemnity and Reimbursement Act (FAIR) Act.''

The first provision, ''The Truth in Employment Act,'' remedies the unscrupulous practice of ''salting'' by amending the National Labor Relations Act (NLRA) to make clear that an employer is not required to hire any person who seeks a job in order to promote interests unrelated to those of the employer. I would point out that the language in no way infringes upon any rights or protections otherwise accorded employees under the NLRA, including the right to organize. This provision would merely alleviate the legal pressures imposed upon employers to hire individuals whose overriding purpose for seeking the job is to disrupt the employer's workplace, or otherwise inflict economic harm designed to put the employer out of business.

The second section, ''The Fair Hearing Act,'' would create a statutory right to a hearing for the employer when there is a dispute regarding the proper bargaining unit of a company with multiple locations. While the NLRB proposal has been ''tabled'' for now, there is still nothing in the law to assure fairness for employees.

The last provision, ''The Fair Access to Indemnity and Reimbursement Act (FAIR) Act,'' would amend the NLRA to provide that a small business or labor organization which prevails in an action against the NLRB will automatically be allowed to recoup the attorneys' fees and expenses it spends defending itself. Small employers often cannot afford the qualified legal representation necessary to defend themselves against NLRB charges.

Mr. President, it is time to stop the devastating impact of unfair labor law enforcement on small businesses and their employees. Small businesses are truly the backbone of our nation's economy. We must curtail the anticompetitive attacks, and instead help these companies devote time, money, and resources toward productivity, growth, and providing new jobs.

I would urge my fellow Senators to join me in cosponsoring this legislation, and work to pass ''The Fairness for Small Business and Employees Act of 1998.'' The survival of America's small businesses demand that we act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2085

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness for Small Business and Employees Act of 1998''.

TITLE I—TRUTH IN EMPLOYMENT

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) An atmosphere of trust and civility in labor-management relationships is essential to a productive workplace and a healthy economy.

(2) The tactic of using professional union organizers and agents to infiltrate a targeted employer's workplace, a practice commonly referred to as ''salting'' has evolved into an aggressive form of harassment not contemplated when the National Labor Relations Act was enacted and threatens the balance of rights which is fundamental to our system of collective bargaining.

(3) Increasingly, union organizers are seeking employment with nonunion employers not because of a desire to work for such employers but primarily to organize the employees of such employers or to inflict economic harm specifically designed to put nonunion competitors out of business, or to do both.

(4) While no employer may discriminate against employees based upon the views of employees concerning collective bargaining, an employer should have the right to expect job applicants to be primarily interested in utilizing the skills of the applicants to further the goals of the business of the employer.

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining;

(2) to preserve the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act; and

(3) to alleviate pressure on employers to hire individuals who seek or gain employment in order to disrupt the workplace of the employer or otherwise inflict economic harm designed to put the employer out of business.

SEC. 103. PROTECTION OF EMPLOYER RIGHTS.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by adding after paragraph (5) the following flush sentence:

''Nothing in this subsection shall be construed as requiring an employer to employ any person who is not a bona fide employee applicant, in that such person seeks or has sought employment with the employer with the primary purpose of furthering another employment or agency status: *Provided*, That this sentence shall not affect the rights and responsibilities under this Act of any employee who is or was a bona fide employee applicant, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.''.

TITLE II—FAIR HEARING

SEC. 201. FINDINGS.

Congress makes the following findings:

(1) Bargaining unit determinations by their nature require the type of fact-specific analysis that only case-by-case adjudication allows.

(2) The National Labor Relations Board has for decades held hearings to determine the appropriateness of certifying a single location bargaining unit.

(3) The imprecision of a blanket rule limiting the factors considered material to determining the appropriateness of a single location bargaining unit detracts from the National Labor Relations Act's goal of promoting stability in labor relations.

SEC. 202. PURPOSE.

The purpose of this title is to ensure that the National Labor Relations Board conducts a hearing process and specific analysis of whether or not a single location bargaining unit is appropriate, given all of the relevant facts and circumstances of a particular case.

SEC. 203. REPRESENTATIVES AND ELECTIONS.

Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

''(6) If a petition for an election requests the Board to certify a unit which includes the employees employed at one or more facilities of a multi-facility employer, and in the absence of an agreement by the parties (stipulation for certification upon consent election or agreement for consent election) regarding the appropriateness of the bargaining unit at issue for purposes of subsection (b), the Board shall provide for a hearing upon due notice to determine the appropriateness of the bargaining unit. In making its determination, the Board shall consider functional integration, centralized control, common skills, functions and working conditions, permanent and temporary employee interchange, geographical separation, local autonomy, the number of employees, bargaining history, and such other factors as the Board considers appropriate.''.

TITLE III—ATTORNEYS FEES

SEC. 301. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Certain small businesses and labor organizations are at a great disadvantage in terms of expertise and resources when facing actions brought by the National Labor Relations Board.

(2) The attempt to ''level the playing field'' for small businesses and labor organizations by means of the Equal Access to Justice Act has proven ineffective and has been underutilized by these small entities in their actions before the National Labor Relations Board.

(3) The greater expertise and resources of the National Labor Relations Board as compared with those of small businesses and labor organizations necessitate a standard that awards fees and costs to certain small entities when they prevail against the National Labor Relations Board.

(b) PURPOSE.—It is the purpose of this title—

(1) to ensure that certain small businesses and labor organizations will not be deterred from seeking review of, or defending against, actions brought against them by the National Labor Relations Board because of the expense involved in securing vindication of their rights;

(2) to reduce the disparity in resources and expertise between certain small businesses and labor organizations and the National Labor Relations Board; and

(3) to make the National Labor Relations Board more accountable for its enforcement actions against certain small businesses and labor organizations by awarding fees and costs to these entities when they prevail against the National Labor Relations Board.

SEC. 302. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.

The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

''AWARDS OF ATTORNEYS' FEES AND COSTS

''SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An employer who, or a labor organization that—

''(1) is the prevailing party in an adversary adjudication conducted by the Board under this or any other Act, and

''(2) had not more than 100 employees and a net worth of not more than $1,400,000 at the time the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Board was substantially justified or special circumstances make an award unjust. For purposes of this subsection, the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

''(b) COURT PROCEEDINGS.—An employer who, or a labor organization that—

''(1) is the prevailing party in a civil action, including proceedings for judicial review of agency action by the Board, brought by or against the Board, and

''(2) had not more than 100 employees and a net worth of not more than $1,400,000 at the time the civil action was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) or this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.''.

SEC. 303. APPLICABILITY.

(a) AGENCY PROCEEDINGS.—Subsection (a) of section 20 of the National Labor Relations Act (as added by section 302) applies to agency proceedings commenced on or after the date of the enactment of this Act.

(b) COURT PROCEEDINGS.—Subsection (b) of section 20 of the National Labor Relations Act (as added by section 302) applies to civil actions commenced on or after the date of the enactment of this Act.

ADDITIONAL COSPONSORS

S. 831

At the request of Mr. SHELBY, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Michigan [Mr. ABRAHAM] and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 882

At the request of Mrs. BOXER, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 882, a bill to improve academic and social outcomes for students by providing productive activities during after school hours.

S. 1252

At the request of Mr. GRAHAM, the names of the Senator from Arkansas [Mr. BUMPERS), the Senator from Louisiana [Mr. BREAUX), the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1334

At the request of Mr. BOND, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1392

At the request of Mr. BROWNBACK, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 1392, a bill to provide for offsetting tax cuts whenever there is an elimination of a discretionary spending program.

S. 1677

At the request of Mr. CHAFEE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1677, a bill to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

S. 1924

At the request of Mr. MACK, the names of the Senator from Washington [Mr. GORTON], the Senator from Maryland [Mr. SARBANES], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 1924, a bill to restore the standards used for determining whether technical workers

are not employees as in effect before the Tax Reform Act of 1986.

S. 2033

At the request of Mr. ABRAHAM, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 2033, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

S. 2067

At the request of Mr. ASHCROFT, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2067, a bill to protect the privacy and constitutional rights of Americans, to establish standards and procedures regarding law enforcement access to decryption assistance for encrypted communications and stored electronic information, to affirm the rights of Americans to use and sell encryption products, and for other purposes.

SENATE RESOLUTION 189

At the request of Mr. TORRICELLI, the names of the Senator from Nevada [Mr. REID] and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Resolution 189, a resolution honoring the 150th anniversary of the United States Women's Rights Movement that was initiated by the 1848 Women's Rights Convention held in Seneca Falls, New York, and calling for a national celebration of women's rights in 1998.

AMENDMENT NO. 2387

At the request of Mr. HUTCHINSON the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of amendment No. 2387 proposed to S. 2057, an original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 2388

At the request of Mr. HUTCHINSON the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of amendment No. 2388 proposed to S. 2057, an original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

SENATE CONCURRENT RESOLUTION 96—EXPRESSING THE SENSE OF CONGRESS THAT A POSTAGE STAMP SHOULD BE ISSUED HONORING OSKAR SCHINDLER

Mr. LAUTENBERG (for himself and Mr. SPECTER) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 96

Whereas during the Nazi occupation of Poland, Oskar Schindler personally risked his life and that of his wife to provide food and medical care and saved the lives of over 1,000 Jews from death, many of whom later made their homes in the United States;

Whereas Oskar Schindler also rescued about 100 Jewish men and women from the Golezów concentration camp, who lay trapped and partly frozen in 2 sealed train cars stranded near Brünnlitz;

Whereas millions of Americans have been made aware of the story of Schindler's bravery;

Whereas on April 28, 1962, Oskar Schindler was named a ''Righteous Gentile'' by Yad Vashem; and

Whereas Oskar Schindler is a true hero and humanitarian deserving of honor by the United States Government: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Postal Service should issue a stamp honoring the life of Oskar Schindler.

Mr. LAUTENBERG. Mr. President, today we celebrate the 50th Anniversary of the establishment of the State of Israel. As we do so, we also remember the tragedy of the Holocaust and the events that culminated in the creation of a Jewish homeland.

I rise today to submit a measure to honor an individual who stands in the highest esteem of the citizens of Israel, and throughout the world. I am pleased to be joined by the senior senator from Pennsylvania, Senator SPECTER, in submitting this measure calling on the Postal Service to issue a stamp commemorating the life of Oskar Schindler.

Millions of people around the world know the story of Oskar Schindler, whose heroism was brought to light by the author Thomas Keneally and the film maker Steven Spielberg. During the Nazi occupation of Poland, Oskar Schindler demonstrated that one person truly could make a difference. He saved the lives of over 1,200 Jewish men, women, and children, while risking his own life and that of his wife. Mr. Schindler also rescued approximately 100 Jewish men and women from the Golezow concentration camp, who were trapped in a sealed and freezing railroad car.

Two of the individuals whose lives were saved by Oskar Schindler are residents of New Jersey. Before the war, Abraham Zuckerman lived in Krakow, Poland. In 1942, he was sent to the Plaszow concentration camp where he faced unspeakable horrors and certain death. While he waited out his days toiling in a coal yard, one day, to his great fortune, Mr. Zuckerman was told that he was one of the fortunate individuals whose name appeared on ''Schindler's List.'' Mr. Zuckerman was relatively safe for a little more than a year, but when Schindler's factory in Krakow was liquidated, he was sent to a concentration camp at Mauthausen and later Gusen II, where he was finally liberated. Meanwhile, Mr. Zuckerman's close friend Murray Pantirer was sent to another concentration camp, Gross-Rosen, after Plaszow was shut down. On his third day there, he was chosen as one of 900 workers for Schindler's new factory in Brinnlitz, Czechoslovakia. Both men later emigrated to the United States. They have lived in New Jersey since shortly after the war where they started a home building business. To honor Mr. Schindler, these men are responsible for over 20 Schindler Courts, Terraces and Plazas all over the Garden State.

Mr. President, we recognize that Mr. Schindler was a human being, not infallible like many heroes. But his bravery has truly made him stand out and worthy of honor. There is nothing I can say that could describe him any better than in the words of Mr. Zuckerman.

''I am one of the Survivors and I owe my life to the courage and strength of this great man. He was not a diplomat or a politician, he was a very good manipulator. He had the courage and the knowledge to save over 1200 Jews from death. He managed somehow to fool the Germans into thinking he was on their side when all along he was going behind their backs to save the Jews. His life was always in danger but still he persisted to do what he knew to be the right thing, he saved the Jews anyway he could. He bartered, he lied, he used his own money, he did everything humanly possible to save us. He was very unselfish as his life could have ended at any time but still he did all he could to save the Jews.''

Mr. President, Senator SPECTER and I are submitting this resolution today to call on the Postal Service to issue a stamp commemorating the life of Oskar Schindler. Such a stamp would bring the story to millions of people. It would help us all understand that one individual can make a difference in the lives of others.

We understand that we face somewhat of an uphill battle as Mr. Schindler is not a citizen of the United States. The Postal Service tells me that its policy is to issue stamps that depict American subjects. But we say in response that Mr. Schindler's life was largely devoted to the pursuit of freedom, to opposing tyranny, and to humanitarianism. These qualities certainly represent the American ideal and we believe that Mr. Schindler deserves the honor that the Postal Service has bestowed on other individuals who stood for these ideals. I am pleased to sponsor this important measure.

AMENDMENTS SUBMITTED

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

THURMOND (AND LEVIN) AMENDMENT NO. 2399

Mr. THURMOND (himself and Mr. LEVIN) proposed an amendment to the

bill (S. 2057) to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

In section 103(2), strike out ''$2,375,803,000'' and insert in lieu thereof ''$2,354,745,000''.

In section 201(3), strike out ''$13,398,993,000'' and insert in lieu thereof ''$13,673,993,000''.

In section 201(4), strike out ''$9,837,764,000'' and insert in lieu thereof ''$9,583,822,000''.

MURKOWSKI (AND BINGAMAN) AMENDMENT NO. 2400

(Ordered to lie on the table.)

Mr. MURKOWSKI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by them to the bill, S. 2057, supra; as follows:

Insert in the appropriate place:

SEC. . ENERGY POLICY AND CONSERVATION ACT AMENDMENTS.

The Energy Policy and Conservation Act is amended—

(1) in section 104(b)(1) by striking ''1994'' and inserting in lieu thereof ''1999'';

(2) in section 166 (42 U.S.C. 6246) by striking ''1997'' and inserting in lieu thereof ''1999'';

(3) in section 181 (42 U.S.C. 6251) by striking ''1997'' both places it appears and inserting in lieu thereof ''1999'';

(4) by striking ''section 252(l)(1)'' in section 251(e)(1) (42 U.S.C. 6271(e)(1)) and inserting ''section 252(k)(1)'';

(5) in section 252 (42 U.S.C. 6272)—

(A) in subsection (a)(1) and (b), by striking, ''allocation and information provisions of the international energy program'' and inserting ''international emergency response provisions'';

(B) in subsection (d)(3), by striking ''known'' and inserting after ''circumstances'' ''known at the time of approval'';

(C) in subsection (e)(2) by striking ''shall'' and inserting ''may'';

(D) in subsection (f)(2) by inserting ''voluntary agreement or'' after ''approved'';

(E) by amending subsection (h) to read as follows—

(h) Section 708 of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out—

(1) the international energy program, or

(2) any allocation, price control, or similar program with respect to petroleum products under this Act.;

(F) in subsection (k) by amending paragraph (2) to read as follows—

(2) The term ''international emergency response provisions'' means—

(A) the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in the program, and

(B) the emergency response measures adopted by the Governing Board of the International Energy Agency (including the July 11, 1984, decision by the Governing Board on ''Stocks and Supply Disruptions'') for—

(i) the coordinated drawdown of stocks of petroleum products held or controlled by governments; and

(ii) complementary actions taken by governments during an existing or impending international oil supply disruption.''; and

(G) by amending subsection (l) to read as follows—

(l) the antitrust defense under subsection (f) shall not extend to the international allocation of petroleum products unless allocation is required by chapters III and IV of the international energy program during an international energy supply emergency.'';

(6) in section 281 (42 U.S.C. 6285) by striking ''1997'' both places it appears and inserting in lieu thereof ''1999''; and

(7) at the end of section 154 by adding the following new subsection:

(f)(1) The drawdown and distribution of petroleum products from the Strategic Petroleum Reserve is authorized only under section 161 of this Act, and drawdown and distribution of petroleum products for purposes other than those described in section 161 of this Act shall be prohibited.

(2) In the Secretary's annual budget submission, the Secretary shall request funds for acquisition, transportation, and injection of petroleum products for storage in the Reserve. If no request for funds is made, the Secretary shall provide a written explanation of the reason therefore.

Mr. MURKOWSKI. Mr. President, this legislation should have been the easiest thing we did this Congress. The Senate passed a bill on this issue by unanimous consent three times this Congress. This bill contains nothing less than our Nation's energy security insurance policy. This bill authorizes two vital energy security measures: the Strategic Petroleum Reserve and U.S. participation in the International Energy Agency.

Both of these authorities have expired. Again, this year we have sent our soldiers to the Gulf to protect our Nation's energy security interests. We owe it to our soldiers, and the Nation's civilian consumers, to do everything we can to ensure that our energy insurance policy is in effect.

However, to ensure our Nation's energy security fully, we need more than just a simple extension of these authorities. We must change the antitrust exemption in EPCA to comply with current IEA policy. The IEA changed its emergency response policy at our request, switching from command-and-control measures to more market-oriented coordinated stockdraw procedures. However, our laws haven't kept up.

Right now, our U.S. oil companies don't have any assurance that their attempts to cooperate with the IEA and our government in a crises won't be a violation of antitrust laws. The IEA's efforts to respond to a crisis are already being critically impaired, because they can't coordinate with U.S. oil companies or even conduct exercises to prepare for an emergency. Our oil companies want to cooperate with our government and the IEA and strongly support this amendment.

For every year in recent memory, we have authorized this Act on a year-to-year basis. Every year, we face a potential crises when these authorities go unrenewed until the very end of the Congress. The provisions of this bill are not controversial. However, there are those who see any important bill as leverage.

This year, we are on the edge of a real crises. We have military activity in the Gulf, and no clear authority to respond to oil supply shortages. Playing political games with this bill has always been irresponsible; now it is downright dangerous. In the future, the only way to avoid the annual crisis is to renew EPCA for more than one year. I am disappointed that we can't do that now. But for now, we must avert the immediate crisis.

I have tried to address concerns about the future of the SPR. Like many of you, I am dismayed by the recent use of the SPR as a ''piggy bank''. In 1995, DOE proposed the sale of oil to pay for repairs and upkeep, opening the floodgates to continued sales of oil for budget-balancing purposes. So far, we've lost the American taxpayer over half a billion dollars. Buying high and selling low never makes sense. We're like the man in the old joke who was buying high and selling low who claimed that ''he would make it up on volume.'' I am pleased that we were successful in canceling the oil sale ordered by the fiscal year 1998 Interior Appropriations bill. I thank the appropriators for keeping my oil-sale cancellation amendment in the conference on the Supplemental Appropriations bill. By my calculations, we have saved the American taxpayer over $500 million. I am also pleased that the President's budget does not propose oil sales. I hope we have broken the habit of selling SPR oil forever.

We have already invested a great deal of taxpayer dollars in the SPR. We proved during the Persian Gulf War that the stabilizing effect of an SPR drawdown far outstrips the volume of oil sold. The simple fact that the SPR is available can have a calming influence on oil markets. The oil is there, waiting to dampen the effects of an energy emergency on our economy. However, if we don't ensure that there is authority to use the oil when we need it, we will have thrown those tax dollars away. So, the first step is to ensure that our emergency oil reserves are fully authorized and available.

We are talking about people's lives and jobs. The least we can do is stop holding this measure hostage to political ambition. I urge my colleagues to support the adoption of this amendment.

THOMAS AMENDMENT NO. 2401

Mr. THOMAS proposed an amendment to the amendment No. 2387 proposed by Mr. HUTCHINSON to the bill, S. 2057, supra; as follows

In the pending amendment, on page 1, strike lines 5 through page 5, line 4.

HARKIN (AND WELLSTONE) AMENDMENT NO. 2402

Mr. HARKIN (for himself and Mr. WELLSTONE) proposed an amendment to the amendment No. 2388 proposed by Mr. HUTCHINSON to the bill, S. 2057, supra; as follows

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The United States Customs Service has identified goods, wares, articles, and merchandise mined, produced, or manufactured under conditions of convict labor, forced labor, or indentured labor, in several countries.

(2) The United States Customs Service has made limited attempts to prohibit the import of products made with forced labor, resulting in only a few seizures, detention orders, fines, and criminal prosecutions.

(3) The United States Customs Service has taken 21 formal administrative actions in the form of detention orders against different products destined for the United States market, found to have been made with forced labor, including products from the People's Republic of China.

(4) However, the United States Customs Service has never formally investigated or pursued enforcement with respect to attempts to import products made with forced or indentured child labor.

(5) The United States Customs Service can use additional resources and tools to obtain the timely and in-depth verification necessary to identify and interdict products made with forced labor or indentured labor, including forced or indentured child labor, that are destined for the United States market.

(6) The International Labor Organization estimates that approximately 250,000,000 children between the ages of 5 and 14 are working in developing countries, including millions of children in bondage or otherwise forced to work for little or no pay.

(7) Congress has clearly indicated in Public Law 105–61, Treasury-Postal Service Appropriations, 1998, that forced or indentured child labor constitutes forced labor under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

SEC. 2. AUTHORIZATION FOR ADDITIONAL CUSTOMS PERSONNEL TO MONITOR THE IMPORTATION OF PRODUCTS MADE WITH FORCED OR INDENTURED LABOR.

There are authorized to be appropriated $2,000,000 for fiscal year 1999 to the United States Customs Service to monitor the importation of products made with forced labor or indentured labor, including forced or indentured child labor, the importation of which violates section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code.

SEC. 3. REPORTING REQUIREMENT ON FORCED LABOR OR INDENTURED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner of Customs shall prepare and transmit to Congress a report on products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

(1) The extent of the use of forced labor or indentured labor, including forced or indentured child labor in manufacturing or mining products destined for the United States market.

(2) The volume of products made or mined with forced labor or indentured labor, including forced or indentured child labor that is—

(A) destined for the United States market,

(B) in violation of section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, and

(C) seized by the United States Customs Service.

(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor or indentured labor, including forced or indentured child labor that are destined for the United States market.

SEC. 4. RENEGOTIATING MEMORANDA OF UNDERSTANDING ON FORCED LABOR.

It is the sense of Congress that the President should determine whether any country with which the United States has a memorandum of understanding with respect to reciprocal trade that involves goods made with forced labor or indentured labor, including forced or indentured child labor is frustrating implementation of the memorandum. If an affirmative determination be made, the President should immediately commence negotiations to replace the current memorandum of understanding with one providing for effective procedures for the monitoring of forced labor or indentured labor, including forced or indentured child labor. The memorandum of understanding should include improved procedures for requesting investigations of suspected work sites by international monitors.

SEC. 5. DEFINITION OF FORCED LABOR.

In this Act, the term ''forced labor'' means convict labor, forced labor, or indentured labor, as such terms are used in section 307 of the Tariff Act of 1930. The term includes forced or indentured child labor—

(1) that is exacted from any person under 15 years of age, either in payment for the debts of a parent, relative, or guardian, or drawn under false pretexts; and

(2) with respect to which such person is confined against the person's will.

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended by adding at the end the following new paragraph:

''For purposes of this section, forced or indentured labor includes forced or indentured child labor.''

INHOFE (AND OTHERS) AMENDMENT NO. 2403

(Ordered to lie on the table.)

Mr. INHOFE (for himself, Mr. DORGAN, Ms. SNOWE, Mr. BENNETT, Mr. SMITH of New Hampshire, Ms. COLLINS, Mr. SHELBY, Mr. SESSIONS, and Mr. HATCH) submitted an amendment intended to be proposed by them to the bill, S. 2057, supra; as follows:

At the appropriate place in Title XXVIII of the bill, insert the following:

SEC. . MODIFICATION OF LIMITATIONS ON GENERAL AUTHORITY RELATING TO BASE CLOSURES AND REALIGNMENTS.

(a) ACTIONS COVERED BY NOTICE AND WAIT PROCEDURES.—Subsection (a) of section 2687 of title 10, United States Code, is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following new paragraphs (1) and (2);

''(1) the closure of any military installation at which at least 150 civilian personnel are authorized to be employed;

''(2) any realignment with respect to a military installation if such realignment will result in an aggregate reduction in the number of civilian personnel authorized to be employed at such military installation during the fiscal year in which notice of such realignment is submitted to Congress under subsection (b) equal to or greater than—

''(A) 150 such civilian personnel; or

''(B) the number equal to 50 percent of the total number of civilian personnel authorized to be employed at such military installation at the beginning of such fiscal year; or''.

(b) AVAILABILITY OF FUNDS FOR CERTAIN PRE-CLOSURE ACTIVITIES.— Subsection (d) of the section is amended is amended by adding at the end the following:

''(3) No funds appropriated or otherwise available to the Department of Defense may be obligated or expended for the purpose of planning or carrying out a transfer of civilian or military personnel or equipment in connection with a closure of a military installation not covered by subsection (a) unless the use of funds for that purpose is specifically authorized by law.''.

(c) DEFINITIONS.—Subsection (e) of that section is amended—

(1) in paragraph (3), by inserting ''(including a consolidation)'' after ''any action''; and

(2) by adding at the end the following:

''(5) The term 'closure' includes any action to inactivate or abandon a military installation or to transfer a military installation to caretaker status.''.

SEC. . SENSE OF THE SENATE ON FURTHER ROUNDS ON BASE CLOSURES.

(a) FINDINGS.—The Senate finds that—

(1) There may be a need for further rounds of base closures, but there is no need to authorize in 1998 a new base closure commission that would not begin its work until three years from now, in 2001;

(2) While the Department of Defense has submitted a report to the Congress in response to Section 2824 of the National Defense Authorization Act for Fiscal Year 1998, that report—

(A) based its estimates of the costs and savings of previous base closure rounds on data that the General Accounting Office has described as ''inconsistent'', ''unreliable'' and ''incomplete'';

(B) failed to demonstrate that the Defense Department is working effectively to improve its ability to track base closure costs and savings resulting from the 1993 and 1995 base closure rounds, which are ongoing;

(C) modeled the savings to be achieved as a result of further base closure rounds on the 1993 and 1995 rounds, which are as yet incomplete and on which the Department's information is faulty; and

(D) projected that base closure rounds in 2001 and 2005 would not produce substantial savings until 2008, a decade after the federal government will have achieved unified budget balance, and 5 years beyond the planning period for the current congressional budget and Future Years Defense Plan;

(3) Section 2824 required that the Congressional Budget Office and the General Accounting Office review the Defense Department's report, and—

(A) The General Accounting Office stated on May 1, that ''we are now conducting our analysis to be able to report any limitations that may exist in the required level of detail. . . . [W]e are awaiting some supporting documentation from the military services to help us finish assessing the report's information.'';

(B) The Congressional Budget Office stated on May 1 that its review is ongoing, and that ''it is important that CBO take the time necessary to provide a thoughtful and accurate evaluation of DoD's report, rather than issue a preliminary and potentially inaccurate assessment.'';

(4) The Congressional Budget Office recommended that ''The Congress could consider authorizing an additional round of base closures if the Department of Defense believes that there is a surplus of military capacity after all rounds of BRAC have been carried out. That consideration, however, should follow an interval during which DoD and independent analysts examine the actual impact of the measures that have been taken thus far.''

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that:

(1) Congress should not authorize further rounds of base closures and realignments until all actions authorized by the Defense Base Closure and Realignment Act of 1990 are completed; and

(2) The Department of Defense should submit forthwith to the Congress the report required by Section 2815 of Public Law 103–337, analyzing the effects of base closures and realignments on the ability of the Armed Forces to remobilize, describing the military construction projects needed to facilitate such remobilization, and discussing the assets, such as air space, that would be difficult to reacquire in the event of such remobilization.

INHOFE (AND OTHERS) AMENDMENT NO. 2404

(Ordered to lie on the table.)

Mr. INHOFE (for himself, Mr. HUTCHINSON, Mr. ASHCROFT, Mr. BROWNBACK, and Mr. SMITH of New Hampshire) submitted an amendment intended to be proposed by them to the bill, S. 2057, supra; as follows:

In title XXVIII, insert the following:

SEC. . PROHIBITION ON CONVEYANCE OF PROPERTY AT LONG BEACH NAVAL STATION, CALIFORNIA, TO CHINA OCEAN SHIPPING COMPANY.

(a) PROHIBITION AGAINST DIRECT CONVEYANCE.—In disposing of real property in connection with the closure of Long Beach Naval Station, California, under the provisions of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), the Secretary of Defense may not convey any portion of the property (whether by sale, lease, or other method) to China Ocean Shipping Company, or any successor entity to the company.

(b) PROHIBITION AGAINST INDIRECT CONVEYANCE.—The Secretary shall impose as a condition on each conveyance of real property located at Long Beach Naval Station the requirement that the property may not be subsequently conveyed (whether by sale, lease, or other method) to China Ocean Shipping Company, or any successor entity to the company.

(c) REVERSIONARY INTEREST.—If the Secretary determines at any time that real property located at Long Beach Naval Station and conveyed under the provisions of the Defense Base Closure and Realignment Act of 1990 has been conveyed to China Ocean Shipping Company (or any successor entity to the company) in violation of subsection (b), or is otherwise being used by China Ocean Shipping Company (or any successor entity to the company) in violation of such subsection, all right, title, and interest in and to the property shall revert to the United States, and the United States shall have the right of immediate entry thereon.

FEINSTEIN (AND OTHERS) AMENDMENT NO. 2405

Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. GLENN, and Mr. BRYAN) proposed an amendment to the bill, S. 2057, supra; as follows:

At the appropriate place insert:

The Government of India conducted an underground nuclear explosion on May 18, 1974;

Since the 1974 nuclear test by the Government of India, the United States and its allies have worked extensively to prevent the further proliferation of nuclear weapons in South Asia;

On May 11, 1998, the Government of India conducted underground tests of three separate nuclear explosive devices, including a fission device, a low-yield device, and a thermo-nuclear device;

On May 13, 1998 the Government of India conducted two additional underground tests of nuclear explosive devices;

This decision by the Government of India has needlessly raised tension in the South Asia region and threatens to exacerbate the nuclear arms race in that region;

The five declared nuclear weapons states and 144 other nations have signed the Comprehensive Test Ban Treaty in hopes of putting a permanent end to nuclear testing;

The Government of India has refused to sign the Comprehensive Test Ban Treaty;

The Government of India has refused to sign the Nuclear Non-Proliferation Treaty;

India has refused to enter into a safeguards agreement with the International Atomic Energy Agency covering any of its nuclear research facilities;

The Nuclear Proliferation Act of 1994 requires the President to impose a variety of aid and trade sanctions against any non-nuclear weapons state that detonates a nuclear explosive device;

It is the sense of Senate that the Senate—

(1) Condemns in the strongest possible terms the decision of the Government of India to conduct three nuclear tests on May 11, 1998 and two nuclear tests on May 13, 1998;

(2) Supports the President's decision to carry out the provisions of the Nuclear Proliferation Prevention Act of 1994 with respect to India and invoke all sanctions therein;

(3) Calls upon the Government of India to take immediate steps to reduce tensions that this unilateral and unnecessary step has caused;

(4) Expresses its regret that this decision by the Government of India will, of necessity, set back relations between the United States and India;

(5) Urges the Government of Pakistan, the Government of the People's Republic of China, and all governments to exercise restraint in response to the Indian nuclear tests, in order to avoid further exacerbating the nuclear arms race in South Asia;

(6) Calls upon all governments in the region to take steps to prevent further proliferation of nuclear weapons and ballistic missiles;

(7) Urges the Government of India to enter into a safeguards agreement with the International Atomic energy Agency which would cover all Indian nuclear research facilities at the earliest possible time.

FEINSTEIN AMENDMENT NO. 2406

(Ordered to lie on the table.)

Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill, S. 2057, supra; as follows:

At the end of subtitle C of title V, add the following:

SEC. 531. PROHIBITION ON ENTRY INTO CORRECTIONAL FACILITIES FOR PRESENTATION OF DECORATIONS TO PERSONS WHO COMMIT CERTAIN CRIMES BEFORE PRESENTATION.

(a) PROHIBITION.—Chapter 57 of title 10, United States Code, is amended by adding at the end the following:

"§ 1132. Presentation of decorations: prohibition on entering into correctional facilities for certain presentations

"(a) PROHIBITION.—No member of the armed forces may enter into a Federal, State, or local correctional facility for purposes of presenting a decoration to a person who has been convicted of a serious violent felony.

"(b) DEFINITIONS.—In this section:

"(1) The term 'decoration' means any decoration or award that may be presented or awarded to a member of the armed forces.

"(2) The term 'serious violent felony' has the meaning given that term in section 3359(c)(2)(F) of title 18.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by adding at the end the following:

"1132. Presentation of decorations: prohibition on entering into correctional facilities for certain presentations.".

BROWNBACK (AND HARKIN) AMENDMENT NO. 2407

Mr. BROWNBACK (for himself and Mr. HARKIN) proposed an amendment to the amendment No. 2405 proposed by Mrs. FEINSTEIN to the bill, S. 2057, supra; as follows:

At the end of the amendment add the following:

SEC. 1064. REPEAL OF RESTRICTION ON CERTAIN ASSISTANCE AND OTHER TRANSFERS TO PAKISTAN.

Section 620E(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2375(e)) is repealed.

MURRAY (AND SARBANES) AMENDMENT NO. 2408

(Ordered to lie on the table.)

Mrs. MURRAY (for herself and Mr. SARBANES) submitted an amendment intended to be proposed by them to the bill, S. 2057, supra; as follows:

On page 109, below line 20, add the following:

SEC. 531. HONOR GUARD DETAILS AT FUNERALS OF VETERANS.

(a) IN GENERAL.—(1) Chapter 75 of title 10, United States Code, is amended by adding at the end the following:

"§ 1491. Honor guard details

"(a) AVAILABILITY UPON REQUEST.—The Secretaries of the military departments shall provide honor guard details at funerals of veterans of the armed forces only upon request.

"(b) MINIMUM SIZE OF DETAILS.—The Secretaries of the military departments shall ensure that honor guard details at funerals of veterans of the armed forces consist of not less than four members of the armed forces.

"(c) AVAILABILITY OF APPROPRIATIONS.—Any amounts appropriated to the Department of Defense may be used in order to meet the requirement set forth in subsection (b).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

"1491. Honor guard details.".

(b) TREATMENT OF PERFORMANCE OF HONOR GUARD FUNCTIONS BY RESERVES.—Chapter 1215 of title 10, United States Code, is amended—

(1) by striking out the following:

"[No present sections]"; and

(2) by inserting in lieu thereof the following:

"Sec.
"12551. Honor guard functions: prohibition on treatment as drill or training.

"§ 12551. Honor guard functions: prohibition on treatment as drill or training

"Any performance by a Reserve of honor guard functions at the funeral of a veteran of the armed forces may not be considered to be a period of drill or training otherwise required.".

(c) REPEAL OF LIMITATION ON AVAILABILITY OF FUNDS FOR HONOR GUARD FUNCTIONS BY NATIONAL GUARD.—Section 114 of title 32, United States Code, is amended—

(1) by striking out ''(a)''; and

(2) by striking out subsection (b).

(d) APPLICABILITY.—The amendments made by this section shall apply to burials of veterans that occur on or after the date that is 180 days after the date of enactment of this Act.

(e) REPORT ON IMPLEMENTATION.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall submit to Congress the directives prescribed by the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force in order to carry out the requirements under the amendments made by this section.

MURRAY (AND SNOWE) AMENDMENT NO. 2409

(Ordered to lie on the table.)

Mrs. MURRAY (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by them to the bill, S. 2057, supra; as follows:

At the end of title VII add the following:

SEC. 708. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES.

Section 1093 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) in subsection (a), by striking out ''(a) RESTRICTION ON USE OF FUNDS.—''.

MCCAIN (AND OTHERS) AMENDMENT NO. 2410

Mr. MCCAIN (for himself, Mr. LEVIN, and Mr. THURMOND) proposed an amendment to the bill, S. 2057, supra; as follows:

At the end of subtitle B of title VI, add the following:

SEC. 620. HARDSHIP DUTY PAY.

(a) DUTY FOR WHICH PAY AUTHORIZED.—Subsection (a) of section 305 of title 37, United States Code, is amended by striking out ''on duty at a location'' and all that follows and inserting in lieu thereof ''performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.''.

(b) REPEAL OF EXCEPTION FOR MEMBERS RECEIVING CAREER SEA PAY.—Subsection (c) of such section is repealed.

(c) CONFORMING AMENDMENTS.—(1) Subsections (b) and (d) of such section are amended by striking out ''hardship duty location pay'' and inserting in lieu thereof ''hardship duty pay''.

(2) Subsection (d) of such section is redesignated as subsection (c).

(3) The heading for such section is amended by striking out **''location''**.

(4) Section 907(d) of title 37, United States Code, is amended by striking out ''duty at a hardship duty location'' and inserting in lieu thereof ''hardship duty''.

(d) CLERICAL AMENDMENT.—The item relating to section 305 in the table of sections at the beginning of chapter 5 of such title is amended to read as follows:

''305. Special pay: hardship duty pay.''.

THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998

HATCH AMENDMENT NO. 2411

Mr. HATCH proposed an amendment to the bill (S. 2037) to amend title 17, United States Code, to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to provide limitations on copyright liability relating to material online, and for other purposes; as follows:

On page 12, line 15 strike subsection (c) and redesignate the succeeding subsections and references thereto accordingly.

On page 17, line 4, insert ''and with the intent to induce, enable, facilitate or conceal infringement'' after ''knowingly''.

On page 17, beginning on line 8, strike '', with the intent to induce, enable, facilitate or conceal infringement''.

On page 17, beginning on line 21, strike paragraph (3) and insert in lieu thereof the following:

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under this title.''.

On page 19, line 4, insert the following new paragraph and redesignate the succeeding paragraphs accordingly:

''(6) terms and conditions for use of the work;''.

On page 19, line 4, strike ''of'' and insert in lieu thereof ''or''.

NOTICE OF JOINT HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND COMMITTEE ON FOREIGN RELATIONS

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a joint hearing has been scheduled before the Committee on Energy and Natural Resources and the Committee on Foreign Relations.

The hearing will take place on Thursday, May 21, 1998, beginning at 10 a.m. in Room SD–419 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on the subject of Iraq: Are Sanctions Collapsing?

Those who wish to submit written statements should write to the Committee on Foreign Relations, United States Senate, Washington, D.C. 20510. For further information, please contact Ms. Danielle Pletka of the Foreign Relations Committee staff at (202) 224–4651 or Mr. Howard Useem of the Energy & Natural Resources Committee staff at (202) 224–6567.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, May 14, 1998, at 9 a.m. in SR–328A. The purpose of this meeting will be to examine the year 2000 computer problem compliance of the U.S. Department of Agriculture, Commodity Futures Trading Commission and Farm Credit Administration.

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

COMMITTEE ON FINANCE

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Thursday, May 14, 1998, beginning at 9:30 a.m. in room SH–215, to conduct a markup.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 14, 1998, at 10 a.m. and 1:30 p.m. to hold two hearings.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. THURMOND. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, May 14, 1998, at 2 p.m. for a business meeting and markup.

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

COMMITTEE ON THE JUDICIARY

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, May 14, 1998, at 2 p.m., in room 226 of the Senate Dirksen Office Building to hold a hearing on ''Judicial Nominations.''

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

COMMITTEE ON SMALL BUSINESS

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for a hearing nominating Fred P. Hochberg to be Deputy Administrator of the U.S. Small Business Administration. The hearing will begin at 9:30 a.m. on Thursday, May 14, 1998, in room 428A Russell Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. THURMOND. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, May 14, 1998, at 3:30 p.m. to hold closed hearing on Intelligence Matters.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. THURMOND. Mr. President, I ask unanimous consent on behalf of the Permanent Subcommittee on Investigations of the Governmental Affairs Committee to meet on Thursday, May 14, 1998, at 9:30 a.m. for a hearing on the topic of ''The Safety of Food Imports.''

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

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION

Mr. THURMOND. Mr. President, I ask unanimous consent that the Subcommittee on National Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, May 14, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2 p.m. The purpose of this hearing is to receive testimony on titles IX and X of S. 1693, the Vision 2020 National Parks Restoration Act; and S. 1614, a bill to require a permit for the making of motion picture, television program, or other form of commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System.

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

ADDITIONAL STATEMENTS

NUCLEAR TESTS CONDUCTED BY INDIA ON MONDAY, MAY 11, AND WEDNESDAY, MAY 13, 1998

● Mr. JOHNSON. Mr. President, I am deeply concerned that India conducted three underground nuclear tests in the western desert state of Rajasthan on Monday, May 11, and two additional tests at the same site on Wednesday, May 13. These tests were conducted without any advance warning to the rest of the world and are a dangerous precedent for future testing by other nations. No nation should think that it can conduct secret nuclear tests and not be held accountable for its actions. Furthermore, these tests run counter to an international campaign to pass the Comprehensive Test Ban Treaty (CTBT), of which I fully support, and are both irresponsible and unacceptable. The United States and the international community must speak out against this action and act swiftly and justly.

India, which has not signed the 1970 nonproliferation treaty, gave no advance warning about the nuclear tests on Monday and Wednesday. Indian Prime Minister Atal Bihari Vajpayee said that the explosions in the desert, 330 miles southwest of New Delhi, did not result in the release of radiation into the atmosphere. However, this is simply untrue. Nuclear explosions, even when they are conducted underground, release deadly radioactive materials into the atmosphere and water table, posing health risks for generations to come. Treating the human race and the environment with such complete disrespect is unacceptable and will not go unnoticed.

While many of India's leaders have applauded these tests, the people of India are hurt the most. India is a country of extreme poverty and all Indians will be harmed by this act. On one hand, international sanctions are imminent which will pose further economic hardship on the poorest of the poor. On the other, the radiation from these nuclear blasts has severe health impacts on all Indians including those closest to New Delhi. It was irresponsible for the leaders of India to sacrifice the economic and physical well-being of its people for a display of military might.

Moreover, countries that break international law by detonating nuclear devices are subject to denial of U.S. credits and credit guarantees.

Federal law also requires U.S. opposition to loan requests to international lending institutions and bars loans from any U.S. bank to the Indian government except those that provide food or other agricultural commodities. I will bring the issue of international sanctions and international lending up with my colleagues on the Senate Banking Committee, which overseas World Bank issues, to ensure that appropriate actions are taken with regard to countries who disregard international law and conduct nuclear tests.

India, one of several nations widely suspected of nuclear capability which has not joined the 1970 CTBT treaty, now observed by 185 countries, should be pressured to sign the treaty immediately. India's leaders acted with disregard and India must be shown that its actions are unacceptable. The United States will be forced to impose sanctions on India, and I would urge swift action on this front. Nevertheless, this irresponsible act by India should not be an impetus to step up the arms race by Pakistan. Instead, Pakistan should exercise restraint and caution while the international community imposes sanctions. In the long-term, Pakistan will benefit most by responding to this action, not with military buildup, but with a higher level of dignity and morality.

Mohandas Gandhi said, We must support friends even in their mistakes, however, it must be the friend and not the mistake we are supporting.'' India's decision to conduct nuclear tests was a mistake that was both irresponsible and unacceptable. Although I wish no ill on the people of India, the leaders of the country must accept responsibility for this mistake and the consequences that, no doubt, will follow.●

ARTHRITIS FOUNDATION'S 50TH ANNIVERSARY

● Mr. COVERDELL. Mr. President, I rise today to congratulate the Arthritis Foundation on its 50th anniversary. Since its inception in 1948, the Arthritis Foundation is stronger than ever and is forging ahead with an increased commitment to providing help and hope for those who suffer from the more than one hundred forms of arthritis and related conditions, including osteoarthritis, rheumatoid arthritis, lupus, fibromyalgia and juvenile arthritis.

Arthritis, in its various forms, is a major national health problem, affecting more than 40 million people in the United States. The Centers for Disease Control and Prevention predict that by the year 2020, arthritis prevalence will increase to 59.4 million Americans—one out of every five people, including 285,000 children.

If that is not enough, the economic impact of arthritis is significant. I have been informed that arthritis results in 39 million physician visits a year and more than half a million hospitalizations annually. Medical costs and lost productivity due to arthritis are estimated at almost $65 billion per year—approximately 1.1 percent of the gross national product.

Through it all, the Arthritis Foundation has increased public awareness and has help provide guidance for combating arthritis. The Arthritis Foundation, an Atlanta based nonprofit organization, supports research to find the cure for the prevention of arthritis and seeks to improve the quality of life for those affected by this disease. Further, the Arthritis Foundation encourages people with arthritis to seek early diagnosis and treatment, and provides programs to facilitate self-management.

The Arthritis Foundation's sponsorship of research for 50 years has resulted in major treatment advances for most types of arthritis and related conditions. The Foundation currently provides $16 million annually in grants to more than 300 researchers to help find cures, promote prevention and provide better treatments. Since its inception, the Foundation has spent more than $200 million on research while supporting more than 1,700 scientists and physicians.

The organization has informed me that they are moving toward a new era of public health activity that includes collaboration with the Centers for Disease Control and Prevention to develop the National Arthritis Action Plan. They are seeking support for the inclusion of arthritis in Healthy People 2010, the nation's strategic planning guide for health promotion and disease prevention.

The National Arthritis Action Plan will focus on such elements as defining the nature, extent and distribution of the arthritis burden; identifying modifiable risk factors; developing creative and effective public health programs and policies to reduce this burden; and implementing and coordinating these programs and policies through partnership with government, voluntary, professional, private and academic institutions and organizations.

The Arthritis Foundation also provides a large number of nationwide community-based services to make life easier and less painful. These services include self-help courses, water and land-based exercise classes, support groups, instructional videotapes, educational brochures and booklets, and continuing education courses and publications for health professionals.

In the past 50 years, the Arthritis Foundation has funded research, increased public awareness and provided needed education and services. These major contributions have placed the goal of curing and managing the impact of some forms of arthritis within a realistic reach. I congratulate the Foundation on this golden achievement and wish it continued success in the future.●

HONORING THE RETIREMENT OF DR. H. JAMES MAHAN

● Ms. MOSELEY-BRAUN. Mr. President, it is my pleasure today to take a few minutes to honor the career of a champion of public education, Dr. H. James Mahan, as he retires from the position of Superintendent of Homewood School District Number 153 in Homewood, Illinois.

For 15 years, Dr. Mahan has led Homewood School District #153 down a path of educational excellence and innovation. In 1984, the district had 1,450 students and 90 professional staff members. Today, there are 2,240 students and 180 professional staffers. During this period of expansion, Dr. Mahan worked to ensure that the quality of education in his school district improved as well.

Under his stewardship, district schools have twice been named Blue Ribbon Winners by the United States Department of Education. This success is in large part due to the sound educational principles that have been the basis of Dr. Mahan's leadership. He has developed meaningful physical improvement plans, initiated the use of the Internet and other technology as classroom tools, and he has encouraged local businesses and organizations to provide his district's students with hands-on learning experiences through internships and mentoring programs. Furthermore, Dr. Mahan has instilled in his schools the principles of fiscal prudence, good discipline and teacher development.

Dr. Mahan's commitment to public education and to the students of Homewood School District #153 are commendable and serve as a model for others to follow. I congratulate Dr. Mahan on this milestone of his career, and wish him good luck and Godspeed in all of his future endeavors.●

NATIONAL SPACE SYMPOSIUM

● Mr. ALLARD. Mr. President, I had the pleasure of participating in the 14th National Space Symposium hosted last month by the United States Space Foundation. The annual symposium was designed to display and discuss current trends in the space community, and the 1998 theme reflected what has become very significant to the development of the United States space industry: ''The Global Relevance for Space: Civil, Commercial and Military''. As the Foundation's President, Bill Knudsen, said in his remarks, ''Space is increasingly global in all aspects. The strong interrelationship between government, private industry and military space activities has created a completely new environment.''

The location of this symposium highlights the significant position of my state of Colorado in the global space business. All aspects of space thrive in Colorado; we have an extensive and growing industry and a significant military presence.

The symposium addressed several issues and opportunities with a broad international flavor, and with a focus on commercial and market concerns.

Demonstrating the interrelated nature of space activity, each of the symposium's eleven professional panels had at least one representative from the civil sector, one representing the commercial perspective and one from the national security perspective. This integrated approach produced a spirited dialog on critical space issues.

The list of participants was impressive, a few especially captured my attention. NASA Administrator Dan Goldin detailed accomplishments of the agency, announced cooperative efforts with the Air Force and substantiated the need for the International Space Station, rejecting suggestions that the Russians should be dropped from the program. Mr. Goldin also spoke to what I believe may be NASA's greatest accomplishment: increasing their productivity while reducing their budget. The NASA budget has decreased 30% since 1993, and in that same time 10 new programs and numerous partnerships have been created. In the coming era of public and private partnership in space exploration and development, NASA has established a high standard of efficiency and achievement.

The capstone panel, led by Mr. Golden, also featured General Howell Estes, Commander in Chief of NORAD and US Space Command. General Estes emphasized the marketplace as the driving force, while recognizing the necessity of a proper partnership between the private sector and government.

Robert Mallett, the Deputy Secretary of Commerce, stressed the need to recognize commercial space as the driver of a higher growth job machine in industry that will deliver prosperity and security for coming generations of Americans.

Our colleague in the House, Representative Curt Weldon, addressed national security, space and arms control concerns as he spoke passionately from his experience of working with the Russians.

I spoke about the important mission of our military to secure the use of space, and my perspective as a member of the Senate Intelligence Committee on space implications for national security. I believe that the private and public sector must work together to ensure that the United States is the first and best in space. I support legislation in Congress to encourage commercialization of space, and in particular have been supportive of the efforts of our Colorado companies that plan to operate remote-sensing satellites that will offer unique high-resolution satellite photos.

In addition to the panels, more than sixty exhibitors displayed the latest in space technology at this international conference. The Foundation honored exceptional achievement in space activities, recognizing NASA's Jet Propulsion Laboratory for their public outreach efforts associated with last summer's remarkable Pathfinder Mission, and the career of space leadership of General Thomas S. Moorman, Jr. USAF (ret.), the former vice chief of staff of the Air Force.

General Estes and others from the Space Command laid out the future of military space with the unveiling at the symposium of their Long Range Plan. Two technologies were inducted into the Space Technology Hall of Fame, the Global Positioning System and Temper Foam, a NASA Ames Research Center technology used in medical and recreational applications. The Hall of Fame marketed its 10th anniversary of honoring technologies originally developed for the space program and later adapted to benefit others here on Earth.

The symposium's sponsor, the United States Foundation, is a national nonprofit organization with headquarters in Colorado Springs. The Foundation's mission it to aggressively advance civil, commercial and national security space endeavors for a brighter future and to provide and support educational excellence through the excitement of space. The Foundation should be commended for this symposium and for their other important projects, such as the Mission HOME program, a public awareness campaign for the space community, and Space Discovery graduate courses and teacher education opportunities.

This annual event has grown considerably in the past few years, and I expect it to continue growing in scope and significance. I am already looking forward to next April and the 15th Annual National Space Symposium.●

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998—AMENDMENT NO. 2397

● Mr. DODD. Is it the intention of the sponsor of amendment No. 2397 to the Securities Litigation Uniform Standards Act that it should apply solely to States, their political subdivisions, and their pension plans?

Mr. SARBANES. Yes.

Mr. DODD. And is it the Senator's intention that the amendment not be used by plaintiff's lawyers to piggyback class action suits onto suits brought by the entities mentioned in the amendment?

Mr. SARBANES. That is correct.●

HELEN LUCILE WULFMEYER

● Mr. ROBERTS. Mr. President, I rise to recognize a life-long Kansas native, Lucile Wulfmeyer, who passed away on May 11, 1997. Her memorial service at First Presbyterian Church included the following remembrance of Lucile, written by her elder daughter, Roberta Doerges:

My earliest memories of mother and my family roots seem to materialize in the home she purchased at 316 S. Bluff. Here, I remember a formal dining room converted to a family room; learning to ride my first bicycle; and meeting the man who would later become my father: Lawrence Wulfmeyer. What come before all of that dims in childhood lost, but along with Marian's ''I wuv you, Wawrance,'' and my manipulative acts to prevent my mother's dating, I remember an abundance of motherly patience and forbearance. The nearly four years between my father, Francis Chambers' death, and my mothers' union of 37 years to Lawrence, set the stage for revealing my mother's life of service.

Today's stories might have described a woman with 18-month-old and not-quite-three-year-old daughters as capitulating to welfare, but not so for our mother. A woman wise beyond her decade, she returned to work at Wichita's McConnell AFB and managed to provide her daughters with a live-in housekeeper, as well as financial support. I have always marveled at her courage to do this: a ''woman's libber'' before her time, working in a predominately male field, and providing two young daughters with love and sustenance.

Knowing that she needed companionship, and a helpmate to raise these little girls, Lucile married again in October of 1959. Lawrence's Brownie camera recorded two little girls, dressed identically, and participating in the celebration of their parents' union and a new father. A new home in East Wichita, and a new family life ensued.

Always a large part of the family picture was First Presbyterian Church: group calling on prospective new members, UPY meetings and youth choir through junior and senior high school years. Even the conception and realization of the Wulfmeyer ''Dream Home'' in Clearwater did not dim that emphasis. Many a Lucckock Class picnic, or a Brown Sunday School Class open house was held at the home in Clearwater, dubbed ''Spring Creek Acres,'' and the seat of so many collective family memories.

Mother's life of service continued through all of those years. Whether creating musical programs for Marian, Roberta and Lucile to perform, or lovingly constructing costumes to enhance them; whether taxiing busy daughters to endless high school extracurricular activities, or typing term papers at 7:30 am (at 120 words per minutes proficiency, this was one skill that was too tempting for at least her elder daughter to overlook taking advantage of!) Reading and correcting school papers, assisting with college choices, consoling unrequited crushes—no act was too demeaning for Mother. Her creative juices seemed endless; her power to be supportive was astonishing; her innovation was impressive. (To this day, I owe my own extensive and find vocabulary to her love of literature, and the ingenious idea during our late high school years to put a ''new'' vocabulary word on the table daily, at breakfast. The challenge was not only to learn its meaning, but, by dinner time, to be able to use it correctly in conversation.)

My mother's ability to teach and instill was amazing. I never remember learning the 23rd Psalm or the Lord's Prayer. These were repeated to us as babies, following our father's death, and were as much a part of our essence as eating or speaking. The faith which she instilled in us was invaluable: the unswerving foundation of a God who loves us, in spite of any adversity.

Mother's ability to teach also shows through in her three grandchildren: Autumn's love of art; Lauren's organizational skills, service inclinations, and musical interests; Kyle's appreciation of theater . . . all of these are owed in great part to a grandmother who took the time of summer visits to send grandchildren to art classes, or escort them to Wichita Music Theater. That love and those lessons will last a lifetime.

Small wonder that Lucile had already begun a life of service as a young woman. Her father died when she was seventeen. She assisted her mother through years of illnesses, operations at Mayo, bitterness over poor health, and tender care in her elder years. This attitude of service also include care for her elderly father-in-law, Sidney Chambers, and for Lawrence's mother, Clara. Her love and service seemingly knew no bounds.

Those who loved Lucile will remember her devotion to protocol, her gracious way of living, and her love of family. They will remember her acute appreciation of the fine arts; her gifts of writing prose and poetry; her love of reading and of books, her fascination with history (especially through the D.A.R.), and her delight in the unique (how many American ''witches'' do you know)? She will be remembered for her life of service to her family and her church; and her appreciation of God's divine purpose.

While recent months may have seemingly robber her of many of the things which she appreciated most, her inability to enjoy those things completely made all of us who visited and loved her, acutely aware of all those finer appreciations which she enjoyed and instilled in others.

She was greatly loved, and will be greatly missed. ''Well done, thou good and faithful servant.''●

GENERAL CLIFTON B. CATES, USMC

● Mr. FRIST. Mr. President, I come to the Senate floor today to ask that my colleagues join with me in paying tribute to the 19th Commandant of the Marine Corps, General Clifton B. Cates. I am confident the Senate will grant approval to express a Sense of the Congress that the next LPD–17 amphibious vessel be named in General Cates' honor.

General Cates was a native of Tennessee, born in Tiptonville, and later educated at the University of Tennessee earning a Bachelor of Laws degree. He was Commissioned a second lieutenant on June 13, 1917. General Cates had a remarkable career that took him to battles defending American interests around the globe. The then-Lieutenant Cates demonstrated his dedication to duty in such legendary battles as Belleau Wood and Verdun where he won the Navy Cross and two Silver Star medals.

During WW II, General Cates commanded the 1st Marine Regiment's landing in Guadalcanal and later was the Commander of the Fourth Marine Division in the Marianas operation. General Cates fought in Tinian and perhaps the most famous of Marine Corps clashes, the seizure of Iwo Jima. The valor demonstrated by the General in all of these hard fought battles continues to be an example for young Marines deployed around the world today.

General Cates died at age 76 in June of 1970 after an extremely distinguished and long career. It is only appropriate that the Congress express its desire to have the Secretary of the Navy bestow the honor of naming a vessel for General Cates.●

TRIBUTE TO KORTNEY SHERBINE

● Mr. HOLLINGS. Mr. President, I rise today in tribute to one of our nation's fine young students, Ms. Kortney Sherbine of Cheraw, South Carolina. She has been named the South Carolina state winner in The Citizens Flag Alliance Essay Contest. Her essay, ''The American Flag Protection Amendment: A Right of the People . . . the Right Thing to Do'', is a thoughtful paean to our Nation's banner. I ask that it be printed in the RECORD.

The essay follows:

THE AMERICAN FLAG PROTECTION AMENDMENT: A RIGHT OF THE PEOPLE . . . THE RIGHT THING TO DO

(By Kortney Beth Sherbine)

It is my profound and adamant belief that an American Flag-Protection Amendment must be enacted to unequivocally ensure America's survival as a thriving, democratic nation. The significance of our beloved flag is best immortalized through America's heroic and valorous history. From the moment of our country's inception, the flag has served as an inspiration and motivation during times of exaltation as well as tribulation. All Americans should be moved to tears as they see Old Glory through Francis Scott Key's eyes as he peered anxiously from a British prison ship during the War of 1812 (World Book, 238). As he drifted in the Baltimore Harbor, the sole affirmation of America's surviving liberty waved highly in air. As he witnessed the perseverance of our flag, he realized our nation was destined for greatness.

In addition, our flag's sacredness was poignantly displayed at Libby's Prison where soldiers cut our banner in twenty-two pieces saving it from desecration at the hands of the Confederates (Krythe, 17). Subsequently, the American people will never forget the powerful image of five marines and one corpsman planting the Stars and Bars at Iwo Jima. These aforementioned tributes to Old Glory should touch the very core of our identity as American citizens. The planting of the American flag throughout history has carved our role as the great defender of democracy.

For over two hundred years, the flag has been the most honorable, tangible shrine to freedom the people of the world have witnessed. It is a beacon of hope and light for the oppressed and downtrodden. The American flag is as necessary and integral a part of our patriotism as God and family. It is a symbol of the turmoil our nation conquered to become a superpower today.

No action can be more disheartening and devastating to a true American than seeing one of our own deface and desecrate our most precious symbol of liberty. Throughout the span of time, our fallen heroes have paid the ultimate debt for our freedoms and rights. These great patriots sacrificed their very

lives for the values and unalienable privileges that Old Glory emulates. How dare our countrymen have the vile audacity to dishonor the memories of our veterans and our hallowed history? Captain William Driver reflected the true American spirit as he proclaimed, ''Thank God! I lived to raise Old Glory . . . I am now ready to die and go to my forefathers'' (Adams, 26).

The media shows day after day how American citizens cling to the philosophy of basic human rights in a democratic society. We should hold the Stars and Stripes, the cloak of our very freedom, dear to our hearts with an equal conviction. Charles W. Stewart laced this concept with eloquence as he reflected, ''The Stars and Stripes is our sign of national sovereignty and unity. It is a symbol of the Constitution as the cross is a symbol of Christianity'' (Krythe, 26). We should value our flag's worth as we value our very existence in this grand nation.

In 1989, our Supreme Court, through Texas v. Johnson, invalidated the flag-protection laws in 48 states and the District of Columbia (CFA, 3). Currently, five national surveys show that 80 percent of Americans support a flag-protection amendment (CFA, 1). A government should conform to the wishes of the majority of its citizens. Our forefathers were indeed wise as they anticipated the changing needs and demands of future generations. They set forth two possible routes for amendments. Firstly, two-thirds of the state legislatures may call a convention for the proposing of amendments. In addition, two-thirds of the Senate and House can propose an amendment (Ritchie, 59). This wisely crafted system of checks and balances has truly kept our country operated by its citizens.

Among many basic rights, the first amendment of our Constitution prohibits the government from restricting freedom of speech (Ritchie, 65). An American's right to speak out for one's beliefs was born in the colonial era and has remained a unique component of our nation thereafter. The Supreme Court has grossly contorted the intention of this freedom and has made a mockery of it for the world to scorn. Freedoms must have limitations for humans to live in harmony. If no boundaries are enforced, chaos will certainly ensue. The ''clear and present'' danger system of limiting freedoms should extend to desecrating the flag (Ritchie, 67). Consequently, when 80% of Americans are extremely offended by the defacing of our most treasured symbols, the possibility for clear and present danger is imminent and inevitable.

Vital steps do exist to allow the American people to have a voice concerning the preserving of Old Glory. Laws should reflect the feelings of the majority, not the whims of a minority. A democracy is a government of action. Inaction does not hold a place in our thriving nation. Many steps can be taken by citizens to make positive changes in our government. It is an American's right to contact members of congress, contact the news media, write an editorial, talk via radio, and circulate petitions and materials to show support for his cause (CFA 1). Every true believer in the United States of America should take these steps to save and preserve our beloved flag.

If we want our great, democratic nation to survive, then we must save the banner of our triumphs and freedoms. If our symbol of freedom is destroyed, then our nation will surely follow. By losing respect for our American flag, we ultimately sacrifice the right to refer to ourselves as ''The land of the free and the home of the brave.'' In essence, we would merely reduce ourselves to ''The land of the ungrateful and the home of the misguided.'' Why worry about foreign nations stealing our freedoms when we are perfectly willing to sacrifice them free of charge? We must protect our Stars and Bars as adamantly as we fight for our very rights to life, liberty and the pursuit of happiness.

A wise President, Calvin Coolidge, summarized the necessity of our respect for the flag as he urged, ''It will be futile merely to show outward respect of our National Emblem if we do not cherish in our hearts, an unquenchable love for, and devotion to, the unseen which it represents'' (Adams, 30) Seeing our flag flutter majestically in the air should move every American to tears. We should be inspired to be profoundly grateful for the great human sacrifices that have provided us with a rare nation; a nation where all citizens, regardless of race, sex, religion, or wealth have the right to pursue their dreams and reach for the ''stars''.

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APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore and upon the recommendation of the Majority Leader, pursuant to P.L. 103–227, appoints the following individuals to the National Skill Standards Board: Jon A. Reeves, of Mississippi, Representative of Business; Ronald K. Robinson, of Mississippi, Representative of Labor; and Earline N. Ashley, of Mississippi, Representative of Human Resources.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the Senator from Arkansas (Mr. HUTCHINSON) as a member of the Senate Delegation to the North Atlantic Assembly during the Second Session of the 105th Congress, to be held in Barcelona, Spain, May 22–27, 1998.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Calendar Nos. 560, 561, 598 and 599. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

Paul J. Hoeper, of California, to be an Assistant Secretary of the Army.

Sue Bailey, of Maryland, to be an Assistant Secretary of Defense.

THE JUDICIARY

William P. Dimitrouleas, of Florida, to be United States District Judge for the Southern District of Florida.

Stephen P. Mickle, of Florida, to be United States District Judge for the Northern District of Florida.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORDERS FOR FRIDAY, MAY 15, 1998

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, May 15th. I further ask unanimous consent that on Friday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 12 noon, with Senators permitted to speak for up to 5 minutes each.

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

Mr. KEMPTHORNE. I further ask unanimous consent that at 12 noon on Monday, May 18, the Senate proceed to consideration of S. 1723, the Abraham immigration legislation under the consent agreement of May 13.

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

PROGRAM

Mr. KEMPTHORNE. Mr. President, for the information of all Senators, tomorrow morning at 9:30 a.m. the Senate will be in a period of morning business until 12 noon. As a reminder, there will be no votes during Friday's session. A cloture motion was filed today on the motion to proceed to the tobacco legislation. That vote will occur on Monday at a time to be determined by the two leaders, but not prior to 5 p.m.

Also, at noon on Monday, the Senate will begin consideration of S. 1723, the Abraham immigration legislation. Therefore, Members can expect a roll-call vote on cloture and additional votes with respect to the immigration legislation Monday evening.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. KEMPTHORNE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous

consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:41 p.m., adjourned until Friday, May 15, 1998, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 14, 1998:

DEPARTMENT OF DEFENSE

PAUL J. HOEPER, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF THE ARMY.

SUE BAILEY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

WILLIAM P. DIMITROULEAS, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.

STEPHAN P. MICKLE, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA.