

and the business direct loan financing account would thereby exceed \$750,000.

“(ii) EXCEPTION.—A loan may not be made to a borrower under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund, the business guaranty loan financing account, and the business direct loan financing account would thereby exceed \$1,000,000.

“(E) ADMINISTRATION PARTICIPATION.—Notwithstanding paragraph (2)(A), in an agreement to participate in a loan under this paragraph, participation by the Administration shall not exceed—

“(i) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance exceeds \$100,000;

“(ii) 90 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance is less than or equal to \$100,000; and

“(iii) notwithstanding clauses (i) and (ii), in any case in which the subject loan is processed in accordance with the requirements applicable to the SBAExpress Pilot Program, 50 percent of the balance outstanding at the time of disbursement of the loan.

“(F) PERIODIC REVIEWS.—The Inspector General of the Administration shall periodically review a representative sample of loans guaranteed under this paragraph to mitigate the risk of fraud and ensure the safety and soundness of the loan program.

“(G) ANNUAL REPORT.—The Administration shall annually submit to the Committees on Small Business of the House of Representatives and the Senate a report on the results of the program carried out under this paragraph during the preceding 12-month period, which shall include information relating to—

“(i) the total number of loans guaranteed under this paragraph;

“(ii) with respect to each loan guaranteed under this paragraph—

“(I) the amount of the loan;

“(II) the geographic location of the borrower; and

“(III) whether the loan was made to repair or replace information technology and other automated systems or to remedy an economic injury; and

“(iii) the total number of eligible lenders participating in the program.”

(b) GUIDELINES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue guidelines to carry out the program under section 7(a)(27) of the Small Business Act, as added by this section.

(2) REQUIREMENTS.—Except to the extent that it would be inconsistent with this section or section 7(a)(27) of the Small Business Act, as added by this section, the guidelines issued under this subsection shall, with respect to the loan program established under section 7(a)(27) of the Small Business Act, as added by this section—

(A) provide maximum flexibility in the establishment of terms and conditions of loans originated under the loan program so that such loans may be structured in a manner that enhances the ability of the applicant to repay the debt;

(B) if appropriate to facilitate repayment, establish a moratorium on principal payments under the loan program for up to 1 year beginning on the date of the origination of the loan;

(C) provide that any reasonable doubts regarding a loan applicant's ability to service the debt be resolved in favor of the loan applicant; and

(D) authorize an eligible lender (as defined in section 7(a)(27)(A) of the Small Business Act, as added by this section) to process a loan under the loan program in accordance with the requirements applicable to loans originated under another loan program established pursuant to section 7(a) of the Small Business Act (including the general business loan program, the Preferred Lender Program, the Certified Lender Program, the Low Documentation Loan Program, and the SBAExpress Pilot Program), if—

(i) the eligible lender is eligible to participate in such other loan program; and

(ii) the terms of the loan, including the principal amount of the loan, are consistent with the requirements applicable to loans originated under such other loan program.

(c) REPEAL.—Effective on December 31, 2000, this section and the amendments made by this section are repealed.

Mr. BENNETT. Mr. President, I move to reconsider the vote.

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 Vermont is recognized.

Mr. LEAHY. I ask unanimous consent for 7 minutes as in morning business.

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

RESTRAINING CONGRESSIONAL IMPULSE TO FEDERALIZE MORE LOCAL CRIME LAWS

Mr. LEAHY. Mr. President, every Congress in which I have served—I have served here since 1975—has focused significant attention on crime legislation. It doesn't make any difference which party controls the White House or either House of Congress, the opportunity to make our mark on the criminal law has been irresistible. In fact, more than a quarter of all the Federal criminal provisions enacted since the Civil War—a quarter of all Federal criminal provisions since the Civil War—have been enacted in the 16 years since 1980, more than 40 percent of those laws have been created since 1970.

In fact, at this point the total number is too high to count. Last month, a task force headed by former Attorney General Edwin Meese and organized by the American Bar Association released a comprehensive report. The best the task force could do was estimate the Federal crimes to be over 3,300. Even that doesn't count the nearly 10,000 Federal regulations authorized by Congress that carry some sort of sanction.

I have become increasingly concerned about the seemingly uncontrollable impulse to react to the latest headline-grabbing criminal caper with a new Federal prohibition. I have to admit, I supported some of the initiatives. Usually, the expansion of Federal authority by the creation of a new Federal crime is only incremental. Some crime proposals, however, are more

sweeping, and they invite Federal enforcement authority into entirely new areas traditionally handled by State and local law enforcement.

In the last Congress, for example, the majority on the Senate Judiciary Committee reported to the Senate a juvenile crime bill that would have granted Federal prosecutors broad new authority to investigate and prosecute Federal crimes committed by juveniles—crimes now normally deferred to the State. In addition, it would have compelled the States to revise the manner in which they dealt with juvenile crime, overridden all the State legislatures and told them to comport with a host of new Federal mandates. I strenuously opposed this legislation on federalism and other grounds.

Even the Chief Justice of the U.S. Supreme Court went out of his way in his 1997 Year-End Report of the Federal Judiciary to caution against “legislation pending in Congress to ‘federalize’ certain juvenile crimes.” The Meese Task Force also cites this legislation “as an example of enhanced Federal attention where the need is neither apparent nor demonstrated.”

The Meese Task Force report chided Congress for its indiscriminate passage of new Federal crimes wholly duplicative of existing State crimes. This Task Force was told by a number of people that these new Federal laws are passed not because they were needed “but because Federal crime legislation in general is thought to be politically popular. Put another way, it is not considered politically wise to vote against crime legislation, even if it is misguided, unnecessary, and even harmful.” We all appreciate the hard truth in this observation.

While the juvenile crime bill was not enacted, we have not always generated such restraint. The Meese Task Force examined a number of other Federal crimes, such as drive-by shooting, interstate domestic violence, murder committed by prison escapees, and others, that encroach on criminal activity traditionally handled by the States—almost reaching the point that jaywalking in a suburban subdivision could become a Federal crime because that street may lead to a State road which may lead to a Federal road. You see where we are going. The Task Force found that federal prosecution of those traditional State crimes was minimal or nonexistent. Given the dearth of Federal enforcement, one is tempted to conclude that maybe the Federal laws do not encroach and that any harm to State authority from passage of these laws is similarly minimal. But the task force debunks the notion that federalization is “cost-free.”

Federalizing criminal activity already covered by State criminal laws that are adequately enforced by State or local law enforcement authorities

raises three significant concerns, even if the Federal enforcement authority is not exercised.

First, dormant Federal criminal laws may be revived at the whim of a federal prosecutor. Even the appearance—let alone the actual practice—of selectively bringing Federal prosecutions against certain individuals whose conduct also violates State laws, and the imposition of disparate Federal and State sentences for essentially the same underlying criminal conduct, offends our notions of fundamental fairness and undermines respect for the entire criminal justice system. The Task Force criticizes the “expansive amount of unprincipled overlap in which very large amounts of conduct are susceptible to selection for prosecution as either federal or state crime is intolerable.”

Second, every new Federal crime results in an expansion of Federal law enforcement jurisdiction and further concentration of policing power in the Federal government. Americans naturally distrust such concentrations of power. That is the policy underlying our posse comitatus law prohibiting the military from participating in general law enforcement activities. According to the Task Force, Federal law enforcement personnel have grown a staggering 96 percent from 1982 to 1993 compared to a growth rate of less than half that for State personnel. The Task Force correctly notes in the report that:

Enactment of each new federal crime bestows new federal investigative power on federal agencies, broadening their power to intrude into individual lives. Expansion of federal jurisdiction also creates the opportunity for greater collection and maintenance of data at the federal level in an era when various databases are computerized and linked.

Finally, and most significantly, Federal prosecutors are simply not as accountable as a local prosecutor to the people of a particular town, county or State. I was privileged to serve as a State's Attorney in Vermont for eight years, and went before the people of Chittenden County for election four times. They had the opportunity at every election to let me know what they thought of the job I was doing.

By contrast, Federal prosecutors are appointed by the President and confirmed by the Senate, only two Members of which represent the people who actually reside within the jurisdiction of any particular U.S. Attorney. Federalizing otherwise local crime not only establishes a national standard for particular conduct but also allows enforcement by a Federal prosecutor, who is not directly accountable to the people against whom the law is being enforced. The Task Force warns that the “diminution of local autonomy inherent in the imposition of national standards, without regard to local community values and without regard to

any noticeable benefits, requires cautious legislative assessment.”

Distrust and dismay at the exercise of Federal police power fueled the public outcry at the tragic endings of the stand-offs with Federal law enforcement authorities at Ruby Ridge in 1992 and at Waco in 1993. I participated in the Judiciary Committee oversight hearings into those incidents, and was struck that both of those standoffs were sparked by enforcement of Federal gun laws. The regulation of firearms is a subject with extraordinary variance among the States and requires great sensitivity and accountability to local mores.

Vermont has virtually no gun laws, and we also have one of the lowest crime rates in the country, but our laws reflect our needs. We should be very careful not just about federalizing a prohibition that already exists at most State levels, but also creating a Federal criminal prohibition where none exists at the State level, like mine.

Proposals to create new Federal crimes that run roughshod over highly sensitive public policy choices normally decided at the local level prompt significant concern over Federal overreaching and the exercise of Federal police power. For example, the majority on the Judiciary Committee reported in the last Congress a bill that would have made it a Federal crime to travel with a minor across State lines to get an abortion without complying with the parental consent law of the minor's home State. This law, if enacted, would invite Federal prosecutors to investigate and prosecute the violation of one State's parental consent law even if neither State would subject the conduct to criminal sanction. Establishing a national standard through creation of a new Federal crime to deal with conduct that the States have addressed in a different manner is a dangerous usurpation of local authority.

The death penalty is a good example. Congress has increasingly passed Federal criminal laws carrying the death penalty, even though twelve States, including Vermont, and the District of Columbia have declined to adopt the death penalty. Federal prosecutors in those States are free, with the Attorney General's approval, to buck the State's decision and seek the death penalty in certain Federal cases which have resulted in murder—for which every State has overlapping jurisdiction. In Vermont, for example, we are for the first time confronting a Federal death penalty case. These cases always present facts that could have been prosecuted by the State, and often involve high-profile cases that have generated press attention.

In the aftermath of a heinous murder, the public may cry out for blood vengeance. But the considered judgment of the State against the death penalty should not be easily bypassed,

and Federal prosecutors should not be encouraged to find some basis for the exercise of Federal jurisdiction merely to be able to seek the death penalty.

The Task Force report concludes with a “fundamental plea” to legislators and members of the public alike “to think carefully about the risks of excessive federalization of the criminal law and to have these risks clearly in mind when considering any proposal to enact new federal criminal laws and to add more resources and personnel to federal law enforcement agencies.” This is a plea I commend to all Senators as we return to the business of legislating and are asked to consider any number of crime proposals in this Congress.

Mr. President, I urge Senators to think very carefully. We should not feel that the only way we show that we are against crime is to suddenly federalize all crimes and basically tell our State legislatures, our State law enforcement, our State prosecutors that they are insignificant. Let us resist that impulse. Maybe we can pass a resolution saying that all Senators are opposed to crime—as we are. But let the States do what they do best.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah is recognized to make a motion to recess the Senate.

RECESS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now stand in recess until the hour of 2:15 today in order for Members to attend a confidential briefing in room S. 407 of the Capitol, and this briefing is in respect to the Y2K event.

There being no objection, the Senate, at 10:58 a.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to speak as in morning business.

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

TEXAS INDEPENDENCE DAY

Mrs. HUTCHISON. Mr. President, I rise today to talk about a point of important history in our Nation; that is, to commemorate this day 163 years ago, Texas Independence Day.

Each year, I look forward to March 2nd. This is a special day for Texans, a day that fills our hearts with pride. On this day 163 years ago, a solemn convention of 54 men, including my great, great grandfather Charles S. Taylor, met in the small settlement of Washington-on-the-Brazos. There they signed the Texas Declaration of Independence. The declaration stated: