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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 102<sup>d</sup> CONGRESS, FIRST SESSION

## SENATE—Thursday, October 17, 1991

(Legislative day of Thursday, September 19, 1991)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Honorable PAUL SIMON, a Senator from the State of Illinois.

### PRAYER

The chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Let us devote a moment of silent prayer for the recovery of Dave Marcos, assistant executive clerk, who has suffered a heart attack.

*Bless the Lord, O my soul; and all that is within me, bless his holy name. Bless the Lord, O my soul, and forget not all his benefits: Who forgiveth all thine iniquities; who healeth all thy diseases; Who redeemeth thy life from destruction; who crowneth thee with lovingkindness and tender mercies \* \* \*—Psalm 103:1-4.*

Gracious God, our heavenly Father, we pray for a special visitation of healing love—not only in the Senate but in the Nation. These last few days have left many deep wounds—not just Professor Hill and Judge Thomas, but many in the Senate and among the people. Your Word declares, "If any man offend not in word, the same is a perfect man. \* \* \*" None of us is perfect, and words spoken out of deep emotions often hurt deeply. In love may those wounds be healed. May forgiveness be sought and given. Bind us together, Lord, bind us together in love.

In His name who is love incarnate. Amen.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, October 17, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable PAUL SIMON, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. SIMON thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADERSHIP TIME

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

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### THE JOURNAL

Mr. MITCHELL. Mr. President, am I correct in my understanding that under the previous order the Journal has also been approved?

The ACTING PRESIDENT pro tempore. The leader is correct.

### SCHEDULE

Mr. MITCHELL. Mr. President and Members of the Senate, this morning there will be a period of morning business not to extend beyond 12:30 p.m. Five Senators are to be recognized to address the Senate for specific times under a previous order. At 12:30 p.m. today, the Senate will vote on a motion to invoke cloture on the motion to proceed to S. 596, the Federal Facilities Compliance Act. If cloture is invoked, I hope that we will then be able to adopt the motion to proceed and begin consideration of the bill and any possible amendments to that bill.

Therefore, following the cloture vote, if cloture is invoked, and if we are able to proceed to the bill, Senators should be aware that other votes will be possible on various amendments to the bill.

### THE FEDERAL FACILITIES COMPLIANCE ACT

Mr. MITCHELL. Mr. President, I would like to speak just briefly about the Federal Facilities Compliance Act since it is a measure of which I am the author.

Most Americans today would be shocked to learn that the Federal Government is not subject to the same enforcement of environmental laws which the Federal Government imposes on others, yet that is the case. Although I believe the law is clearly to the contrary, some courts have held that the Federal Government is not subject to the same laws which it imposes on others. I believe those court decisions to be incorrect. But it is now imperative that legislation be adopted to make that clear beyond any doubt.

I am very sorry to say that the Bush administration opposes this legislation, and I am very sorry to say that our Republican colleagues have refused to permit us to even bring up the legislation and have required that we proceed to invoke cloture on a motion to proceed to the bill. I regret that very much.

I encourage all Senators to vote for the cloture motion on the motion to proceed so that we can begin consideration of this bill. If the administration, or if some Senator does not like a particular provision of the bill, then, of course, he or she has the perfect right to offer amendments to change those provisions or to modify or improve them in any way that the Senator feels appropriate. But to simply say that we cannot even consider a bill which has such a straightforward and, I believe, appropriate objective is most regrettable.

So, Mr. President, all of those Senators who represent States in which there are Federal facilities located—and I think that is most States—ought to be aware that the citizens of those States ought to have the right to demand that those Federal facilities comply with the laws which apply to all other citizens in our society, which

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

apply to private businesses, private individuals, State and local governments, and other entities.

That is the essence of this bill. It is an important bill. It affects the lives of millions of Americans, particularly those who live near Federal facilities which, unfortunately, have a long and sorry record of compliance with those laws. So I hope that my colleagues will join me in voting for cloture on the motion to proceed and then in supporting the bill once it is brought to the floor for a vote.

Mr. DURENBERGER. Will the leader yield?

Mr. MITCHELL. Yes, I certainly will.

Mr. DURENBERGER. Mr. President, despite occasional appearances to the contrary, the majority leader is a very patient person, and I rise only to clarify that if there was any implication all Republicans were standing in the way of this bill, a number of people on this side of the aisle have at various times supported the majority leader's efforts to get this bill passed. At various times the House counterpart was hung on the Department of Energy bill, making that very difficult to pass through here.

So I say to my colleagues, certainly on the Republican side of the aisle, that there have always been objections from the administration to this bill. The majority leader and those of us who have supported him in this effort have worked very patiently, as the majority leader is working right this minute, to bring this bill to the floor with agreed-upon amendments. I think right now the burden is on the administration, not on the majority leader, the author of this bill, to deal with the final roadblocks that are in the way so that everyone in the body can vote for cloture and can vote this bill out of here this afternoon.

Mr. MITCHELL. Mr. President, I want to make clear I did not intend that implication, and I thank my colleague for his statement and clarification. The bill has more than 50 cosponsors including several Republican Senators. The problem has been, frankly, the administration's objections and foot-dragging. We have been at this bill for several years. It has passed the House three times by overwhelming margins, been reported twice out of the Senate Committee on Environment and Public Works by, I believe, a unanimous vote, the last time being 5 or 6 months ago, at which time I was asked specifically by the Senator from Minnesota, the senior Senator from Virginia, and others, if I would withhold bringing the bill to the floor for a period of time—and we discussed it for about a month or so—to permit discussions with the administration to see if we could resolve the matter.

I agreed. Not only did I hold it back for a month, but I held it back for almost 6 months. But I am sorry to say,

Mr. President, that the administration has largely stonewalled the effort. Only now, at the very last minute—it is very clear only because I have now insisted bringing the bill to the floor—it is coming forward through other Senators as their spokesman to say maybe we ought to have this or that changed. Their discussions so far have effectively been stonewalling. Their proposals have been whatever one knew was unacceptable and had been deemed unacceptable over a period of many years before.

So I hope we can get the bill passed. I hope and expect that it will be with substantial Republican support because many Republican Senators are cosponsors of this bill. Every Republican Senator on the Environment and Public Works voted for the bill in the committee.

I hope we are going to be able to pass this bill at an early time, possibly today, or if not, as soon as all of the various amendments are considered.

I thank my colleague for his comments, and for his valuable help and support on this important legislation.

I yield the floor.

#### MORNING BUSINESS

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

The Senator from Pennsylvania [Mr. WOFFORD] is recognized for up to 20 minutes.

#### A RIGHT, NOT A PRIVILEGE: MEETING THE CHALLENGE OF AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Mr. WOFFORD. Mr. President, back in his 1960 campaign, John Kennedy used to say, "My opponent tells you we never had it so good; I say we can do better."

Thirty years later that same choice faces America. But today the crisis that most threatens our future is not in some faraway place—not in Moscow, or Havana, or Berlin—but right here at home. That crisis is as near as the closest doctor's office. It is as frightening as a child's cry of pain.

It is a health care crisis that is bankrupting our families, our businesses, our communities and our whole economy. And the solution is not to be satisfied with things as they are, but to work and fight for change.

There is an old saying that if you have your health, you have got just about everything. But in our country today, it would be more accurate to say, if you need health care, you stand to lose just about everything.

Some people seem to think we have a pretty good health care system as it is. I disagree.

They should listen to the people I have been listening to. They tell a dif-

ferent story. They cannot wait while this administration decides if they should do something to make health care more affordable and available.

On a visit to Philadelphia's Methodist Hospital recently, I spoke with a young woman in a wheelchair named Linda Sherk. She is a 24-year-old Lancaster resident who dropped her insurance coverage because she could no longer afford it. She had to wait a year and a half to have a disc removed from her back so that she could save up enough money for the operation. Instituting national health insurance "is something that needs to be done," she told me. "A lot of people can't afford health care now."

What would this administration say to Linda Sherk? Almost 2 years ago in his State of the Union Address, the President pledged that his Domestic Policy Council would put forward a health care plan. We are still waiting.

And now the latest we hear from the White House is that we cannot have a health care plan until after the next Presidential election. What is the message to the millions of Americans who lie awake at night, afraid of being one accident, one illness, one injury away from ruin? Do not get sick before November 1992.

We spend some \$650 billion a year on health care—that is more than twice the Pentagon budget. We spend \$30 billion a year in Pennsylvania alone. Americans not only spend far more than other nations, costs are also rising at a much faster rate. If we continue on the present course, by the year 2000 we will spend an estimated \$1.6 trillion on health care, or 16 percent of our projected gross national product.

No other industrialized nation pays as much of its income for medical care as we do. And yet we seem to be getting less and less for our money. In 1989, Japan spent \$1,035 per person on health care; Germany spent \$1,232; Canada spent \$1,683. While we in the United States spent \$2,354.

Think about that: We are the only major country—except South Africa—that does not have some kind of national health insurance system to make sure that everyone can afford to see a doctor when they are sick. But we still spend so much more.

The numbers are staggering—especially when you see what health care costs working families and employers. The average cost to business of health coverage jumped from \$2,600 per employee to over \$3,100 in 1990 alone. At the present rate of growth, the average health care premium will top \$22,000 per worker in the year 2000.

The fact is that doing nothing is really a health-care inflation plan for the American people.

Businesses will pay more and will find it harder and harder to compete with foreign companies that do not

face such exorbitant health care costs. Chrysler estimates that health care costs the company \$700 for every car it builds in the United States, but only \$223 for every car it builds in Canada. No wonder we are losing jobs to Germany and Japan and Mexico.

As I found as Secretary of Labor and Industry in Pennsylvania, a growing number of labor disputes turn on the issue of who pays for health benefits and how much—and whether there is any room left for a wage increase.

There is a good reason for this: What American businesses spend on health services today is about equal to their entire after-tax profits. That is double the amount of only a decade ago.

The New York Times recently reported that 3 of 10 workers say that they have stayed put in a job they wanted to leave because they were afraid of losing health insurance benefits. This kind of job lock is hostile to the core American value of economic opportunity and upward mobility. It also means that our Nation's work force is less flexible, and therefore less productive, than those of our competitors.

I have also witnessed, in our Pennsylvania Job Centers, how so many people are afraid to move off of welfare into the work force because they will lose Medicaid coverage. These days an entry-level job rarely provides decent health benefits.

So it is not a matter of altruism, but simple economics: We cannot maintain the unfairness, inefficiency, and staggering expense of our current health care system.

Sometimes it seems as though the only place they do not know we have a health care crisis is right here on Capitol Hill. And so my call for action begins right here.

When a Member of Congress gets sick, he or she does not sit in a waiting room at a doctor's office. Members of the House and Senate can go to the Office of the Attending Physician of the Capitol. There they get free medical care, physicals, blood tests, x rays, lab work, even free prescription drugs.

But they do not get a bill or the half a dozen different bills most people get when they go to a hospital or clinic. It is unacceptable that politicians with free taxpayer-provided health care are delaying or opposing health insurance for working people.

That is why I have just introduced a bill to cutoff all the special health benefits for Members of Congress, until Congress passes a health plan for the country, because I think health care is a right for all Americans, not a privilege for the powerful.

Under my plan, Members of Congress will still be allowed to participate in the Federal Employees Health Benefits Plan, just as other Federal workers do. But until they pass a health care plan for working people, Members of Con-

gress will no longer be able to live by the credit card company's slogan: "Membership has its privileges."

Once we put Congress in the same boat as the American people we will be amazed at how fast they can accomplish this bailout.

That is exactly what happened with the Social Security System. In 1981 Social Security was in deep trouble. In 1982, Congress included itself in the system, and in 1983, lo and behold, the Congress had put Social Security back on sound financial footing.

The next step, it seems to me, is to take action. And action Congress must take. There are certain principles that I believe must guide any plan to make health care affordable and available to all American families:

First. Health care must be recognized as a fundamental right. Our Constitution gives criminals a right to a lawyer. Working people should have the right to a doctor when they are sick.

Second. All Americans must be covered. We need to return to the American belief that programs must serve all the people, not just a targeted few. No one can be canceled, cutoff, or cut out.

Third. National health insurance must save the country money. Any acceptable system of national health insurance should save at least \$50 billion a year in administrative overhead, duplication, redtape, and bureaucracy, money that is being wasted today.

Fourth. National health insurance must lower costs for our Nation's working families. Every time your family writes a check for health coverage, part of that check goes to pay for advertising, marketing, underwriting, and other nonpatient care costs. We must reduce those costs and pass the savings on to working families.

Fifth. National health insurance must lead to lower costs for businesses that already provide health insurance. Under the present system, thousands of responsible companies are picking up the tab for those who provide no health insurance. Including all employers will make the system fairer, as well as cheaper.

Sixth. National health insurance must embody the American values of freedom of choice and competition, and it must contain free market principles that improve the quality of care. People must have the right to choose their own doctor and hospital. The system must also have competition built into it to ensure good service and avoid do-nothing government bureaucracy.

Insurance companies must have a new role in a national health insurance system, a role in which they compete for customers based on the quality of the service they provide, and not on the quality of the jingles in their commercials.

Free market principles will raise the level of treatment people can expect.

In throwing out the bathwater of inefficiency and skyrocketing costs, we do not have to throw out the baby of free-market choice as well.

Seventh. A national health insurance system must control medical inflation. Health care costs tripled from 1980 to 1990, and experts estimate that they will nearly triple again during this decade. Cost control is essential.

Eighth. National health insurance must address the need for long-term care. Older Americans today face policies which force them to spend their life savings in order to qualify for Medicaid-financed nursing care, and they must wade through a maze of co-insurance policies—many of them unnecessary—in order to feel secure about their coverage. A new system of national health insurance must provide a safety net for long-term care.

Ninth. The new system must use existing public resources more efficiently. Federal, State, and local governments already spend about \$260 billion on health care—42 percent of all health care spending. In a comprehensive system, our Government dollars will be used more effectively, especially by focusing on low-cost preventive and routine medical care that the uninsured and underinsured often neglect.

Tenth. National health insurance must spread the burden fairly. A system built on the proven principles of Social Security and Medicare can work, but only if everyone pays their fair share. Under the current system, those with health insurance are paying more than their fair share to subsidize those with no health insurance. We cannot afford any more free riders.

Eleventh. There must be no new taxes on working families. We do not need them. We already have the most expensive health care system in the world. The most important reason we need national health insurance is to lighten the burden on working families. Taxing them any more would be unfair and unnecessary. These principles should guide policymakers as we develop a plan for national health insurance.

Let us turn now to the task of putting those principles into practice. Of course, the administration's Domestic Policy Council had 3 years to study the problem and take action; yet, it has done nothing fundamental about this problem. The government finds billions to help the Kurds and Kuwaitis, to bail out the S&L's and defend Western Europe and Japan. But when it comes to helping working Americans, they say the cupboard is bare. That attitude is proof positive that this administration just does not get it.

Our people know the problem is not that we spend too much for health care; we spend too wastefully. The people of Pennsylvania want to send a message to Washington. We want ac-

tion on national health insurance, and we want it now.

We in this Chamber need to hear that message and act on it. After about 160 days in this Chamber, I have come to realize what Bismarck meant when he said that making laws was like making sausage—it is a grinding process. Many good ideas have already been put on the table by my colleagues, and there will be more to come.

Today I propose seven key ingredients, in addition to the general principles I have just mentioned. I believe these form the heart and soul of a sensible plan for meeting America's health insurance needs:

First, any workable plan must eliminate unnecessary insurance company costs, such as marketing and underwriting. That is one of the reasons that Medicare delivers health care to millions of Americans with less than 3 percent of its cost used for administration, while private insurance companies waste over 12 percent of their cost on administration and overhead.

Second, medical inflation should be controlled by the establishment of a national medical expenditures board. The board would play much the same kind of role that the Federal Reserve plays in our banking system. In the same way that the Fed controls our money supply, a health Fed would help us control our investment in medical care.

Third, a successful plan should reform insurance practices and establish a system of qualified insurance carriers. In order to be a qualified insurance carrier, a company must accept all Americans who seek coverage; eliminate experience rating; cease the practice of canceling policies on people who get sick, and abolish the preexisting condition rule, which tells millions of Americans that when they need insurance the most, they cannot have it.

Fourth, a successful plan would require all insurance carriers to provide comprehensive benefits, including a substantial period of completely covered long-term care.

Fifth, national health insurance should put an absolute limit on out-of-pocket expenses, so that never again will an accident or an illness be a one-way ticket to the poorhouse.

Sixth, all employees should be required to participate.

Seventh, the system should be administered by a nonprofit corporation, which would deal directly with private insurance companies to maximize economies of scale and minimize duplication, waste, and redtape. Individuals and companies that are currently paying premiums to a host of different insurance companies, and so are required to wrestle with a myriad of different forms and requirements, would pay their premiums to a central corporation.

These 11 general principles and seven specific policies can serve as a guide to the fundamental reform we need.

To those who ask first what it will cost, I say they are asking the wrong question. The point is: How much will it save us, especially in the long run?

Let me say this more strongly: National health insurance must not require new Government spending or taxes on working families, because the problem is not that we spend too little; the problem is that we waste too much. But here is how we can spend \$50 billion less than the \$650 billion a year we are now spending.

Start with the \$260 billion that Government already spends on health program, redirect it into our comprehensive system so we can get better care for the same amount of money. Second, add \$50 billion cut from the defense budget, which even the President says he wants to cut by \$40 or \$50 billion. Together, these two sources alone would provide \$310 billion, more than half the total cost of a national system.

That leaves \$290 billion which would still come from businesses and individuals. That may sound like a lot. It is until you realize that they are spending \$390 billion right now, \$100 billion more.

Under the current system, families then have to spend about \$215 billion a year in skyrocketing premiums, copayments, deductibles and bills for care that insurance companies refuse to cover. At the same time, American companies are paying about \$175 billion to provide health benefits to their employees. That is, those companies which can still afford it. We could cut the amount that families spend by \$95 billion; reduce the amount business as a whole spends by about \$5 billion. Everyone would be spending less, and we could finance this plan without any new Government spending. But the result would be better health care, for more people, for less money.

In his inaugural address, President Bush surveyed our domestic challenges, wrung his hands and sighed: "we have more will than wallet." But in this instance we have too much wallet and too little will. Our challenge is to generate that will.

From Allentown to Aliquippa I have seen that will. We in this body need to discover that will, make it our own, seize this moment and turn national health insurance into an idea whose time finally has finally come.

Health care is a right, not a privilege. And it is time for us to turn that right into a reality for all Americans.

Mr. President, I want to take this opportunity to clarify the health plan I have outlined. I am proposing a national health system which would allow this country to save \$50 billion on health care costs by cutting administrative waste, asking everyone to pay

their fair share and improving the way we manage patient care.

Under our current system, as a nation we spend \$650 billion on health services each year. After instituting the reforms I am proposing, we would spend a total of \$600 billion and provide better care for more people for less money. In addition to the savings detailed above, I believe we can redirect about \$50 billion in unnecessary defense spending to health care.

The \$50 billion in defense savings and the \$50 billion in reduced health costs would, under the system I am proposing, be passed on to business and working families who together would spend \$100 billion less than they do now.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized for up to 20 minutes.

Mr. DURENBERGER. Mr. President, before I speak, I would like to advance the cause of this body and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

The Senator from Minnesota is recognized.

Mr. DURENBERGER. I thank the Chair.

(The remarks of Mr. DURENBERGER pertaining to the introduction of S. 1836 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### EXTENSION OF MORNING BUSINESS

Mr. GORE. Mr. President, I ask unanimous consent that the period for morning business extend not beyond 12:30 p.m. today.

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

#### WEAPONS PROLIFERATION

Mr. GORE. Mr. President, one of the main outcomes of the war with Iraq is our subsequent discovery—in a process which is still unfolding and expanding—of the staggering extent of that country's efforts to acquire the full panoply of weapons of mass destruction: chemical weapons, biological weapons, nuclear weapons, and the means for their delivery including both ballistic missiles and the so-called superguns. The flip side of this discovery is that none of this would have been possible without the help of corporations in advanced industrial countries, operating under the nearsighted and often tolerant supervision of their governments.

With each discovery by the U.N. inspection teams, we are seeing the documented failure of every single mechanism established over the years to try to block the proliferation of these weapons. The Australia Group, which deals with chemical weapons; the MTCR which deals with ballistic missiles; the Zanger and London Groups, which deal with nuclear technology; the International Atomic Energy Agency, and evidently the world's major intelligence services—none of them was a match for Saddam Hussein and his oil money.

Perhaps the world will draw appropriate conclusions about what has happened and will move vigorously to block any such development in the future. Frankly, we cannot assume this will happen and it remains to be seen whether it will or not. Yes, there has been a flurry of activity, and some tightening here and there. For example, the Australia Group met last May and did some constructive things: Notably, by expanding the list of dual-purpose chemicals to be subject to special export control regimes. But time is passing. The anniversary of the Persian Gulf war has already been observed. And where is the new legislation some governments declared they were going to secure? Where are proposals from President Bush to deal with this problem of the exporting of technology, dangerous technology to countries like Iraq?

In this country and elsewhere, usually the legislative proposals are still hung up, blocked by political problems relating to other matters.

The greatest single danger is a return, given time, to business as usual and to collective denial of individual responsibility in this matter. Recently, the New York Times published a portion of a speech I gave here on the subject of Iraq and proliferation, in which there was a reference to the role of Switzerland as a source and conduit of technologies and materials for Iraq's various programs. It was one of a series of speeches, in a number of which I have singled out various countries that have participated in the proliferation of weapons technologies to Iraq. That particular speech, and the article which resulted from it, stung the Swiss and their Ambassador came to see me. To the credit of his government he did not deny the involvement of Swiss firms in providing assistance to Saddam Hussein, but, rather, attempted to put their activities and the responses of his government into context. Subsequently, the Ambassador wrote to the Times in a similar vein, and at the conclusion of my remarks I will include for the RECORD a copy of his letter. I ask unanimous consent to do so.

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

(See exhibit 1.)

Mr. GORE. The Ambassador's point is that Switzerland was not alone, and in-

deed might be better considered as a junior partner in what took place. I certainly understand his point. Other countries were involved. It is abundantly clear that our own country was involved, to a much greater extent than Switzerland. I also understand the problems inherent in seeking multilateral cooperation so that all exporting countries are exercising restraint. And I understand the problems involved in dealing with ambiguous, dual-purpose technologies, which may as well be used for peaceful as for destructive purposes. But in the last analysis, the only way out of this is for each nation to accept not only such culpability as there may be, but also to accept the responsibility to act alone rather than to defer action, pending multilateral agreement on export policy.

Ideally, national export legislation and controls should be approximately equal to each other in terms of their effectiveness in screening exports, deterring violations, and severity of action in case of violation. The multilateral agreements we have cobbled together are still consensual: They are not treaties; they are not enforceable. And, therefore, they cannot yet substitute for action by individual governments to make these transactions high crimes under each country's legal system; to devote the resources necessary to find those who have violated those laws or who are conspiring to violate them, and to punish the violators so heavily as to guarantee the personal ruin of those who are responsible, and to easily threaten the destruction of any enterprise so engaged.

In the course of taking these steps, we and other advanced industrial governments should be utterly deaf to the outrageous demands of various so-called developing countries who regard these constraints as infringements upon their sovereignty. We do not have to recognize the sovereign right of all governments to acquire weapons of mass destruction if they happen to have the talent and money to waste on that process. The spread of these technologies is manifestly a fundamental threat to the security of the advanced industrial nations and the entire world. In our own self-interest we should act to interdict the flow of these technologies, and the louder other governments protest, the more we will know that we are on the right track.

What is needed ultimately are binding international covenants, similar in nature to the Nonproliferation Treaty, whereby advanced industrial nations undertake to make technologies available to others for peaceful uses, providing the recipients pledge to forswear the military applications of these technologies, under conditions which can be monitored and verified, by highly intrusive means to the degree necessary. This is particularly necessary in light of the problem of dual capable

technologies and materials. The only way to permit international commerce in these products—without accepting the inevitability of further proliferation—is to enforce inspection of end use, to assure that only peaceful applications are made. I would add also that suppliers groups focused on different aspects of proliferation need to be expanded so as to make full members out of not only the Soviet Union but also of key Republics of the former Soviet Union, some of which inherit significant manufacturing and technological assets against the background of desperate financial need.

The alternative to radical surgery of this kind is the further spread of the cancer. We have to learn from our experience. Had Saddam Hussein not backed himself into war, had he laid low and continued his operations for a year or two or three, we would be confronting a nuclear armed, totalitarian state, with the credible ability to annihilate countries hundreds and perhaps thousands of miles from its borders. Whether such a mentality as Saddam Hussein's could be deterred by the likelihood of the reciprocal annihilation of Iraq cannot be known. But there is reason for doubt. He and his supporters might be just as blind to the risks, and just as ready to gamble at that future time as they were a year ago. Perhaps even more so.

That kind of risk is so intolerable that the mind shies away from its consequences. And time is not an ally of those who believe we cannot avert our eyes and must take action. Other concerns take over. Attention is diverted by new crises. Those with political or commercial interests to protect will use this time to lobby against new constraints. And even though the threat is mortal, governments just barely awakened to the reality of the danger may yet again be distracted into inattention and lulled into forgetfulness.

I can think of only one way to push this process and that is to invoke public opinion, and the only way that I can think of to do that is to release as much information as we have on those corporations that were willingly complicit in the Iraqi effort, whether they are in Switzerland or the United States or Germany or Great Britain or France or Italy or wherever, or China—in every country, every company that was sufficiently dull-witted to sell dual-purpose materials and technologies to a customer whose objectives any but the witless and the greedy ought to have suspected.

The director of the IAEA has already said that the inspection process and the subsequent analytic effort is revealing a global network of suppliers, and that in his view, the correct approach to this information is—having first screened out the innocent—to treat the remainder transparently; to let the light shine in; to make it pub-

lic; to expose corporations and corporate leaders who would deal in mass death, in apocalypse, in the destruction of entire nations, for profit.

Why not make it public? Let us see the names of the corporations who were willing to sell this technology to a madman, intent on threatening and destroying his neighbors.

Unfortunately, the IAEA does not feel enabled—given the ground rules established for it by its Board and by the Security Council—to release this information publicly itself. Instead, as it completes the work of assessing the information at its disposal, the IAEA will release that product to governments on a filtered basis: To each government that asks, a list of its own corporations. That may be all that the IAEA can do, but it is drastically inadequate. Any information available to the U.S. Government should be released publicly at once.

Governments are not compelled to ask for information. Having received information, they are not compelled to release it, and some governments, such as that of Great Britain, are clearly opposed to publication because of a fear of severe embarrassment.

Mr. President, I do not have this on official authority, but I am told the Swiss, as one nation, are prepared to be in favor of releasing all this information publicly. I would like to see President Bush take the position that the information on which corporations have sold technologies of mass destruction to Saddam Hussein, the information gathered by these inspectors who risked their lives and were impounded in the parking lot there, be made public for all the world to see. That way we will get a little pressure on the corporations that are selling this technology of mass death; that way we will get some effective pressure to stop this kind of proliferation activity. If they want to make a buck on the possibility of slaughtering hundreds of thousands and tens of millions, then let us expose it to public view and let us see if they want to continue that activity knowing that it is going to become public. It is exactly embarrassment and severe embarrassment that is needed. All governments should be urged to divulge this information and let the chips fall where they may. Ideally, the information should be divulged in its totality on instructions from the Security Council.

I call upon President Bush to take the lead in this matter. And may I say, Mr. President, that I am proud to join my colleague, Senator McCAIN, in signing a letter, which he took the initiative to draft, to the Secretary of State urging him in this direction. I commend my colleague for his initiative. We must make this information public. To do less is to allow those who were exposed when we lifted up the rock they were hiding under to escape to

other shelter. Pending the slower progress of efforts to strengthen national law and improve mechanisms for multilateral coordination among exporter States, exposure of those whose greed could take humanity to the gates of hell and beyond is the nearest, most effective means of self-defense at hand, and it must be used.

Mr. President, I yield the floor.

#### EXHIBIT 1

#### SWISS PLAY SMALL ROLE IN IRAQ ARMS DEALS To the Editor:

In "Defeating Hussein, Once and for All" (Op-Ed, Sept. 26), Senator Al Gore labels Switzerland, among other things, a "well-known haven for arms dealers and proliferators."

It is true that a few companies were found to deal, in violation of Swiss law, with Iraq. Their numbers, however, are far fewer than those in other Western nations. Moreover, indictments were made after each disclosure of unauthorized or shady deals, and a series of legal actions were undertaken well before the imposition of complete sanctions by Switzerland on Iraq in August 1990.

Therefore, I was most surprised that my country had been singled out so as to give the impression we were especially involved in such transactions, when the Swiss have at most been the junior partner of more intimidating powers. I understand that Senator Gore's article, in fact a speech on the floor of the Senate, is part of a series on this same matter, in which he targeted different countries that have dealt with Iraq.

I welcome and commend Senator Gore's initiative to prevent the proliferation of arms and related technology, and I wish we all could learn from errors in this area to avoid repeating them. The Swiss Government has always felt that there needs to be better, more efficient international cooperation in such matters and is willing to increase its efforts in this direction.

EDOUARD BRUNNER,

Ambassador of Switzerland.

WASHINGTON, October 7, 1991.

The PRESIDING OFFICER (MR. SHELBY). The Senator from Louisiana [MR. BREAUX] is recognized to speak for up to 10 minutes. The Senator from Louisiana.

#### REDUCTION IN THE CAPITAL GAINS TAX RATE

Mr. BREAUX. Thank you, Mr. President.

Mr. President, it is time for Congress to start listening to the people whom we represent. As is normal, the people are way ahead in their understanding of when something is wrong. Mr. President, in this case, the wrong is the economy of our country.

People all over the United States understand better than all of the economists in Washington that something is not right. They know that when both parents are working and they still cannot pay the house note that something is wrong. Families know that when one of them loses his or her job, our economy is not growing, but is stagnant. People know that when money is not available to start a new business, something needs to be done.

Unfortunately, once again, the people are ahead of most of the elected officials in this country. Is it any wonder why most Americans distrust elected officials to solve their problems when we are unable to even recognize their problems?

Mr. President, it is time to do something more than just to talk about our economic problems and hope that they go away. It is time for Congress to be bold and to propose solutions to get America moving again. The American people are looking to us for solutions and not excuses.

Shortly, I will be introducing a new approach to help stimulate our economy, new in a sense that it addresses one of the criticisms aimed at a reduction in the capital gains tax rate. My legislation will reduce the tax on capital gains in order to stimulate growth and create jobs and reduce our chronic unemployment.

My proposal is simple: Reduce the capital gains tax from the current 28-percent rate to 20 percent for assets held 3 years or longer; to 22 percent for assets held 2 years; and a 25-percent rate for assets held 1 year. Currently, our U.S. capital gains tax rates are among the highest in the entire world. Our major competitors—Germany, Japan, South Korea—either totally exempt long-term capital gains or tax them only lightly. When we talk about lack of competitiveness, one of the first targets must be removing the shackles of an unreasonable capital gains tax rate.

Some argue that a capital gains tax reduction would be a windfall for the very rich. Mr. President, the facts show just the opposite. According to the Internal Revenue Service, nearly three-fourths of all tax returns with capital gains had other income of less than \$50,000 and less than 2 percent had other income of \$200,000 or more. In addition, nearly one-half of all of the capital gains in dollar terms are received by people with wage and salary incomes of less than \$50,000.

Mr. President, in a country where over the last decade middle-income people have suffered the worst of all groups, it is clear that we need to help middle-income taxpayers, and a capital gains tax reduction would do just that.

Yesterday, Mr. President, I voted for extending unemployment benefits for millions of unemployed Americans. It was the right thing to do, and it should have passed over the veto of the President. But make no mistake, unemployment compensation does not create new jobs for people out of work. It does not solve the problem of no jobs. It only puts a Band-aid on the cut. It does not cure the problem.

Mr. President, we need to do more. We need to create jobs, we need to encourage capital formation, and we need to encourage investment in new businesses that will create new jobs. When

we have savings and loans that are in trouble, when we have banks that do not lend, when we have insurance companies that are shaky, it is time that we act to ensure that economic growth and investment in America is not just part of our Nation's history, but rather part of America's future.

Mr. President, I believe that we have not acted on a capital gains tax reduction because no one can agree on whether such a proposal increases tax revenues or loses tax revenues. The Treasury Department tells us that it gains \$12.5 billion between 1990 and 1995, but the Joint Tax Committee tells us that, no, it is going to lose \$11.4 billion over the same period. Mr. President, that should not tie our hands and create paralysis.

My plan says, let us move forward, but let us do so with a safety net of protection, a safety net of protection in case it does, in fact, lose money. If the Treasury Department is right, we all win. More new jobs are created, more revenues are generated, and less deficits are the result. However, if it loses money, my legislation pays for any loss by creating a new fourth top rate of 36 percent on taxable income of \$500,000, a half million dollars, or more. If such a rate was triggered by the loss of revenues, it would affect roughly 200,000 taxpayers out of 115 million taxpayers in this country. Mr. President, that is only two-tenths of 1 percent of the taxpayers in this country.

Mr. President, now is not the time to be timid. Now is the time for action. Let us not have to continue to argue about unemployment benefits. Let us act to create new businesses and new jobs and eliminate unemployment. My proposal should answer the question of what this proposal will do by providing the safety net of protection and the fairness that everyone, I think, should support.

Mr. President, I ask my colleagues to join with me in moving our economy forward by cosponsoring this legislation. I ask President Bush to join us in a bipartisan effort to solve what is a bipartisan problem. It is now time for Congress to move boldly with a plan that can, as President John F. Kennedy said, "stimulate a free flow of investment funds and facilitate economic growth, as well as provide more even-handed treatment of taxpayers across the board."

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WALLOP. 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 from Wyoming is recognized for up to 15 minutes.

Mr. WALLOP. I thank the Chair.

#### THE THOMAS-FORTAS NOMINATIONS

Mr. WALLOP. Mr. President, on Tuesday evening the Senate finally voted, to the relief of the Senate and the American people, on the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

No Senator is surprised by this Senator's view that the debate on this nomination seemed endless, and would probably have in fact been so had some on the other side of the aisle prevailed. The Senate must now try to reclaim some of its credibility by moving on to other legislative business and the energy bill would be an excellent option. But I would like to respond to the remarks of the majority leader in his closing arguments before the Thomas nomination vote.

The majority leader began his defense of the indefensible treatment of Judge Thomas by equating this travesty with the Senate's defeat of Justice Abe Fortas in 1968 when President Johnson attempted to elevate him to Chief Justice. The majority leader recounted that in June of 1968 Republican Senators publicly stated that they would oppose any nomination of a new Chief Justice before the 1968 election, arguing that whoever won the Presidency should select the new Chief Justice.

The majority leader, while noting that purely political statement, failed to mention that the retirement of then Chief Justice Earl Warren was a political move timed to ensure Lyndon Johnson the appointment of the next Chief Justice, so the Republicans' clearly political response was entirely understandable under the circumstances.

The leader equates those actions in 1968 with the Democrat majority today taking over 100 days to process the nomination of Judge Thomas, yet missed an important distinction: the opponents in 1968—Republican and Democrat—were honest and straightforward in their efforts to defeat Justice Fortas. The majority leader made a hypocritical pretense of giving Judge Thomas every fair consideration, taking 100 days to move the process forward; in fact giving their allies time to run a nationwide search for dirt and smut.

Further according to Senator MITCHELL, Abe Fortas was opposed in 1968 for reasons having nothing to do with his qualifications, and that, while searching for ammunition to use against Fortas, his opponents "uncovered some financial dealings which ultimately led to his resignation from the Supreme Court."

The majority leader finally noted that Republican Senators in 1968 shouted at Abe Fortas and demanded that he

answer specific questions before the committee.

The analogy fails again, Mr. President. Any suggestion that the opposition to Abe Fortas was as scurrilous as the attacks on Clarence Thomas is absurd, and an historical reminder is in order: In 1968 Abe Fortas was accused of serious, continuing, probably criminal financial improprieties. Even Liberal author Bob Woodward, in his book "The Brethren," made no effort to defend Fortas: Abe Fortas was accused in a Life magazine spread of accepting a \$20,000 payment from a millionaire named Louis Wolfson who was then under investigation by the Securities and Exchange Commission and who bragged that his friend Fortas was going to help him. Wolfson was later indicted and convicted, and Fortas returned the \$20,000.

Wolfson later submitted to the Government documents showing that the \$20,000 payment to Fortas from the Wolfson Foundation was not a single payment, but the first of lifetime payments to Fortas, which would continue to his widow for her lifetime. The Government had a copy of the contract specifying these lifetime payments to Fortas, and was about to obtain correspondence between Wolfson and Fortas dealing with the SEC case. These documents were shown to Chief Justice Earl Warren by Government investigators, and a few days later Abe Fortas resigned from the Supreme Court, at the urging not of Republicans but his fellow Justices.

The majority leader's moral equivalency fails as well in their effort to stop the Thomas nomination, the Democrats, their overly aggressive and in at least one case irresponsible staff, and their entire Nationwide Alliance for Justice, People for the American Way, National Organization for Women Leadership Conference on Civil Rights, NAACP Coalition, could come up with one sad individual to accuse Clarence Thomas of wrongdoing. One unsubstantiated claim of sexual harassment, corroborated in its commission or specificity by no one, denied passionately by the accused and dozens of his employees, associates and friends, and the majority leader implies this is on a par with the Abe Fortas accusations.

Last, and perhaps most offensively, the majority leader seemed to suggest that since some Republican Senators behaved badly and without civility or decorum in their treatment of Abe Fortas, the behavior of Democrats today is acceptable. Poppycock! Mr. President. Any Senator who abandoned common courtesy—then or now—should have his judgment condemned.

But let me return to the Thomas nomination specifically.

The majority leader argued that prior Presidents of both parties have sought nominees for the Court who combined excellence with compatible

political views, but that the search for excellence has now been abandoned. Such a patently absurd and inaccurate partisan gibe cannot stand: One of the most indisputably qualified, jurists to come before this body—Robert Bork—was denied approval by the Senate despite excellence and because of a perceived political ideology. When faced with the intellectual power of Robert Bork, his opponents hid behind accusations of arrogance and rigid ideology.

When faced with a qualified, articulate, conservative black like Judge Thomas, they found a new screen behind which to hide: inexperience or underqualification. But that failed, and a clear majority of the U.S. Senate was prepared 1 week ago to cast their votes in support of Clarence Thomas, so a new issue had to be found. Sexual harassment. It is all nonsense.

Judge Bork's taste in rental movies had little to do with either his ideology or his qualifications, yet his opposition researchers pored over that information looking for dirt. Clarence Thomas himself said he would not mind being defeated on ideological grounds but condemned his adversaries for attempting to destroy his character.

If, as the majority leader seemed to suggest in his jeremiad on abortion, Clarence Thomas' ideology would have been enough to defeat the nominee, then this whole sordid scandal would not have occurred. But his ideology was not sufficient, nor seemingly did the majority party wish to fight it or face defeat over it. Thus began the week of terror that came close to destroying two people.

What his opponents cannot accept is the role model of Clarence Thomas to all young people today, especially to minorities and the underprivileged of all races: You can achieve your goals, and you can advance your beliefs, and you do not have to comply with some unwritten rule about accepted behavior of blacks or other minorities or women or any other special interest voting bloc whose votes the Democrats have taken for granted for years.

That is what the majority party has most to fear from Judge—no, Justice, Clarence Thomas, a black man from the deep South and the depths of poverty and racism who did not need—in fact rejected—the patronizing paternalism of the liberal Democrat establishment and still made good.

So that led to claims that Clarence Thomas "lacks the experience and the ability that is essential to service on the Supreme Court." Yet last week, before a criminal leak to the press, enough Members of the Senate were committed to supporting Thomas to have ensured his confirmation. A majority of the Senate felt he was sufficiently qualified.

The majority leader asserts that sexual harassment is a serious charge, and indeed it is. But that harassment was

never the decisive factor in his decision to oppose Thomas. Does anyone think he would have changed his vote had there been a clear resolution of that issue? No, sir. Last week the votes committed to supporting Thomas were greater than those finally cast Tuesday evening, so to some Democrats at least a wholly unsubstantiated accusation of sexual harassment did become the decisive factor. How is this fairness?

The majority leader asserted that the White House approved a "typical, and tragic" orchestrated campaign to attack and discredit Anita Hill, though the unsubstantiated 11th hour attempt to discredit Judge Thomas failed to elicit his similar sympathy. He asserted that properly skeptical questioning of Anita Hill turned into a search and destroy mission. In over 100 days of steady inquisition and nationwide search for dirt, the opposition failed to come up with anything more than Anita Hill, and with a mere weekend of hearings forced on the country by a majority party unwilling to graciously accept the inevitability of his confirmation, poor Anita Hill's credibility and poor Judge Thomas' credibility was severely damaged.

What the organized opposition failed to accomplish against Clarence Thomas was accomplished against Anita Hill, and not by George Bush, but by Clarence Thomas' visible and unshakable integrity and honesty, joined by a vast array of men and women of decency who know him and would not stand by and permit him to be smeared.

The majority leader asserted that "what happened to Professor Hill unfortunately sent a clear and chilling message to women everywhere: If you complain about sexual harassment, you may be doubly victimized." This Senator does not know what women the majority leader is speaking about or for. Every public opinion poll this Senator saw, from most of the major media outlets, showed, consistently, that a majority of Americans—black, white, male, and female, by at least 2-to-1 margins, believe Clarence Thomas and supported his confirmation.

This Senator finds that polling data at least as exhilarating as the vote to confirm Clarence Thomas—despite all we do in government to demolish such noble notions—the American people still believe in fair play. God bless them for it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FOWLER. 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. WELLSTONE. Mr. President, I rise to support S. 596, the Federal Facilities Compliance Act of 1991, which I am proud to cosponsor. This is important legislation to close a major loophole in our national system of environmental protection—the failure of previous laws to ensure that Federal Government facilities meet the same Federal and State environmental rules and regulations as everybody else.

It is a tragic fact that many of our Federal agencies and facilities have been among the worst polluters in the Nation. In particular, the nuclear weapons plants managed by the Department of Energy, along with some of our other munitions plants and military bases, have contributed to enormous chemical and radioactive contamination of their sites and surrounding areas. Estimates of costs for cleaning up these facilities run into the hundreds of billions of dollars over the next several decades. There has obviously been a massive failure of our regulatory system.

I am reminded of similar failings in the Soviet Union and Eastern Europe which have received so much publicity. What happened in the defunct Communist systems of that region is not unlike what has happened here: government bodies were allowed to pursue their missions without any incentive to control their pollution. The result was an environmental catastrophe. The same thing would have happened in this country if we had not enacted the Clean Air Act, Clean Water Act, Solid Waste Disposal Act and other legislation to control toxic and hazardous wastes in the 1970's. The lesson is clear: unless there are checks and balances, unless there are controls on public as well as private parties, we will not get effective environmental protection.

The bill at hand is needed to clarify that Federal facilities must comply with the requirements of major environmental laws, including the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act [RCRA]. Courts have given conflicting rulings on the applicability of State solid and hazardous waste laws to Federal facilities under section 6001 of this act, and this bill clearly establishes that applicability. The bill also requires each Federal department or agency to make an assessment, within 12 months of enactment, of all releases of hazardous substances from any of its waste management units, in order to see if it is in compliance with all applicable Federal environmental statutes.

At the Federal level, the Environmental Protection Agency [EPA] must have authority to ensure that other Federal agencies are in fact in compliance with the laws it is charged to implement. This bill therefore gives EPA explicit authority to make a thorough annual inspection of each facility to see if it is in compliance with Federal environmental laws; and, if necessary, to take administrative enforcement actions against Federal executive departments or agencies, or against instrumentalities of the legislative or judicial branches. The record of these inspections must be made public. The public has a right to know if their communities are threatened by toxic substances.

Finally, this bill also waives Federal immunity under RCRA so that States can levy civil fines or administrative penalties under section 6001 against Federal facilities which violate their environmental laws. States are presently handicapped by lack of clear legal authority to enforce compliance with their laws. This provision simply puts teeth into State solid and hazardous waste laws which supposedly apply to Federal agencies.

I don't know of anyone who is opposed to this important legislation other than the Department of Energy and the Department of Defense, the two agencies whose facilities are in greatest need of cleanup. It would be a travesty to postpone this legislation since the cleanups of DOD and DOE facilities are already well behind schedule. We are playing politics with peoples' public health here—we are risking peoples' lives.

This bill has broad support and was reported out of committee by a 16-0 vote. The House of Representatives has already passed similar legislation by voice vote. It is time for the U.S. Government to live up to its own laws; otherwise how can we expect anyone else to comply? People are already cynical enough about public institutions without adding to it. It is time to set an example for the country and the world by enacting this crucial legislation.

#### TRIBUTE TO CARL WALLACE

Mr. SASSER. Mr. President, I rise today to pay tribute to a true Tennessee volunteer and a staunch defender of democracy, retired Maj. Gen. Carl D. Wallace.

General Wallace served with dedication and distinction for 16 years as adjutant general of the Tennessee National Guard.

During his tenure, the strength of the Tennessee National Guard increased by more than 2,000, and it has maintained 100 percent strength or better during the past 10 years.

General Wallace also served as president of the Adjutant's General Association of the United States from June 1977, until June 1979.

Mr. President, these marks of distinction are the capstone of more than 40 years of military service. General Wallace began his career in 1951 as an enlistee in the U.S. Air Force. Transferring to the Army, General Wallace trained as an artillery officer and was first assigned to the 47th Division Artillery, Fort Rucker, AL, and then, later, to the 189th Field Artillery Battalion, 45th Infantry Division in Korea. In 1975, he was appointed as 70th Adjutant General of Tennessee, and he received Federal recognition as a Brigadier General, adjutant general's corps, on February 4, 1977.

His awards and decorations are many, and include the Legion of Merit, Korean Service Medal with two bronze stars, and the United Nations Service Medal. His Tennessee awards include the Governor's Meritorious Unit Citation with two service stars and the National Guard Commendation Ribbon. He has also received the Distinguished Service Medal from the National Guard Association of the United States.

He has also contributed greatly in the civic arena, as a member of the Lions Club, the American Legion, the Veterans of Foreign Wars, and the National Guard Associations of the United States and Tennessee. He also served as State fund chairman of the American Heart Association and American Cancer Society of Tennessee.

In short, he has consistently striven for excellence, tempered with humanitarian values.

Prior to his retirement as adjutant general, Carl Wallace presided over the deployment and return of thousands of Tennessee men and women during the military operation in the Persian Gulf.

General Wallace's professionalism and his sensitivity to the unique needs of the families who were left tending the home front earned him the admiration and appreciation of all Tennesseans.

Mr. President, we wish General Wallace much success and happiness in his future endeavors.

#### EXPLANATION OF NOT VOTING

Mr. KERREY. Mr. President, today the Senate will hold a cloture vote on the motion to proceed to S. 596, the Federal Facilities Compliance Act. Unfortunately, I will unavoidably be absent from this vote, though if I were present for the vote, I would vote "aye."

#### OSBORN ELLIOTT'S CALL

Mr. MOYNIHAN. Mr. President, Osborn Elliott has always been a blessing to us. A former editor-in-chief of Newsweek magazine, deputy mayor of New York City, and friend of many years, he has worked throughout to urge on the public an awareness of the plight of our urban centers. I would

like to bring to my colleagues' attention a piece he contributed to Newsweek last spring, and to a statement he gave at the U.S. Conference of Mayors this past August. Both are an urgent call for aid to our cities. Mr. President, we would do well to listen. I ask unanimous consent that the text of these articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD as follows:

#### MARCH ON WASHINGTON

(By Osborn Elliott)

Now that the gulf war is behind us, it's time to start planning history's greatest March on Washington, a huge parade of protest by the cities of this land against a national government that has betrayed them. We live in an urban society. Yet, incredibly, our cities have lost their place on the national agenda. Brutal cutbacks in federal aid for schools, housing, food stamps, mass transit and social services have taken a terrible toll. The cuts were deliberate and their effects make daily headlines from Milwaukee to Miami:

A child left by her mother in the trunk of a car for lack of proper day care.

An army of inner-city dropouts honing their entrepreneurial skills by dealing drugs and dodging bullets.

A horde of young mothers and babies who are now the fastest growing group among our homeless millions.

"A Clockwork Orange" violence that has turned our streets and parks into killing fields.

It's high time that urban Americans, as well as suburbanites who depend on the cities for their daily bread, exercise their right "peaceably to assemble, and to petition the Government for a redress of grievances." In communities of 50,000 and in cities of many millions, governmental neglect has caused or worsened all these grievances. It is no coincidence that homelessness has soared as federal subsidies for low-cost housing have been slashed by 80 percent. Since the late 1970s, the portion of state and local budgets picked up by Washington has slumped by one third. For New York City, that has meant the denial of more than \$20 billion in federal funding over the last decade and \$3 billion in the current year alone. That is exactly the size of the budget gap the city is now struggling to close.

No one claims that Washington should take on the whole burden of restoring urban America. Our cities and states, our great corporations and foundations, our academic institutions and our churches must do their part as well. So must ordinary Americans, who already give enormously of their time, effort and money. But all these cannot do the job alone; the federal government has a practical obligation and a moral imperative to assume a much larger role in helping to mend the frayed fabric.

Where should the marchers come from? From East and West, North and South, from cities and suburbs large and small. From San Francisco, where the pestilence of AIDS fights with the homeless for preference and priority. From sprawling Detroit and historic New London, Conn., cities whose downtown hearts barely beat anymore.

Who should join the protest? This march should be nonpartisan—for Democrats and Republicans alike are to blame for the cities' plight. The urban cutbacks started in the Carter administration, accelerated rapidly

under Ronald Reagan and continue with President Bush. And all the while, a Democratic Congress has acquiesced in the butchery. Now bankers and businessmen and labor leaders should join hands, just as they did when New York was threatened with bankruptcy 15 years ago, in this crusade for the cities. Civil groups—Lions and Elks, war veterans, chambers of commerce—should join the line of march. Teachers and students and parents should demand that our crumbling schools be restored. Church leaders should rally their flocks to express outrage about their decaying communities. Civil-rights activists should unfurl their banners and raise their voices against the continuing cruelties of urban discrimination and the pathological conditions of ghetto life.

#### LOVE-HATE AMBIVALENCE

Who should lead the parade? Given the love-hate ambivalence the country has always displayed toward New York, probably not New York or its mayor. Boston's Mayor Raymond Flynn, an expert on homelessness, who is soon to become head of the U.S. Conference of Mayors, is one likely candidate. So is Cleveland's energetic Mayor Michael White. Or Seattle's Norman Rice. Or Mary Moran of Bridgeport, Conn. Or Lee Cooke of Austin, Texas. Or Kurt Schmoke of Baltimore.

When should this great march take place? Late this summer.

A quarter century ago, when Martin Luther King Jr. rallied 210,000 people in search of "jobs and freedom," many months went into the planning of that event. A. Philip Randolph, president of the Sleeping Car Porters of America, had the idea to begin with, and \$110,000 was raised to coordinate and run that march. Randolph reached out to Bayard Rustin, the leading intellectual of the civil-rights movement, to plan the enormous gathering down to the tiniest detail. Marchers were advised to bring two box lunches apiece (hold the mayonnaise, the instructions said, lest it go bad in the summer heat). In Washington, 26 public toilets were set up, each with facilities for up to 40 persons. There were 22 first-aid stations, staffed with two doctors and four nurses apiece. And thousands of District of Columbia police, National Guardsmen and volunteer marshals stood by to maintain order, if needed (they weren't). More than 1,500 chartered buses rumbled into Washington, and on the morning of the march 40 special trains pulled into Union Station at the rate of one every few minutes.

Similar detailed planning, probably over a span of four or five months, will have to go into the great Urban March on Washington. That would bring us to late summer 1991. As it happens, next Aug. 28 will mark the 28th anniversary of that glorious day in 1963, when Dr. King dreamed his historic dream. Not a bad moment for our cities to put on parade their own dreams, so long denied, and to regain their rightful place atop the list of America's most pressing priorities.

#### STATEMENT BY OSBORN ELLIOTT, U.S. CONFERENCE OF MAYORS, HYANNIS, MA

I am a journalist. For almost half a century I have picked my way through a thicket of opposing views in search of fairness and objectivity. I am neither Republican or Democrat.

Once before, I became politicized. That was in the 1960's, in the heyday of the civil rights movement, when I was the editor of Newsweek. I'm proud to say that Newsweek became America's leading journalistic advocate of civil rights.

Now I have become politicized once again. Why? Because that America of the 1960's, that America of our aspirations, has evanesced. Instead of setting high goals at home, our national government now locks its sights on foreign ventures. Instead of nurturing our cities and our children, it has betrayed them.

As a father, as a grandfather, as a lifelong New Yorker and former Deputy Mayor of that amazing city, I'm mad as hell.

The time has come for history's greatest March on Washington—a huge parade of protest by the cities of this country against the indifference of our federal government. I want one million Americans on parade. And I want you, the mayors of America, to lead that march.

The goal is to put the cities of America, and the children of America, back on the national agenda.

The cutbacks in federal aid for schools, housing, food stamps, mass transit and social services have been brutal: since the late 1970's the portion of state and local budgets picked up by Washington has plummeted by one third.

For New York City this has meant the denial of almost \$25 billion in federal funding—\$3 billion in the current year alone. That is about the size of the budget gap that my friend David Dinkins has just painfully managed to close.

These cutbacks have devastating effects—from crumbling schools to deteriorating health to sharply rising numbers of homeless. Everyone suffers—and in many places young and old alike live at the edge of the abyss.

The problems are not confined to the inner cities. They extend to surrounding areas, to the suburbs, even to rural America. That's why this event should engage everyone: we are all at risk.

Who should join in this crusade for our cities and our children?

Civic groups must join the line of march—Lions and Elks, Kiwanis clubs, women's organizations, war veterans, chambers of commerce, even the Boy Scouts, the Girl Scouts, the Red Cross.

Teachers and students and mothers and fathers must march, demanding delivery on all those promises of a better education—so that America can compete in the world, and so that America's young people can find decent jobs with a real and fulfilling future.

Labor leaders must rally their troops and join hands with bankers and businessmen, just as they did 15 years ago when New York City was threatened with bankruptcy.

Church leaders and their flocks must denounce the indifference that causes their communities to decay.

Civil-rights activists must unfurl their banners and raise their voices against the cruelties of urban discrimination and the pathological conditions of ghetto life.

Doctors and lawyers, artists and merchants, farmers and pharmacists, civil servants and neighborhood leaders must all be heard.

You might call it a million points of protest.

This march must be nonpartisan, for Democrats and Republicans are both to blame for the neglect of our cities and our children. The urban cutbacks actually started in the Carter administration, accelerated rapidly under Ronald Reagan and continue with President Bush. And all the while, a Democratic Congress has acquiesced in the butchery.

When should the march take place?

Saturday, April 4th, 1992. That's right in the midst of the Presidential primaries. And not so incidentally, April 4th, 1992 is the 24th anniversary of the death of Martin Luther King, Jr.

Who should lead the protest?

That's where you majors come in. Imagine the drama of one million people from hundreds of American cities protesting against the government of the United States! Not just the big cities, like New York, Chicago and Los Angeles, but cities as diverse as Bridgeport, Louisville and Boise, as different as Brownsville, Elkhart and Reno. And for that matter, not just the cities themselves but those surrounding areas and suburbs that simply would not exist without the cities.

You and I know that our cities are the very heart of our civilization. And we know that our children are the only hope for our future.

So my plea to you, the majors of America, is to lead this great protest and force the Congress and the White House to take action against our sea of troubles. Thus will we begin to heal our heart. Thus will we begin to burnish our hope once again.

Join the March!

Save Our Cities! Save Our Children!

#### TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,406th day that Terry Anderson has been held captive in Lebanon.

But I note that U.N. mediator, Giandomenico Picco, is again in the Middle East attempting to effect his release. Mr. President, I ask unanimous consent that an Associated Press report detailing Mr. Picco's most recent efforts be included in the RECORD at this time.

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

#### U.N. CHIEF SAYS HOSTAGE TALKS "MOVING FORWARD"

(By Peter James Spielmann)

UNITED NATIONS.—A U.N. envoy's efforts to arrange a trade of Western hostages for Arabs held by Israel is moving forward, Secretary-General Javier Perez de Cuellar said Thursday.

The U.N. mediator, Giandomenico Picco, held a marathon 20-hour session of talks in Lebanon with representatives of Lebanese kidnappers and returned to Damascus, Syria, on Wednesday, sources in Lebanon said.

One of the security sources in the Mideast characterized the talks as "tough and complicated," but would not elaborate on the substance of the session, which began Tuesday.

Following the talks, Perez de Cuellar appealed to all parties in the Middle East to cooperate and said the process was "moving forward."

It wasn't known if Picco would return to Lebanon for further talks on his present mission, which began Sunday with his arrival in the Syrian capital.

The sources said Picco was driven Tuesday in a convoy of four Mercedes limousines with Syrian license plates to Nabi Sheeh, a village in Lebanon's Syrian-controlled Bekaa Valley 10 miles south of Baalbek. The sources refused to identify the men Picco met with there.

Nabi Sheet is the hometown of two senior officials of the pro-Iranian Hezbollah, which is believed to be the umbrella group for the kidnapers: Abbas Musawi, secretary-general of the group, and Hussein Musawi, his distant cousin.

Picco was accompanied by several plain-clothes Syrian security officers, who waited outside as he entered the house where the talks were held, the sources said.

Four groups have claimed the abduction of most of the nine missing Westerners—five Americans, two Germans, a Briton and an Italian.

The longest held hostage is American journalist Terry Anderson, who was kidnapped on March 16, 1985. Another Briton, Alec Collett, was kidnapped in 1985, but British officials say he is presumed dead.

Picco had returned to the region this week after holding separate talks in New York with Iranian Foreign Minister Ali Akbar Velayati and Uri Lubrani, the top Israeli involved in the hostage issue.

The Lebanese kidnapers are seeking the release of about 300 Arabs held in Israeli jails or at the Khiam detention center in the Israeli-occupied enclave in southern Lebanon.

Israel had demanded firm word on the fate of six of its soldiers missing in Lebanon.

Iran, eager to improve its relations with the West, has said it would use its influence with the kidnapers if Israel freed the Arab prisoners.

U.N. intervention in the hostage ordeal was requested by the kidnapers in a letter they sent to Perez de Cuellar via British television journalist John McCarthy, who was freed from captivity on Aug. 8.

American hostage Edward Tracy was freed three days later.

On Sept. 12, Israel freed 51 Arabs and repatriated the bodies of nine Hezbollah guerrillas, saying it was in exchange for receiving proof that one of its missing servicemen, Rahamim Alsheikh, was dead.

Jack Mann, a Briton, was freed on Sept. 24.

Alsheikh was captured in 1986 by Hezbollah guerrillas along with another Israeli soldier, Yossi Fink. Hezbollah has refused to say whether Fink is dead or alive.

**CONCLUSION OF MORNING BUSINESS**

The PRESIDING OFFICER. Morning business is closed.

**CLOTURE MOTION**

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The bill 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, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 596, Federal Facility Compliance Act of 1991:

George Mitchell, Daniel Patrick Moynihan, Quentin Burdick, Paul Simon, John D. Rockefeller IV, Terry Sanford, Max Baucus, Howard M. Metzenbaum, Edward M. Kennedy, Don Riegle, Frank R. Lautenberg, Alan Cranston, John F. Kerry, Albert Gore, Jr., Pat Leahy, Wendell Ford.

**CALL OF THE ROLL**

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

**VOTE**

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 596, the Federal Facilities Compliance Act of 1991, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY], is necessarily absent.

The yeas and nays resulted—yeas 85, nays 14, as follows:

[Rollcall Vote No. 226 Leg.]

**YEAS—85**

Adams	Exon	Mikulski
Akaka	Ford	Mitchell
Baucus	Fowler	Moynihan
Bentsen	Garn	Nickles
Biden	Glenn	Nunn
Bingaman	Gore	Packwood
Boren	Gorton	Pell
Bradley	Graham	Pressler
Breaux	Grassley	Pryor
Brown	Harkin	Reid
Bryan	Hatfield	Riegle
Bumpers	Heflin	Robb
Burdick	Hollings	Rockefeller
Burns	Inouye	Roth
Byrd	Jeffords	Rudman
Chafee	Johnston	Sanford
Coats	Kassebaum	Sarbanes
Cohen	Kasten	Sasser
Conrad	Kennedy	Seymour
Craig	Kerry	Shelby
Cranston	Kohl	Simon
D'Amato	Lautenberg	Smith
Danforth	Leahy	Specter
Daschle	Levin	Warner
DeConcini	Lieberman	Wellstone
Dixon	Lugar	Wirth
Dodd	McCain	Wofford
Domenici	McConnell	
Durenberger	Metzenbaum	

**NAYS—14**

Bond	Helms	Stevens
Cochran	Lott	Symms
Dole	Mack	Thurmond
Gramm	Murkowski	Wallop
Hatch	Simpson	

**NOT VOTING—1**

Kerrey

The PRESIDING OFFICER. The yeas are 85, the nays are 14; three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. MITCHELL. Mr. President, I note the presence of the distinguished Republican manager of the legislation and the Republican leader, and the distinguished Senator from Wyoming. I inquire at this time whether, in view of the vote just cast, it will be appropriate to proceed directly to the bill.

As we all know, under the rules, Senators in opposition to taking up this bill could utilize up to 30 hours to delay getting to the bill, which is of course their right. Were that to occur, we would obviously have to just remain

in continuous session until we could get to the bill. I hope that we could proceed to the bill now. I merely use this opportunity now to inquire whether or not that will be possible.

Mr. WALLOP. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. WALLOP. Mr. President, as the majority leader well knows, there have been negotiations underway which could bear fruit. It is not my intention to delay ultimate consideration or deny consideration of this, but it is my intention to use some of those 30 hours to allow us to continue these negotiations.

My guess is that, in the long run, that saves time rather than expands it. But if not, ultimately we will have to go to the bill. I would like to use my right to some of that time for the purpose of allowing negotiations to be completed.

Mr. MITCHELL. Mr. President, that is, of course, the Senator's right, and I fully respect it. We will proceed then. Senators will have to utilize their time under the rules, and we will simply remain in session until such time as the time expires, and we can get to the bill.

If we are able to complete action on the bill tomorrow, it is not my intention that the Senate be in session other than—at least that there be no rollcall votes tomorrow. If we are not able to do so, then we will just stay in tomorrow and proceed as best we can.

Mr. WALLOP. Again, if the majority leader will yield, I have been talking to both majority and minority staff on the Senate Energy Committee. And it would appear that a negotiated settlement of the things in the committee is within reach. And if that is the case, I would let the bill go, if we got to that point.

But just to make certain that we have the ability to utilize that time and not get run over, I would again suggest to the majority leader that I would exercise my right and hope others would join me while those negotiations are underway.

Mr. MITCHELL. Mr. President, as I said, I understand that, and I respect that.

As the Senator from Wyoming knows, almost every Member of the Senate regularly inquires of me as to what the schedule is for the day and for remainder of the week, and I merely made that statement for that purpose so that Senators could be apprised of the fact that we will stay in session this week to try to complete action on this bill. Obviously, if we cannot, we will then discontinue and resume next week. But that includes tonight and tomorrow, to the extent necessary. I hope very much we will be able to resolve it in a way that ultimately we will be able to save time.

The Senator from Wyoming has indicated that he does intend to use at

least some portion of the 30 hours under the rule available for further debate on the motion to proceed. I understand that, and we will proceed accordingly.

Mr. DOMENICI. Mr. President, I think the distinguished majority leader, who has been involved in this effort of Federal cleanup, knows that the Senator from New Mexico may indeed represent one of the most affected States in the Union, and that does not mean that I oppose imposing of us, the Federal Government, what the distinguished majority leader wants imposed; to do as we make others do, as I understand it.

I just want the leader to know we are engaged—and I think it is very, very forthright and aboveboard, and leading toward some good conclusions—we are negotiating to, in some ways, help the bill. We are concerned about some parts of it in terms of how it will be implemented. Fines are imposed that go from one Federal pocket to another; fine the Government and put it in EPA's pocket. We are not too sure about how that works.

I want you to know that I do not intend to delay. But this is a very, very serious bill for some of us, and we want to try to make it even better than the majority leader's efforts, as they show up in this bill.

I thank the leader.

Mr. MITCHELL. Mr. President, I appreciate the concerns of the Senator from New Mexico, and I appreciate his contribution to the bill. I hope it can be satisfactorily resolved.

Mr. SARBANES. Will the majority leader yield for a question?

Mr. MITCHELL. Yes, certainly.

Mr. SARBANES. As I understand it, it is the intention of the majority leader to keep us in session until we go on this bill; is that correct?

Mr. MITCHELL. That is correct.

Let me say, just so we can keep this in some perspective: First, to begin at the end, there are negotiations underway, and I believe and hope that they can result in a resolution of this that will permit prompt consideration and enactment of the bill. That is ultimately my objective.

To move back a little bit, to put it in perspective, I began this effort 5 years ago. This bill has passed the House three times by overwhelming margins, and has twice been reported unanimously by the Senate Committee on the Environment. This is a matter that is not of recent consideration. It has been under intensive consideration for some years.

When it passed the committee, the Environment Committee, earlier this year, I was asked at that time on the record by those who were concerned about some aspect of it, would I withhold bringing the bill to the floor for a period of time—and we discussed specifically a month—to permit negotia-

tions to occur in the hopes of working it out.

I assented to that request, and in fact did not hold it up for a month, but several months—I think it is now 5 or 6 months—in an effort to do that. As so often happens, negotiations do not seem to take on an intensity until the matter is immediately before us. So we finally now brought it up, and I hope we can proceed to it.

I just want to say to my colleagues, this bill has a very simple purpose. All this bill says is that the Federal Government must abide by the environmental laws which it imposes upon others. And the enforcement of those laws will be the same as to the Federal Government as it is to others. In fact, I believe that the original law of some years ago provided for that.

The reason we are here is that courts have disagreed on interpreting that law. Some have said yes, that is what it meant; others have said no, that is not what it meant. So we are here now to clarify that and make it clear once and for all the Federal Government must obey the same environmental laws which it imposes upon States, municipalities, and private citizens.

I hope we are going to be able to work it out.

Mr. SARBANES. Will the majority leader yield further?

Mr. MITCHELL. Yes, certainly.

Mr. SARBANES. Well, of course, no one takes a negative view toward reasonable negotiation, negotiations that might reasonably work out differences. But the legislation is designed to accomplish certain purposes, and I am very frank to say to the majority leader, I do not think that the threat of delay ought to be used as a weapon in the negotiations to obtain adjustments that would otherwise not be seen as being reasonable and proper.

We can stay in session here for 30 hours and at 7 o'clock tomorrow night, when the time on this motion expires and we are on the bill, we can then face another filibuster on the bill, which is actually probably where this should have taken place, when you are actually dealing with the substance of the legislation at that point. But we are being subjected here, I guess, to a double filibuster. And it just seems to me at some point we just ought to say, well, fine, we will stay here and let the time run, and then we will get to the bill in the normal course.

I am not involved in those negotiations, and hopefully they address matters that can be reasonably reconciled appropriately.

I know the majority leader is very much involved in the substance of the legislation. But it seems to me that at some point we have to say, well, fine, people take that position. The procedures provide for the time running. The Senate is prepared to stay here and let the time run rather than have it used

as a lever to obtain concessions that would not otherwise, in reasonable discussions, be appropriate.

I do not know where that point is, and we may not be there. But I just want to make that observation. This is a filibuster not on the bill itself. This is on the motion to even get to the legislation. I do not know how you are going to run the Senate if even just to get to a piece of legislation we have to go through this process. Maybe we ought to let the 30 hours run. I am prepared to be here in order to help to accomplish that purpose if it becomes necessary.

I understand it may not be necessary and perhaps the negotiations are dealing within the area of reasonableness. But if this process of just holding this thing up and putting everything into limbo in order to use it as a lever to obtain adjustments that would not otherwise reasonably be done on the basis of the substance is underway, I think we just ought to let the 30 hours expire.

I do commend the majority leader, at least, for his indication that it is his intention, in effect, to do that if we cannot resolve this situation in some other way.

Mr. MITCHELL. Mr. President, I thank my colleague. I wish to make clear two things. First, I have stated that we will, in fact, stay in session if necessary to get to the bill. But, second, it is my strong hope and my expectation that it will not be necessary to do so. There have been discussions. These are difficult issues. There are credible points of view involved on all sides.

The problem has been to get engaged in discussions. And as we all know, until we actually get a bill up and get to that point, it is hard to engage people in serious and intensive negotiations. But I believe we are at that stage. It is my very strong hope that we can work it out in a way that is responsible and that will permit us to pass the bill, hopefully today. So we are doing that.

I am going to yield momentarily to the Senator from Wyoming so that he may begin to utilize his time, even as I say I very much hope we can work it out. My staff has been engaged in such negotiations pursuant to my instructions, pursuant to an effort to arrive at a reasonable accommodation for all concerned.

I merely wanted to state my intentions so that all Senators would be aware of what the prospects will be for the next couple of days on this matter.

I am now pleased to yield to the Senator to use such time of his hour as he wishes, and hopefully the negotiations can continue.

FEDERAL FACILITIES  
COMPLIANCE ACT

MOTION TO PROCEED

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Wyoming is recognized.

Mr. WALLOP. I thank the majority leader. I find myself in an unusual position. I am not generally one who does spend time delaying the process of the Senate, figuring that the Senate itself provides for its own delays. But there are some serious matters that have not been wisely considered that are contained within this bill. I cast no aspersions on either the proponents of the legislation, its authors, or otherwise, when it has been said that it has been passed by large margins in the House twice and twice been reported by the Committee on Environment unanimously. That does not give this Senator, nor should it give the Senate, the American people, or their Congress a great deal of confidence. Because RCRA is only just becoming known to the American people.

There are enormous budget considerations to this bill, the likes of which cannot be forecast; not by OMB, not by CBO, and not by diviners looking into crystal balls.

Should States, exercising their rights to sue the Federal Government under RCRA, be granted funds? Who can determine, one, what the success rate of the States is going to be; and, two, where the money is going to come from? So this is not an issue about cleaning up mixed and hazardous wastes all by itself. It is a budgetary issue.

It is my belief and the belief of others that a budgetary point of order lies against this bill. It would be my preference not to have to do that because the fact of mixed and hazardous wastes in our States and within our country and within our borders is a serious business which needs addressing. But it ought to be addressed in a rational way which does not eliminate the ability of America, its States, its businesses, or its people to compete in the world.

Our Government is too expensive today to allow one element of our Government to engage another element of our Government in constant lawsuits and the payments of fines of taxpayers' money over which neither has any control. Clearly the poor, benighted taxpayer is the last amongst equals in this issue, whose money is wasted in lawsuits and fines. Appropriations that go to one Department for the purpose of cleanup are now denied that very Department from the funds committed to cleanup.

Where, Mr. President, is there logic in that? There has to be some better solution than to take the money devoted and appropriated for cleanup away from the agency obliged and committed to do that cleanup. It is bizarre, Mr. President. But I guess one has

grown used, in this day of actions of Congress, to accepting the bizarre as the normal and accepting inefficiency and incompetence and mediocrity as the standard by which all other judgments and actions are taken.

But we do not have to do it, Mr. President. We absolutely do not have to do it.

Let me address what S. 596 is all about. It makes all Federal facilities subject to fines and penalties to be paid from the Federal Treasury for violations of RCRA. RCRA precludes land disposal of hazardous waste that has not been treated, and it also precludes the storage of such waste.

Problem No. 1: If you cannot store it and you cannot dispose of it, what in God's green Earth is one expected to do with it? What one is expected to do with it is pay a fine for possessing it, and that gets us nowhere near the cleanup, nor, frankly, does it resolve any of the problems.

The Department of Energy, the National Institutes of Health, the Veterans Administration, all of these agencies and others, too, generate mixed waste having both radioactive and hazardous components, and it is not accepted by commercial hazardous waste treatment facilities because of its radioactive component. Mixed waste requires a treatment technology different from hazardous waste. We have become rather skilled as a nation in the dealing with and disposal of hazardous waste.

The technology: Mr. President, here is where the problems come. The technology is being developed, but it does not exist at present for all forms of mixed waste. Go back to the premise of the bill: You are not allowed to store it and you are not allowed to dispose of it, but the technology of dealing with it does not exist. A fine comes, and where does that lead this Nation and what possible competent use of the taxpayers' dollar is encompassed in that action?

It is idiotic. It is a nation wrapped in navel gazing that cannot lift its eyes from its technology—like a fascination with immortality—to the reality of a world where there are some things we do not know how to do yet. So we fine ourselves for not knowing how to do it. We prohibit ourselves from doing it. And we are set up in S. 596 to do just that to ourselves.

How is there logic in that?

What happened to a country that prides itself on technology expertise and a certain modicum of practicality, a certain ability to deal with problems and commit our ingenuity and our technology to dealing with them, but at least managing to cope until we have arrived?

We are saying we cannot cope, so we will fine ourselves and we will fine ourselves out of the money devoted to trying to determine how to cope. We are a

brilliant country that has chosen that solution, and it is no wonder that we are unable to compete with the Japanese and Germans in the marketplace because we waste our efforts—technological and scientific—our resources, and other kinds of things, on this silly kind of fadism that one element of Government can fine another element of Government and the taxpayer does not have to pay any of that. All he has to do is sit by and see his resources coming out of his or her pocket for which he or she has worked endlessly through many hours, and see it flowing back and forth between agencies of Government, through the courts, to accomplish what, Mr. President? To accomplish a delay in the very resolution of the problems that bring us to the introduction of such a bill.

As if it were not enough that no such technology exists, and if it were not enough that one agency of Government can fine the other, Mr. President, let me make a point, and let me ask the Senate which just voted to go right to the consideration of this bill, to question their judgment and not their passion for a moment, to slip out from under the bonds of green ratings that bring money for campaigns and other kind of things and look rationally at the problems that exist in America.

Mr. President, there are today no existing EPA regulations regarding mixed waste for which treatment technology does exist. How can we fine ourselves for circumstances which are beyond our ability even to formulate regulations, and yet that is precisely what this bill seeks to do.

What we are seeking to do, in the moments the negotiations are going on, is to provide some element of rationality to this process; that we deal with the problems and hazards of mixed waste not by postponing our ability in technology by denying them resources which we have already appropriated to them, but by proceeding with it and allowing ourselves the means by which we can resolve this problem.

Had Dr. Seuss had any idea of the idiocy of this program, as devoted as he was to the environment and the things in this Nation, he would have been able to concoct a series of characters, as he often did, the ironic inconsistencies of which confuse them inevitably and amuse us into thinking rationally on such a serious issue.

Mr. President, if it is not enough that the EPA does not have the regulations and that one agency of Government can sue another agency of Government, the States can sue the Federal Government under the terms and provisions of this under terms and conditions which they concoct within their own bounds.

Mr. President, there is no greater devotee of States' rights in the Senate, nor with a more consistent voting

record toward States' rights, than the Senator from Wyoming. But it ill behooves a Congress to try to yield the sovereign immunity of the United States to the States over rules and regulations and laws which have yet to be drafted or, if they have been drafted, can be used to sue the United States and levy fines and have the courts collect costs.

How, in an era of budget deficits, are we going to plan for what the courts will give to the States when we do not know the laws that they have, the regulations they possess or might promulgate or might yet pass? How can we sit here uniformly, Republicans and Democrats alike, and say what are we going to do about this deficit, and then toss into the hat something that could cost the Treasury billions for purposes about which we do not know and which will come out of the money to cleanup the waste and the research, the technology that does not exist?

Mr. President, these are the actions of a foolish Nation, not the actions of a Nation devoted to resolving its environmental problems.

Additionally, even though technology does exist for some waste streams, there has not yet been time, Mr. President, to construct enough facilities to process those mixed waste streams. We are on the cutting edge of technology, Mr. President. We are trying and trying as a nation to advance it, and we are saying it does not matter that you have not arrived there and that you do not have time to build it, you should have put it in place even though it did not exist, and you can be fined for not using what you have not had time to construct. And where does the money come from but the money to construct even those technologies which we now possess that we ultimately can use to resolve some of the problems of these waste streams?

Mr. President, it was not clear until 4 years ago that mixed waste was covered by RCRA. When we say that the House has passed this legislation a couple of times by large margins and the Committee on Environment and Public Works unanimously in previous years, it is because they did not know what RCRA was. It is a law which we are about to reauthorize and even now is causing controversy because it is not clearly developed either in regulations or in law. But until 4 years ago, it was not clear that mixed waste was part of the territory that the intent of RCRA covered.

Again, let me point to the irony of what we are about to do, Mr. President, because it is a level of frustration for this Senator that our impatience as a Nation outruns our judgment sometimes. Mr. President, it takes 6 years after the technology is developed just to gain approval for a site to place the technology and begin to construct it. So here we have put in place an impediment

to getting there, a series of laws and regulations which will not allow us to use the technology that is on the cutting edge because we have to have site permissions and approvals and construction permits and all the other kinds of things. It takes us 6 years.

I remind you, Mr. President, only 4 years ago did we know that RCRA covered this stuff. So now we are about to say both to the States and the other agencies of the Federal Government, you can sue the EPA or the Veterans' Administration or the National Institutes of Health or the Department of Defense because these mixed waste streams have not been cleaned up, but we will not give you permission to construct them. Yet we will fine you for storing them because that is not allowed, for not disposing of them because we have not permitted you to build the disposal.

What kind of a nation, Mr. President, does that to itself? What kind of nation is so healthy that it can indulge itself in this kind of idiosyncratic behavior, that it spends billions of dollars passing forth amongst agencies of Government, all of which deny us the efficient approach and conclusion to the storage of these wastes.

Now, the Senator from Wyoming is not denying that the wastes must be dealt with. He is not denying that they are hazardous. He is not denying that hazardous mixed wastes are extremely complicated and a serious part of the Nation's environmental health. But the Senator from Wyoming wants to get to the point where we can do it. And you cannot get to the point where you can do it by simply denying yourself day after day the ways and means of getting there because of a fascination with the courts, because of a fascination with regulations as yet unwritten, laws as yet undrafted in the States, by an EPA that does not know what they are, will not give approval for the technologies to deal with them, will not allow the construction of the technologies that do exist. What kind of nation tells itself that it ought to spend time in court over those kinds of issues? It is idiotic. It is wasteful. And the taxpayers simply ought not to have to put up with that.

Now, Mr. President, NEPA compliance is part and parcel of this program. That is part and parcel of what takes us 6 years to arrive at. So it becomes impossible for the agencies of Government that I have mentioned to comply until the facilities are constructed, and in many instances until the technology is developed, and just within the Federal Government the asinine transfer back and forth of up to \$5 billion that is devoted to this very topic by the appropriations of the United States but comes out of the hide of offending agencies and into the coffers of other agencies that sue them.

Now, Mr. President, this is bad enough, as I have described it, but the

medical research community has a dilemma as well. How do they deal with mixed wastes containing both radioactive and RCRA hazardous waste? It involves highly technical as well as regulatory issues but was recently well described as follows, and let me quote, Mr. President. "The waste cannot be disposed of without treatment. Treatment is not now available and the storage of waste until treatment technology or capacity can be developed is a violation of RCRA."

So what do we do, Mr. President? Do we stop medical research so that we can fine ourselves? Do we take money from the study of AIDS and other kinds of things so that we can pay fines while we wait for technologies to be developed under a law which prohibits its storage?

That is what S. 596 is all about. The Department of Health and Human Services, like DOE, like the Department of Defense, like the Veterans' Administration, supports the regulation of hazardous wastes, but they have a number of questions about the validity of RCRA regulations as currently written and applied to biomedical waste treatment.

As an example, Mr. President, a 5-gallon carboy of aqueous waste containing tracer levels of carbon 14 and 6 parts per million of chloroform is considered a mixed hazardous waste. There are many safe and practical methods for disposal of this waste but RCRA's regulations deny them to us. So we do not even allow ourselves to use the technology which exists because of a set of regulations developed under RCRA which deny us the ability to do that.

Now, more than 80 percent of all biomedical research, Mr. President, involves the use of radioactive materials. And this alone generates some 30 to 40 percent of the total volume of low-level radioactive waste produced annually in the United States. Much of it is classified as mixed waste. However, it should be noted that this waste stream contains only 1 to 2 percent of the total radioactivity of that generated by utilities in their low-level waste treatments. The 1 to 2 percent figure is the one most frequently quoted and has led many to assume that the problem is trivial for the biomedical community. Unfortunately, nothing could be farther from the truth.

One source has recently estimated that the cost of disposal of mixed waste will reach between \$10,000 and \$50,000 per cubic foot under the terms and regulations created by RCRA. And the \$10,000 to \$50,000 wasted on trying to find technology to store that, Mr. President, comes directly out of the hide of advanced medical research, make no mistake about it. And under RCRA and by the regulations of the EPA they are not required to make the slightest judgment as to the hazards

contained in these things, only that they are mixed wastes and cannot be stored and the technology to dispose of them cannot be permitted.

That is what this bill is about, Mr. President. That is why some of us, too small a number of us, have focused on it.

Again, let me point out it is not that we deny the risks and the problem of mixed wastes. There has to come some moment that we, in a nation with a budget deficit as high as ours, with a competitive problem as great as ours, simply cannot afford the luxury of one agency of Government fining another agency of Government, keeping it in court, costing it money for the elimination of no risks at all.

What happens to our lead in technology when we do this to ourselves? What happens to the timeframe in which medical advances can take place, when you have \$50,000 a cubic foot for the storage of mixed waste, technology for which and the safe disposal of which exists today but is denied by RCRA?

It is not that RCRA claims that there is public hazard in using current technology. It has simply drafted regulations which do not permit the use of current technology. They make no claim that the public is in some way threatened or endangered by these storage technologies. They have just written the regulations differently, at great expense. And if the expense is too great, the fine which comes out of the hide of medical research, shutting down facilities, shutting down promising technologies, shuts ourselves off from the genius which has led and guided this Nation all the time.

There is a hazard and a threat and a danger to the public health and safety, by all means. That is not what we are talking about. What we are talking about is a set of regulations that do not accommodate safe storage practices today and they are admittedly safe storage practices which somehow or another the words of the regulations got wrapped around the phrases of the English language and the technology of America to deny them to us.

The cost of storing this waste on site at medical facilities in addition to the dangers inherent in that approach are simply prohibited. The assumption under which both Congress and EPA have formulated all radioactive waste disposal laws and regulations is that increases in cost can be passed on to the consumer.

What an assumption? What an arrogant assumption by bureaucracies by which we live within the beltway and could not figure that the consumers—the people that we represent, who work hard for the moneys they earn—and simply pass on a cost to a consumer without telling that consumer that he has one iota of increased safety because of this piece of insanity. Yet that

is what we are about to do, absent some modest structure.

Oh, how easy it is to terrify the public by saying radioactive waste. How can you expect the public to gain expertise in what hazard is contained in this language? Dreams of Chernobyl, Three Mile Island, and other kinds of things and low-level mixed waste which has been handled safely, Mr. President, for years until RCRA came along and only 4 years ago discovered that it ought to control hazardous streams of mixed waste—and other laws of the United States protect us from ourselves and prevent us from achieving the safe disposal of these things—so that the courts and the lawyers of the agencies can confront each other, pay moneys into each others' coffers and deny them the very intellectual capacity to resolve the problems which brings us to the introduction of such legislation in the first place.

Mr. President, after May in 1992, when the current national capacity variance expires, mixed wastes can be stored for no more than 90 days, this despite the fact that there are no disposal outlets for most of this type of biomedical research wastes, and the methods to treat them onsite do not exist.

Mr. President, this is not a fairy tale. This is reality. This is what the Senate is about to do to itself. I do not know what it takes to bring us to our senses to examine what it is that we are going to do. We are asking an America that is genius to deny itself genius. We are asking consumers to pay for frivolity that we are developing here on the floor of the U.S. Senate so that agencies can sue agencies. Agencies that deny agencies the ability to store or dispose of these things can sue them for having them.

I mean, this is a Government that belongs to all of us. It does not belong to the agencies. The money that funds them comes out of the pockets of the people in the gallery, the people in Wyoming, the people in Illinois, the people in Hawaii. We are letting them play games with it—not to increase the safety of Americans but to increase the importance of agencies, lawyers that work for them, staffs that write regulations for them, and the Congress that cannot see beyond its nose to what it is about to do to itself and its people.

Under section 3008(h) of RCRA, EPA may shut down a facilities operation or can assess a penalty of up to \$25,000 a day for each violation. Is the Senate willing to say this afternoon that medical research will have to cease because we cannot reach a regulatory requirement that we have put on one agency of Government to the surprise of itself and the Congress that wrote it?

Congress really must consider the human costs of following RCRA as currently written, but the human cost of RCRA as currently written falls even

greater, and deeper understood are the terms of S. 596 as it is presented to the Senate this afternoon.

Maybe I do not belong in the Senate. But I do not understand how a country can do that to itself. I really do not understand it. I really do not understand the country that has its agencies suing each other, fining each other, and taking appropriated funds, appropriated for one purpose, and put into the pockets of another agency for another purpose, and then complains about its deficits. I really do not understand it.

Perhaps I am not a modern man. Perhaps I do not understand what it is that makes modern government function. I daresay the people in Wyoming do not understand either why one agency of Government should sue another for the disposal of wastes that it, under other laws and provisions, denies it the ability to confront.

Mr. President, I would like to read a letter from the Assistant Secretary for Health, for the Department of Health and Human Services, about this problem of medical wastes. This is not a fantasy that is dreamed up by the Senator from Wyoming. These are the real idiosyncrasies of modern American Government whipping itself into a frenzy and not allowing itself to proceed and use the genius of America.

DEAR SENATOR MITCHELL: The Senate will soon consider S. 596, "The Federal Facilities Compliance Act of 1991." Under this Act, all Federal facilities would be subject to state civil penalties and fines under the Solid Waste Disposal Act for failure to comply with solid and hazardous waste laws and requirements. This would have a negative impact on the National Institutes of Health (NIH), particularly with respect to the problem of "mixed wastes," those containing both radioactive and hazardous wastes. NIH would be exposed to potentially costly litigation and penalties for the storage of mixed wastes.

Mixed waste is, unfortunately, an essential byproduct of most biomedical research. Over 80 percent of all biomedical research involves the use of radioactive materials. Included is virtually all genetic research—

From which Americans have one Nobel Prize.

It shows more people with AIDS, Mr. President.

most research on cancer, vaccine development—

Which is one of the things that we hope for in terms of AIDS, cancer, and other diseases that afflict the human existence—

and research on many life-saving therapies.

Mixed waste produced at NIH typically contains an extremely low-level radioactive component which prevents the waste from being neutralized and treated as any other environmentally hazardous waste. On the other hand, the hazardous chemical component of mixed waste prevents it from being transported and stored permanently at a radioactive waste storage site. Therefore, mixed waste is a special category of waste caught in a "catch-22" situation.

You cannot transport it, you cannot store it on site and you can be fined for either.

Mr. President, why are we doing this to ourselves? What is it that the Senator from Wyoming is missing in the equation that will not allow ourselves to do either thing with it and then fine ourselves for standing still?

Because there is no technology for treating mixed waste and no place to transport and store it, there is no alternative but to store mixed waste on site at great expense. NIH-mixed waste is presently stored in a special building on the Bethesda campus, which will reach full capacity within the next year. Until other options become available, NIH has little alternative but to build further storage capacity for mixed waste. S.596 has the potential for exacerbating an already costly problem.

The assumption under which both Congress and the Environmental Protection Agency have formulated radioactive waste disposal laws and regulations is that increases in costs can be passed on to the consumer. However, in medical research, the increased cost only reduces the amount of medical research that can be supported.

If S. 596 prevails in its present form, potential litigation and penalties will add to the cost of mixed waste storage and directly reduce NIH funds available for research grants.

When the Senate considers S. 596, there will be an opportunity to address some aspects of these problems. We support the administration's amendments dealing with mixed waste. It is certain that without some action on the part of Congress, biomedical research conducted at NIH will be impeded.

I might say that at a certain moment in time, the Senator from Wyoming predicts that biomedical research conducted at NIH, or within the continental United States, will come to a stop.

Mr. President, why do we do this to ourselves? Why is it that a Nation that leads the world in medical research would begin to make it so expensive that it cannot compete within its own boundaries for the right and privilege to continue that research?

Why is it that when we know that we can make safe transportation of this, safe storage of this, we sit around and try to figure out a way to fine ourselves \$25,000 a day, rather than use what we know and come to a practical solution of the problem? A fine of \$25,000 a day from one Government agency to another is not a practical solution, Mr. President, no matter how you try to lay down and view that problem.

It simply makes no rational sense. Americans had the spectacle of the Senate at war with itself over the last week. Not content with that, the Senate is about to set the Government at war with itself, at great cost to the taxpayers, and without a resolution of the problems that we say so proudly

that we sit here and try to make ourselves the heroes of.

Radioactive waste scares the pajamas off Americans, and it ought to. But think about this, Mr. President: How long has it been stored out there, these low-level wastes? How long have the people at NIH and other medical research facilities at colleges and universities around America been using this stuff? How many Americans are dead from that, Mr. President?

What risk is worth setting the Government at war with itself over? It is unseemly enough that the Senate wars within its own curtain. Why do we set one Government agency at the throat of another? Especially giving the one agency that is most likely to be at the throat of the other the means to deny the resolution of the problem to the agency being sued. But that is what we are about.

Americans, in their homes, cannot be expected to know what we are about, merely by stating that we have introduced a bill to protect them from mixed waste containing low levels of radioactivity. It is hard for somebody in politics to come up here and suggest that maybe the risk of the waste is far less than the risk of what it is doing to ourselves as a society.

The demonstrable position on this waste cannot be made by science, but it can be made by flamboyance. It cannot be substantiated with statistics. But it can be substantiated in glorious speeches about how "I am protecting you from radioactivity." "No Chernobyl in your backyard," whether it be the great medical universities of America, or the great institutes of the Federal Government and the voters, the resolution of diseases, elimination of them, advancement of the health and well-being of all Americans.

That is why it is worth taking a little time over S. 596, Mr. President. That is why we really ought to pay attention before we leap and maybe for once, for the moment, set aside the war with ourselves and certainly set aside the temptation to put the States at war with the Government, the agencies of Government at war with themselves, and try to get some bang for the bucks that we peel out of the hides of the taxpayer, the working men and women of America.

They do not need to spend it on Government lawyers, Mr. President. They need this money to be spent by the agencies on developing the technologies to take care of whatever risks are out there. They do not need their taxpayer dollars going to pay some State for a new set of laws and regulations that it possesses, to drive out Federal health facilities, or defense facilities, or veterans facilities from within their midst, and ask us, down the road, what are we going to do to replace that lost Federal presence that once operated in their midst.

The Senator from Hawaii well knows how valuable certain Federal facilities are to certain local economies within our boundaries; and when we seek to shut them down, whether they are defense, or research, or Bureau of Land Management installations, you cause severe local economic distortions by moving them; and then you hear that Congress is authorizing the State to sue them out of their existence, and other agencies of Government can do that same thing, creating wars within the boundaries of Government, so that agencies can sue each other and occupy the courts.

Mr. President, we have better uses for our courts, and if we do not have better uses for our Government lawyers, we ought to have fewer Government lawyers so they can occupy their time more efficiently.

The public cannot be expected to shoulder their expense. And the public cannot be expected to be satisfied with a Government that shuts down its medical research facilities or with the imposition of fines or the creation of costs for the storage sites of waste that exceeds any rational threat to either the employees of those sites or the neighbors that surround them.

And as these medical facilities begin to store greater and greater volumes on site, you do finally begin to get around the corner, where they might in fact be a public hazard. But why do you have them in that volume? It is because Congress said you cannot do anything else with them unless you be fined \$25,000 a day for having them on site.

Does it not seem to America, does it not seem to the Senate, does it not seem to someone that this is ironically stupid? So, Mr. President, that is what S. 596 is about. I will have more to say on it in another moment.

It is my hope that the negotiations that are going on now resolve a problem that the Senator from Wyoming does not deny exists. But I was merely pointing out the additional problems that are created by the passage of this legislation without resolution of the problems that exist.

The sponsors of this legislation, those who passed it out of committee, and those who voted to proceed, all ought to have one common purpose, and that is to relieve Americans of the risk and hazard of things that really threaten them in the safest and most efficient way possible. And the safest and the most efficient way possible is not to use the funds devoted to the advancement and development of technology and the payment of fines back and forth between States and the Federal Government and agencies within the Federal Government.

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

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

## ORDER OF PROCEDURE

Mr. SANFORD. Mr. President, I ask unanimous consent to speak for 6 minutes as if in morning business.

Mr. WALLOP. Mr. President, reserving the right to object, I have no objection to the Senator speaking as if in morning business. But I want the time to be consumed from the 30 hours.

Mr. SANFORD. It will be, and I have checked that out.

The PRESIDING OFFICER. The time will come from the 30 hours.

Mr. WALLOP. It will count against the 30 hours?

The PRESIDING OFFICER. Yes.

Mr. WALLOP. I thank the Chair.

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

The Senator from North Carolina is recognized.

Mr. SANFORD. I thank the Chair.

(The remarks of Mr. SANFORD pertaining to the submission of Senate Concurrent Resolution 70 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

## ORDER OF PROCEDURE

Mr. DIXON. Mr. President, I understand that my distinguished colleague and friend from Wyoming has permitted people to proceed as though in morning business with the understanding that the time consumed would be charged against the bill or against the 30 hours as presently running. Is that my understanding?

Mr. WALLOP. The Senator is correct; as long as it is charged to 30 hours, I have no objection to those proceedings.

Mr. DIXON. I thank my dear friend for that accommodation.

Mr. President, I would like to make a statement that I do not think will consume more than the time by the hour of 3 o'clock. I want my friend in the Chair to understand that I am the next person in the Chair. If I impose upon him for a minute or two, would he be tolerant of that?

The PRESIDING OFFICER. The Chair finds it easy to be tolerant of the Senator from Illinois.

Mr. DIXON. I thank my distinguished friend, the Senator from Connecticut.

## THE INTERIM FINAL MEDICAID REGULATIONS MUST BE WITHDRAWN NOW

Mr. DIXON. Mr. President, on September 12, the Health Care Financing Administration [HCFA] published regulations that will have a serious adverse effect on my own State of Illinois, and more than 30 other States. Because of HCFA's arbitrary interpretation of what State revenues qualify for use to match Federal Medicaid payments, the ability of States to meet rapidly rising Medicaid costs and to provide critical health care services to those who so badly need them are being unnecessarily compromised.

The Omnibus Budget Reconciliation Act of 1990 [OBRA 1990] permits States to use what are called provider taxes as Medicaid matching funds.

The administration, however, wants to restrain the growth of provider donations and taxes, and is therefore working to undermine the authorization for the use of these revenue sources. It has now issued vague and ambiguous regulations regarding these tax programs, and has taken extreme liberties in interpreting congressional intent.

I have learned that the Illinois taxing plan appears not to meet the guidelines. However, HCFA has given some other States with very similar plans informal assurance that their donation or tax programs meet agency guidelines. What makes one State's plan acceptable while another is not, is unclear in the regulations, and continues to be a mystery to me. Frankly, Mr. President, this is troubling.

The Illinois medical assessment plan was unanimously approved by the Illinois House and Senate, signed into law on July 24, 1991, and has been submitted to HCFA for approval. The State plan addresses the rising Medicaid costs, spiraling caseloads, and ever-expanding Federal mandates and insufficient Federal financing.

As a means of helping to cover the costs of medical care, the Illinois plan assesses hospitals, nursing homes, facilities serving persons with developmental disabilities, and community mental health centers according to their Medicaid revenues. This is perfectly legal under current Federal law.

The proposed regulations, however, effectively undo all the work my State has done. The result will be real damage on the State's ability to deliver health care to the most needy Illinoisans—poor families, including children, the elderly, and disabled. In other words, the most vulnerable individuals in our society will no longer receive adequate health care.

Moreover, I am concerned about the adverse impact the Medicaid regulations will have on other programs in the State of Illinois. The fiscal year 1992 State budget began last July. The administration's regulations will be-

come effective on January 1, 1992, midway through the State's fiscal year. This will force Illinois to abruptly end its new reimbursement plans for Medicaid providers before the start of the State's next immediate fiscal year. For this fiscal year alone, I understand that the Federal regulations will cost the State \$320 million, revenues which will have to come out of funds now allocated to other State programs.

Mr. President, what makes the situation even worse is the fact that these hurtful regulations come at a time when the Federal Government has been significantly adding to the Medicaid burden that States now face. To cite my own State as an example, according to the Illinois Governor's office, recent mandatory Federal expansions of the Medicaid Program will cost the State approximately \$44.8 million in fiscal year 1992. These new programs account for a major percentage of Medicaid spending increases during the past 2 years. And as a result of the new mandatory programs, the State has had to cut back on providing optional medical services to our neediest families.

Mr. President, on September 12, 1991, during Senate consideration of the Labor, HHS, Education appropriations bill, H.R. 2707, Senator BENTSEN entered a colloquy with Senator FORD on these new Medicaid regulations. Senator BENTSEN encouraged States to advise the Senate Finance Committee of the impact the regulatory changes would have on their provider donation and tax programs.

I share the concerns expressed in that colloquy, as do many of my constituents. I ask unanimous consent to have printed in the RECORD a letter from the president of the Illinois State Senate, the Honorable Philip J. Rock, who has written as a board member of the Loretto Hospital in Chicago.

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

STATE OF ILLINOIS,  
GENERAL ASSEMBLY,  
September 25, 1991.

Hon. ALAN J. DIXON,  
U.S. Senate, Washington, DC.

DEAR SENATOR DIXON: As a Board Member of Loretto Hospital in Chicago, I am writing to express my concern over a proposed HCFA rule that would disallow federal matching funds to states participating in a provider-specific tax program to generate additional Medicaid revenues. The effect of such a rule on cities and hospitals serving a disproportionately high volume of Medicaid clients would be devastating particularly since the proposed implementation date of the rule is January 1, 1992, six months into SFY92.

Illinois recently enacted such a provider-specific tax program and anticipates that it will receive \$320 million in enhanced federal Medicaid reimbursements in SFY92. The impact of the proposed HCFA rule is threefold. The Illinois Constitution requires the state to enact a balanced budget. The newly enacted program, if deemed invalid, could create a \$300 million gap in the budget. Secondly, Illinois hospitals, which have been ab-

sorbing substantial losses due to chronic underpayment, will suffer if a new stream of revenue is not found between now and January. And finally, Illinois will be forced to pay for an estimated \$274 million in unfunded federal Medicaid mandates in SFY92 thus further crippling Illinois' ability to generate additional dollars for Medicaid services.

The provider-specific tax program provides a legitimate source of funding that will bring reimbursement rates in line with actual hospital costs and enable the State to maintain its balanced budget throughout the end of SFY92. If the Bush Administration is determined to invalidate such programs nationwide, then I ask that you work to delay the implementation date of the rule until the end of SFY92. This would give the State more time to devise an alternative source of funding. Furthermore, prohibiting HCFA from imposing retroactive disallowance of reimbursements during the extension period would ensure that the State is not monetarily penalized during the extension period. Such penalties are usually borne by hospitals in the form of payment delays or inadequate rates.

Once again, I urge you to act quickly to avert the consequences of HCFA's action. The rule subverts Congress' intent in OBRA-90 to leave provider-specific tax programs intact for the purpose of generating additional Medicaid funds.

Sincerely,

*Philip J. Rock.*

Mr. DIXON. This letter is representative of the expression of concern raised by many of my constituents. It demonstrates the importance of the provider tax program to the citizens of the State of Illinois.

Mr. President, I urge HCFA to withdraw the unlawful interim final regulations. HCFA's recent proposal to clarify the regulations cannot solve the problem. The current regulations should be withdrawn at once and new ones developed that are based on the statute and congressional intent.

Mr. President, if I could briefly, beyond this prepared text, say this further: My State, like most States in the Union, has a very serious budgetary problem this year. The legislature was in continuous session past the adjournment date. My party happened to be the majority in both Houses, and they met over a long period of time with the Governor, who happens to be of the opposite political persuasion.

And with a great deal of agonizing on both sides, they made terribly deep cuts in our State budget. And they managed to emerge this year without any tax increases.

I recognize that my friend in the chair represents the State of Connecticut, which has been going through similar agonizing experiences—increasing taxes, as I recall, along with highly contentious budgetary cuts and other things.

Mr. President, we are in trouble already, and the Federal Government wants to adopt new regulations that would deprive my State, unbelievably, of \$620 million, a tremendous blow to the State, Mr. President.

Let me say that at our congressional delegation luncheon today we had repre-

sentative some of the well-known names in this Congress: My distinguished colleague, Senator SIMON, from the Senate, as well as this Senator; and on the other side, some of the giants of the House, like the Honorable DAN ROSTENKOWSKI, chairman of the House Ways and Means Committee, and BOB MICHEL, Republican leader of the House, who are all terribly concerned about this.

This is a matter of major import. There is nothing very exciting about this. This is not going to get the attention of the public, like what we have been through in the last few days on the question of the confirmation of the now Justice Clarence Thomas. But this is terribly important to the States.

I hope the administration is listening. I hope the administration understands that if they go through with this regulation in its present form, to the derogation of what we have done in the Congress, and deprive States in this country of substantial sums of money—\$620 million in my State, with 30 other States affected—many of the great States of our Union are going to have tremendous fiscal problems, and are going to require special sessions of the legislature, terrible cuts in the budget, grievous cuts to the disadvantaged, the already disadvantaged people of the State, the possibility of tax increases, and other things.

I hope the administration understands that this is not a matter of no consequence, and that this is a terribly important matter.

I urge my colleagues on both sides of the aisle, representing States that will be impacted—and I am told a majority of the States of the Union will be—to make some remarks here about this subject before it is too late.

Mr. President, I see that discussions are still going on. I will talk about one other matter very briefly before I take the chair.

Mr. President, I just want to call the attention of my colleagues to the Washington Post of October 17, 1991, a column by William Raspberry. The whole column is subject to some debate, but I will read the closing part into the RECORD.

It is about the whole confirmation process regarding Clarence Thomas, and I want to read it, because it perfectly states the feelings of this Senator and reflects the point of view that led me to my vote. And while it is not precisely what I said, it is very similar, and it is interesting to note that a distinguished columnist would express this view in his column.

Here is what he says:

We don't know—we can't know—whether Thomas did or didn't do the things he was charged with, and the question is what is the fairest thing to do in the face of such doubt.

I don't think the Senate took sexual harassment lightly or believe Prof. Hill to be delusional or assume Thomas spoke only God's truth.

A deadly serious allegation was made against Justice Thomas. The allegation was not proven, either by witnesses or by patterns of behavior or by a preponderance of evidence. On what basis, then, should Thomas have been denied the seat that, absent the accusation, would have been his?

It is a tragedy of major proportions that two splendid lives have been tarnished and that, absent some dramatic confession, they cannot be restored.

But let's be clear about what happened Tuesday night. The Senate did not convict Anita Hill of perjury; it merely found itself unable to resolve the unresolvable.

Mr. President, that statement by a distinguished columnist, William Raspberry, in the Washington Post on October 17, 1991, states the view of this Senator, explains the dilemma of this Senator, and I say that it is worthy of being in the RECORD for the further fact that it will enlighten people in this country about the views of many Senators such as this Senator from Illinois.

I thank the Chair.

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. MITCHELL. 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 majority leader is recognized.

#### SCHEDULE

Mr. MITCHELL. Mr. President, several Senators have contacted me in the last few hours inquiring as to the current status of consideration of the matter and the prospects for the Senate's schedule for the remainder of today and tomorrow. And I thought, rather than engaging in 75 or 80 individual conversations, I would make statement here on the floor and thus inform all Senators at the same time of where the situation stands and what the alternatives are and what I believe the prospects are.

As we all know, under the rules of the Senate any one Senator can object to the Senate proceeding to even consider a bill, and it therefore requires a cloture motion to be filed on a motion to proceed to a bill. That is what occurred in this case.

I sought to obtain unanimous consent to proceed to this bill. Objection was made, which is the right of any Senator. Objection was made by our Republican colleagues, and we are unable to even begin consideration of this bill.

A cloture motion was filed and under our rules, it takes 60 Senators to vote for cloture or to terminate debate on the motion to proceed; that is, not to get to the bill but just on the motion to proceed to the bill. That vote occurred at 12:30 today and 85 Senators voted in the affirmative, 14 in the negative.

So an overwhelming majority of the Members of the Senate have expressed an interest in proceeding to consideration of this bill. However, under the Senate rules, notwithstanding the vote of 60 or more Senators, those who opposed proceeding to the legislation may continue to discuss the motion to proceed for an additional 30 hours before we even get to the bill.

That is the status which we are now in. The 30 hours commenced to run at 12:50 p.m., and if it runs its full course, the Senate would stay in session continuously until 6:50 p.m. tomorrow, at which time we would be in a position to take up the bill. After the vote on the cloture motion, request to take up the bill was denied. As is the right of any Senator, objection was made.

In the interim, negotiations are underway, and are continuing at this time, in an effort to resolve the matter in a way that will permit the Senate to proceed to consideration of the bill and to receive amendments and to express its will one way or the other on each of the amendments and on the bill itself. I am advised that the negotiations are continuing in good faith between Senators who support the bill, those who oppose the bill and who are acting in behalf of the Department of Energy and other administration agencies who have an understandable and appropriate interest in this legislation.

I hope that those negotiations will in the very near future reach a point of decision so that either we will know that we are able to reach agreement or that we cannot reach agreement and we will simply have to proceed to resolve the matter on the Senate floor.

Once we reach that point of decision, we will then confront the question of whether to do that today and obviate the need for the 30 hours until tomorrow evening or whether those Senators opposed to the bill who have been effectively filibustering to prevent the Senate from considering the bill will permit us to do that or will insist on exhausting the full 30 hours.

My hope and my expectation remains that we will reach agreement. Even though we may not reach agreement on every issue, we will reach agreement on the central issue or issues that will be sufficiently satisfactory to permit us to proceed to the bill.

I am unable to state that with any certainty, of course, because negotiations are continuing. I cannot firmly or conclusively predict or judge what the outcome will be.

Senators should be aware, therefore, that several possibilities exist.

It is conceivable that in a short time we could reach agreement and be in a position to proceed to consideration of the bill, and there may be one or more votes today.

It is conceivable—I hope not likely, but nonetheless conceivable—that we cannot reach agreement. The oppo-

nents will insist on using up all of the 30 hours, and we will then stay in session continuously until 6:50 p.m. tomorrow, at which time we will take up the bill and proceed to start voting on it at that time.

I hope we do not have to do that. Obviously, it will inconvenience a lot of Senators. That is not my desire. But I am making the statements so as to respond to the inquiries of a large number of Senators over the last several days as to what is occurring and what is likely to occur.

So what I have done is state the two outside possibilities in terms of what may occur, and there is, of course, a range of possibilities within those. The long and short of it is, the matter remains under negotiation. I hope it will be brought to a conclusion soon.

I am advised that negotiations are continuing in good faith on both sides and that it is possible that a point of decision one way or the other will be reached in the very near future.

Mr. WALLOP. Will the majority leader yield?

Mr. MITCHELL. Yes, certainly.

The PRESIDING OFFICER (Mr. DIXON). The distinguished Senator from Wyoming is recognized.

Mr. WALLOP. I say to the majority leader that it is also my understanding that a good many of the outstanding problems have been resolved and the remainder probably can be resolved.

I would say to the majority leader—without criticizing anybody—that we waited for a response that was to have been delivered at 6 o'clock last night and did not get delivered until 12:30 today which did not advance the cause of negotiations. That now is eliminated. Negotiations are fully engaged, and it is my expectation that there will be a resolution of that, and that if such a thing is obtained, and I believe it will be, we ought to easily be able to finish this bill this evening.

Mr. MITCHELL. I thank my colleague.

Mr. President, just so there is no misunderstanding on the part of Senators, I will repeat what I said earlier today but did not restate during my most recent statement here and that is, it is my intention that if we complete action on this bill today that the Senate will not be in session tomorrow. It is my hope that we can do that.

I stated earlier, and I repeat now, that if we can complete action on this bill today, the Senate will not be in session tomorrow. If we are not able to complete action on this bill today, the Senate will be in session tomorrow throughout the day and proceed to the extent we can in an effort to finish it then.

So I hope we will be able to do that and complete action today.

Mr. WALLOP. Mr. President, could I seek recognition on my own?

Mr. MITCHELL. Mr. President, I yield the floor now.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, let me just state for the record that while it is I who has insisted that some of the 30 hours run, that this has not been solely a Republican reaction to the contents of this bill. There have been, as well, some severe reservations on the majority leader's side which also are part of what is currently going on. I fully claim that it is I who has been undertaking this activity, but it is not fair to say that it is only Republicans who have reservations about certain provisions of this bill.

Mr. MITCHELL. Mr. President, will the Senator yield just to respond to that?

I never said it is only the Republicans who have reservations about the bill. What I have said is it is Republicans who have objected to proceeding to the bill, which I think is accurate.

Mr. WALLOP. Which is what I just said.

Mr. MITCHELL. No Democrat has objected to proceeding to the bill and no Democrat has interposed an objection when we sought to go to it.

I agree with the Senator there is clearly reservation on both sides and negotiations involve Senators on both sides. Every one of the Democratic Senators are agreeable to permitting us to go forward and consider the bill and resolve it on the floor.

I thank my colleague for that clarification.

The PRESIDING OFFICER. The distinguished Senator from Wyoming.

Mr. WALLOP. Mr. President, that is precisely right. It is I, and acting on behalf of others, who have insisted that some portion of this 30 hours run.

I will not go into the whole series of arguments that I have iterated on the Senate floor before. But just so we can put some perspective on what it is we have been trying to resolve, it is the belief of the Senator from Wyoming that medical research is important to America. It is the belief of the Senator from Wyoming that the resources of America, footed by the taxpayers in deficits, are sufficiently scarce that we ought to strive to use them in the most efficient way possible.

While it may be comfortable for the Senate to be at war with itself, as it was last week, it ought not to be comfortable for the American people for us purposely to set agencies of the Government at war with each other; namely, the Environmental Protection Agency with the Department of Defense or the Department of Energy or the National Institutes of Health.

We need better use of America's resources than to set Government lawyers against Government lawyers and waging fines back and forth within agencies, taking money out of appropriations that the Congress has authorized for the cleanup of these wastes.

Nobody involved in the struggles over the fine wording of this bill believes that there is no problem for the disposal of hazardous waste, but some of us believe that it is an inexcusable waste of effort and resources to set agencies at war with each other on the idea that moneys that are devoted to the research for technologies which do not now exist for the disposal of these wastes ought to be diverted to paying fines. That is simple logic of the Senator from Wyoming.

Second, under the terms of RCRA, criminal penalties against employees of the Department of Defense or their contractors or departments of the Government, not just the Department of Defense, but the Department of Energy and others, can be levied. And what is happening is that contractors that are trying to do for the Nation what it wishes to be done are saying, "If I get out of this contract with none of my employees under criminal indictment, nothing will persuade me to reenter that contract because I do not wish to subject my employees to that."

But, Mr. President, I would ask the Senate if anyone here thinks that advances cleanup, where agencies which do not have either the employees or expertise to do what is required of them under the law lose the skills and capabilities the private contractors possess to do just that.

Where do we go? Where does that advance the safety of Americans, the enhancement of our environment? The fact is that it does not. And so what some of us are trying to do is, one, have time to develop the technologies, which do not exist, to resolve this problem of Catch-22, where the Environmental Protection Agency can say it is an offense to store it and it is an offense to transport it, so it must be disposed of, but the technology does not exist to dispose of it.

On top of that, Mr. President, for those few areas under which the technology does exist, the same agency, the Environmental Protection Agency, forcing them to go through the other laws of America, the Endangered Species Act, NEPA, and all of those things, they cannot get their permits to construct the facilities which, if there, would be able to dispose of this waste and relieve them of the fine. And what do we do? We say "You cannot build it, you have not got the permits, so I am going to fine you \$25,000 a day until you have the permits." And to fine you \$25,000 a day until you have the permits." And they say, "Well, I can transport it."

You cannot transport it because it is a fine to transport it. You leave it in the States which have just developed new laws and regulations and the State can sue the Federal Government. That does not advance the safety of people. It is not efficient use of resources of the American taxpayer. And it does not

get us to the goal that all of us seek, which is to somehow or other try to find the means to deal with the hazards of modern technology, engineering, science, and medicine.

I am concerned, Mr. President, that in doing this we just literally put the great medical institutions of America out of business, those that have been giving us Nobel Prize after Nobel Prize, those that are engaged in the research on AIDS, on heart disease, on cancer. Eighty percent of that research creates mixed waste which has some hazardous chemicals and some level of radioactivity, low levels.

If the Senate in its wisdom decides that medical research is no good for America, so be it. But this Senator does not want to agree to it just for the convenience of a few hours on the floor of the Senate. And my guess is we can resolve that problem.

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

The PRESIDING OFFICER. The Senator from Wyoming suggests the absence of a quorum, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. HELMS. Madam President, I ask unanimous consent that it be in order for me to proceed as if in the morning hours.

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. HELMS. I thank the Chair.

#### SENATE RESOLUTION 198 REFERRAL TO RULES COMMITTEE WAS CLEAR VIOLATION OF SENATE RULES

Mr. HELMS. Madam President, yesterday, about 5:30 p.m., my colleague from North Carolina [Mr. SANFORD] submitted Senate Resolution 198, "a resolution amending Senate Resolution 62 of the 102d Congress to authorize the Committee on Rules to exercise certain investigatory powers in connection with its inquiry into the release of the United States hostages in Iran." This matter is commonly referred to, as the distinguished occupant of the Chair knows, as the investigation of the "October surprise."

Madam President, this resolution (S. Res. 198) was immediately referred to the Committee on Rules and Administration. I will emphasize that I am a member of that committee, the Rules Committee. I submit that referring this resolution to the Rules Committee is contrary to rules XXV and XXVI of the Senate. The resolution concerns matters which fall within the substantive jurisdiction of the Committee

on Foreign Relations, on which I happen to serve as the ranking member, and provides substantial new authority to make additional expenditures. Under the Senate rules, as I shall detail in a moment for the RECORD, the resolution should have been referred to the Committee on Foreign Relations.

Rule XXVI 9 says:

... each committee shall report one authorization resolution each year authorizing the committee to make expenditures out of the contingent fund of the Senate.

Madam President, we have, of course, already adopted such a resolution, Senate Resolution 62, on February 21, 1991. And I might add that, as a result of the unorthodox procedure of allowing carryover funding from past years, the Committee on Foreign Relations has at its disposal over \$800,000 more than in previous years.

But let me go back to rule XXVI 9. It goes on to say:

After the annual authorization resolution of a committee for a year has been agreed to, such committee may procure authorization to make additional expenditures out of the contingent fund of the Senate during that year only by reporting a supplemental authorization resolution.

Madam President, this makes it crystal clear that additional authorization for spending taxpayers' money may be procured for the committee in question, only if the committee in question reports out a supplemental authorization resolution.

Now the Committee on Foreign Relations has not reported out a supplemental authorization resolution. It has not even discussed supplemental authorization. The question has never—repeat, never—been raised at any meeting of the committee whatsoever. There has been no hearing on the matter, and no discussion at any business meeting. As ranking member of the committee, I have not signed, I have not approved, I have not been asked to sign any request to the Rules Committee for additional authorization.

Moreover, Madam President, it is equally crystal clear that the Rules Committee has no jurisdiction whatsoever over a supplemental authorization that has not been reported from the committee seeking such a supplemental.

Rule XXV 1(n) of the Senate, in setting forth the jurisdiction of the Rules Committee, states in paragraph 8 as follows:

8. Payment of money out of the contingent fund of the Senate or creating a charge upon the same (except that any resolution relating to substantive matter within the jurisdiction of any other standing committee of the Senate shall be first referred to such committee).

And that means the Foreign Relations Committee, not the Rules Committee. And I happen to belong to both of them.

So once again, for the purpose of emphasis, it is clear that the Rules Com-

mittee has no jurisdiction over Senate Resolution 198, because the aforementioned resolution relates to substantive matters within the jurisdiction of the Foreign Relations Committee. In such cases, as the rules states, the resolution "shall first be referred to such committee." And in this case, the Foreign Relations Committee.

Therefore, on its face, Senate Resolution 198 was improperly referred, contrary to the rules and procedures of the Senate.

Now I am going to propound a unanimous consent request which I shall withdraw, but I want it to be included in the RECORD so that the leadership of the Senate, the majority leader and the minority leader, can confer on this matter with the Parliamentarian and see if I am not right. So I am going to propound it, and just as the Chair says, "Is there objection?, I am going to withdraw it.

Madam President, I ask unanimous consent that the referral of Senate Resolution 198 be vitiated and that it be properly referred to the Committee on Foreign Relations.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. I will withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. HELMS. I will further state, having put the Senate on notice, that I intend to pursue this. And if I am proven wrong about my understanding of the rules, I do not claim any authority on them; I am just a country boy who looks at the rule book every once in a while. But I think this is a serious mistake involving the expenditure of a relatively enormous sum of money chasing a rabbit around a ballpark. And if we are going to start that process, let us at least do it under the rules.

I thank the chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. McCAIN. 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 as if in morning business for up to 15 minutes.

#### NAMING NAMES: THE KEY LESSON OF IRAQ'S PROLIFERATION EFFORTS

Mr. McCAIN. Mr. President, it is only now some 6 months after our victory in

the gulf, that we begin to see the full range of dangers that Iraq has posed to world peace. There were many before the war that claimed that Iraq's nuclear effort was being exaggerated and was a decade or more away from threatening Israel and Iraq's neighbors. There were many that claimed Iraq did not have chemically armed missiles, and that Iraq's efforts to develop biological weapons were little more than a matter of American propaganda.

We now know, however, that Iraq's efforts to develop chemical, biological, and nuclear weapons were far more advanced than even our best intelligence efforts suggested. We have learned that Iraq was actively developing a missile for the specific purpose of delivering nuclear weapons. We have learned that Iraq's efforts to develop "super guns" that could hurl projectiles hundreds of kilometers had advanced in spite of the efforts of Britain and the United States to deny Iraq key components.

#### THE MILITARY LESSON OF IRAQI PROLIFERATION

We have learned that even though coalition air power had unprecedented freedom of action during the gulf war, it could neither find enough of Iraq's facilities and weapons to destroy them, or prevent repeated missile attacks on Israel and Saudi Arabia. We have learned that today's best air and tactical antimissile defense are not leak proof, and that we cannot deal with proliferation by military means in time to ensure that it will not devastate an allied or friendly country.

#### THE INTELLIGENCE LESSON OF IRAQI PROLIFERATION

We have learned that Iraq successfully concealed major buildings and programs like those at Furat and Al Atheer from United States intelligence, and from the other intelligence services of the world. We have learned that it altered the shape of its buildings to fool satellite reconnaissance, and highly sophisticated filtering systems to fool on site intelligence collection efforts. It even conducted an indoor explosion at its rocket testing complex at Al Qaqa so that part of its nuclear weapons development tests would appear to be an exploding missile.

#### THE ECONOMIC AND TECHNICAL LESSONS OF IRAQI PROLIFERATION

We have learned that Iraq was willing to use virtually every aspect of its civil industry and ministries to disguise its efforts. That its petrochemical projects included nuclear weapons, that its national electric power system was altered to support uranium enrichment activity, and that its Ministry of Minerals and Industry was used as a front to obtain the materials for weapons of mass destruction and for their delivery systems.

We have learned that other such fronts include Iraqi Airway, Iraqi Reinsurance, and the Iraqi State Enterprise for foodstuffs, trading, and maritime

transport. We have learned that dummy corporations, pass-throughs, and Iraqi agents set up operations in Austria, Bahrain, Bangladesh, Brazil, Britain, Czechoslovakia, Egypt, Germany, Honduras, India, Italy, Japan, Jordan, Lebanon, Morocco, Netherlands, Poland, PRC, Saudi Arabia, Soviet Union, Tunisia, Turkey, UAE, and the United States.

We have learned that Iraq first began to build up this vast effort in the 1970's and that it had the patience to go on in spite of Israel's successful attacks on Iraq's nuclear reactors. We have also gradually learned just how vast Iraq's network of international suppliers became.

We have learned that Iraq was willing to spend sums ranging from \$4 billion to \$8 billion to acquire weapons of mass destruction. We have learned that it built up a global network of suppliers, and that it drew on virtually every high technology power in the world for equipment, supplies, and skills. We have learned that it imported over 4,400 foreign employees, and employed up to 20,000 workers—including as many as 7,000 scientists.

#### THE SIZE OF THE IRAQI SUPPLIER NETWORK

If we consider recent press reports, we find that companies or individuals in the following countries have played a major role in shaping Iraq's capabilities:

Nuclear technology came from France, Italy, Egypt, the PRC, and URENCO, a British-German-Dutch consortium. Iraq obtained industrial vacuum equipment from Britain and Liechtenstein, power supply units and technology for the high explosive lenses for nuclear weapons from the United States, metal casings from Switzerland, copper coils from Finland, and electrical equipment from Yugoslavia.

Uranium ore came from Brazil, Britain, Germany, Niger, and Portugal; centrifuge magnets, and uranium feedstock and lithium hydride from the PRC. Centrifuge magnets, smelting furnaces, special steels, electrical components for nuclear weapons, and other technology came from Germany; special hexagonal high explosives for nuclear detonators from Czechoslovakia; technology and machine tools for centrifuges from Switzerland; centrifuge parts from Brazil; small amounts of Plutonium from Britain, and a Plutonium separation facility from Italy. The full range of sources for Iraq's calutrons are not yet clear.

Super gun technology for Iraq's Project Babylon came from Belgium—particularly the Advance Technology Institute of its Space Research Corp., Britain, and Canada.

Test equipment for missiles, missile technology, and production equipment and parts came from Argentina, Brazil, France, Italy, Germany, Japan, the PRC, Switzerland, the U.S.S.R., and the United States.

The full range of sources for biological weapons technology—which now seem to include efforts to develop weapons based on anthrax, brucellosis, botulism, gas gangrene, and tularia—are unknown, but they seem to have included Belgium, Britain, France, Germany, Italy, the PRC, and the United States.

Chemical weapons technology, equipment, and feedstocks came from a wide range of nations, including Belgium, Germany, Italy, the PRC, Romania, Soviet Union, and United States.

#### STOPPING PROLIFERATION AT THE SOURCE: THE KEY LESSON OF IRAQI PROLIFERATION

All of this experience makes it clear that we cannot rely on either intelligence or military action to solve the problems created by years of neglect in preventing proliferation. If we are to succeed in protecting our forces, our allies, and our friends we must stop these networks of suppliers long before they reach the point where they can create another Iraq.

This is the most important single lesson we should learn from Iraq's actions and successes. Yet, it is a lesson that we and the other supplier nations of the world have only begun to act upon. It is a lesson that no current or currently contemplated arms control agreement will properly address, and it is a lesson that has only begun to interfere with the actions of other proliferating nations like India, Iran, Libya, North Korea, Pakistan, and Syria.

#### SLOW AND LIMITED ACTION BY SUPPLIER STATES

Many supplier nations are beginning to tighten their export policies, but no one can seriously claim that these efforts begin to approach the kind of concerted crack down necessary to halt the process of proliferation. In many cases, national laws and policies are weak, poorly enforced, or contradictory. In others, governments have proved to be more concerned with exports and profits than the threat to peace.

#### INADEQUATE ARMS CONTROL EFFORTS

The main arms control agreements affecting proliferation—the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Missile Technology Control Regime, and the draft Chemical Weapons Convention—are all important measures that have considerable value. None, however, place adequate controls on any major form of proliferation. None involve tight controls on the sales of technology and equipment that contributes to proliferation. None affect the wide range of different national interpretations of what the agreements mean and how they should affect sales and arms transfers. None involve adequate mechanisms for policing and inspecting the kind of sales that took place to Iraq.

#### CONTINUING PROLIFERATION

The countries that were actively involved in proliferation at the time Iraq

invaded Kuwait have at best been forced to be somewhat more discrete. During the period since Saddam Hussein first invaded Kuwait, India and Pakistan have virtually come out of the nuclear closet. They have been identified as nations who are actively involved in developing or producing chemical weapons by the Director of Naval Intelligence, and they have continued to expand their efforts to develop long range missiles.

While the world's attention has been focused on Iraq, Iran has continued with its own efforts to develop chemical, biological, and nuclear weapons. It has joined with Syria to acquire, and possibly produce, long range North Korean missiles with far greater range-payloads than any of the missiles that Iraq used against Israel and Saudi Arabia. At the same time, Syria has expanded its chemical weapons efforts, and many experts believe its efforts to develop chemical weapons as well.

While Libya may have stumbled in its efforts to develop weapons of mass destruction, there is no question that it has built a massive chemical weapons production plant, has acquired a refueling capability for its long range strike aircraft, and is seeking long range missiles. North Korea has successfully deployed long range missiles, has chemical and biological weapons, and is rapidly nearing the point where it can produce nuclear weapons.

#### PUBLIC RELEASE OF THE NAMES OF IRAQ'S SUPPLIERS

We can hope that supplier states take stronger action. We can hope that arms control agreements are strengthened, and given teeth. We can hope that proliferating states turn away from proliferation. In the long run, we must turn such hopes into realities, or we will see more Iraq's and eventually we will see nations and peoples die because of our neglect.

We cannot, however, rely on hope or wait years to make a start. We cannot wait for other nations to act. We cannot wait the 5 to 10 years it would take to force major changes in today's arm control agreements. We cannot wait for proliferating states to renounce proliferation—a process that might well take forever without external pressure.

As a result, I believe that the United States must begin to take unilateral action, and that this action should take two forms:

#### EXPOSING THE SUPPLIERS

Until adequate national and international controls exist, the only major force that controls the actions of private individuals and companies is the threat of international exposure by a free press. The United States should take full advantage of this force for truth, and against proliferation, by ensuring that a comprehensive list is published of all companies and individuals who contributed to Iraq's efforts to produce and deliver weapons of mass

destruction. It should ensure that no element of the information obtained by the United Nations is kept classified unless this classification is absolutely vital to the identification and prosecution of other suppliers.

This exposure should take place without regard to nation of origin. U.S. suppliers should be exposed as well as those of all other nations. It should take place even when the firms and individuals involved may well have not known the ultimate use of their services. The world can easily understand that many suppliers were unwitting, but we must force those involved to show they did not participate willingly and we must warn others of what Iraq has done.

Further, the United States should find ways to broaden this exposure to include proliferation by the other nations that threaten world peace. Exposure should become the rule, not the exception. Companies and individuals should understand that they risk becoming the subject of investigation by the world's media even if their home or host nation will not act.

This is why I developed legislation this year—which was cosponsored by Senator GORE, Senator BINGAMAN, and my other colleagues on the Arms Services Committee—that would require the first comprehensive U.S. report on proliferation, and reporting that would identify the suppliers that have become merchants of mass destruction. It is also why I have joined with Senator GORE in writing Secretary Baker to make sure that the fullest possible disclosure is made of the names of all the individuals and companies that are listed as suppliers in the material being uncovered in Iraq by the United Nations.

We must not let any individual or company hide behind the shelter of classification. We must not rely on national laws that often produce no penalties or a mere slap on the wrist. We must not rely on diplomatic courtesy. No supplier—deliberate or inadvertent—should be immune to the ruthless spotlight of world opinion.

#### TRADE SANCTIONS

Second, as I have said before in this body, we need legislation that will confront foreign nations and companies with the reality that they must make a choice between proliferation and access to the U.S. market, and U.S. individuals and companies with the reality that they face both serious criminal penalties and the loss of export licenses.

We are making slow progress in legislating such sanctions. They exist for missile technology, but they do not exist in meaningful form for chemical, nuclear, and biological weapons. Even within the United States, the entire system of export controls errs on the side of permissiveness—if not negligence. In other nations, controls are

often deliberately ignored or do not exist.

This is why Senator GORE, Senator D'AMATO, and I have sponsored legislation that would establish comprehensive export sanctions for all forms of proliferation to match the reporting and disclosure legislation now being considered in the House and Senate conference on the fiscal year 1991 Defense Authorization Act. This bill is called the Non-Proliferation and Arms Transfer Control Act (S. 309), and clearly is even more urgent today than it has been in the past.

#### THE NEED FOR CONGRESSIONAL ACTION

Mr. President, there are many other Members of the Senate and the House who have supported the kind of legislation I advocate. Many Members have developed creative and useful legislation of their own. At the risk of seeming Cassandra-like, however, I must conclude by noting that we are making extraordinary slow progress and that our arms control efforts are faltering and incomplete.

The basic issue that this body, this Government, and our world must eventually come to grips with is that proliferation is the greatest single threat we face now that the cold war has ended. If we remain indifferent, or continue to confuse rhetoric and half-measures with forthright action, we or our friends will pay dearly indeed. I pray that we and the world will not have to pay the cost of such neglect.

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

The PRESIDING OFFICER. The Senator's time has expired. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RIEGLE. 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. RIEGLE. Mr. President, I ask unanimous consent to speak for as long as 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for up to 10 minutes as in morning business.

#### EXTENDED UNEMPLOYMENT BENEFITS

Mr. RIEGLE. I thank the Chair. Mr. President, as everyone knows, the President just vetoed the extended unemployment benefits legislation that we passed here in the Congress. Unfortunately, that veto, by a very narrow margin, was upheld in the U.S. Senate.

The veto of the extended unemployment benefits now prevents that emergency assistance from getting out to the unemployed workers in this country and to their families. In my home State of Michigan, where the unem-

ployment rate has just gone up to 9.7 percent, we have 170,000 unemployed workers out there who need these extended benefits, who will not get them because of that veto. Of course, the President argues that we just cannot afford to help people in this country; we just cannot afford to help the unemployed workers.

Actually, there is \$8 billion sitting in the unemployment extended benefits trust fund that should be used for that purpose, but the President is unwilling to allow that money to be released to these unemployed workers at a time of desperate need on their part.

But there is an item this afternoon on the ticker tape outside the Chamber that I just read that I want to bring to the attention of my colleagues, because the President today did decide that it was time to take an economic initiative to really step out there and do something to deal with the economic problems. So I want to just read to my colleagues what he has decided to do. This is from the UPI wire service, and the first paragraph reads as follows:

The administration said Thursday it would offer economic aid to Cambodia after the four warring factions marked the end of the country's civil war by signing a peace accord next Wednesday in Paris.

This is not help for Michigan. It is not help for Pennsylvania. It is not help for West Virginia. It is not help for any of the other 47 States where there are unemployed workers today needing help. But it is help for Cambodia.

It goes on to say:

The official, Richard Solomon, Assistant Secretary of State for Asian and Pacific Affairs, added that the White House would also finance projects designed by the World Bank and other lending institutions to modernize Cambodia's moribund economy, marked by more than a decade of fighting.

So we are going to go to work now to put a little life into the moribund economy of Cambodia. How about the moribund economy of the United States? How do the areas in this country with high unemployment get on the foreign aid list so they can get a little help? Every day it is another country.

There is a jobs program now that the administration has for Mexico. They have a jobs program for China. China is going to have a trade surplus with the United States this year of \$15 billion. Imagine that: Communist China, where they just mowed down the students who were seeking democracy in Tiananmen Square, will have a trade surplus with the United States this year of \$15 billion. And that means that \$15 billion is leaving this country, and the jobs that are attached to that money are leaving America and going to China.

The estimates are next year that the trade surplus that the Chinese will have with us will be \$20 billion. So the Bush administration has a wonderful

economic program for China, and it is helping China. Of course, it is hurting America. They have a plan for Turkey and a plan for Kuwait. It is hard to keep track of all the countries, but there is a new one today: Cambodia. Now we have help for Cambodia.

It says here:

In addition, the administration expects to offer \$25 million in humanitarian aid in fiscal '92 for civilians in areas controlled by the non-Communists.

There was just this terrible incident that we all have read about where this deranged man went into the restaurant down in Texas and shot all these people, 23 of whom have died. We have a lot of problems in this country to deal with. We do not seem to be able to do much about that. But boy, we are right on top of the problems in Cambodia. We have a program for Cambodia. Here it is. Here is another paragraph:

In its first step to formalize ties with Cambodia, Solomon said the United States would soon establish a U.S. mission in the capital of Phnom Penh.

Well, I can imagine the Cambodians are probably pretty happy today that they have this economic help coming from the United States. The President has found time to work up a program for the Cambodians. I wonder about unemployed workers in this country who have been unemployed now 6 months and whose jobs have not come back and who cannot find another job, who are running out of money, who are having difficulty feeding their families, having difficulty keeping a roof over their head, and just having difficulty meeting the basic necessities of life. The President says no, we cannot afford extended unemployment compensation benefits. We cannot afford to help the unemployed workers in this country; it is not important enough. But here we learn today we have money for Cambodia. They got on the list. It was an emergency problem.

The people of this country do not understand this. They do not understand how this administration can spend so much time and so much effort and so much attention and so much money all around the world and cannot see the problems here at home. They just cannot see them.

Congress, for its part, has seen the problem of the unemployed workers who have exhausted their benefits because we have now passed that legislation, passed it with overwhelming majorities, and sent it down to the President. The President does not want to spend the money on our people, but he has no problem spending it on the Cambodians. It is just not right. In this country today, there are children of unemployed workers who will go to bed hungry tonight. It is just a cold, hard, mean fact, because there just is not the income in those families to meet the basic needs.

What has gone wrong in this country that in our executive branch of Govern-

ment the priorities have been turned upside down, so that we care more about the economic problems of other nations and other people around the world than we do about our own people?

The President the other day went out to visit the Grand Canyon. It was a wonderful scene, a great photo opportunity. It is a wonderful natural resource in our country. We are lucky to have it. I am glad he drew some attention to it.

But we have a grand canyon of unemployed people in this country, millions and millions of them. They need help. They want their jobs back. Quite frankly, that is what they want most. They do not want to have to receive extended unemployment benefits. Oh, yes, they want them as an emergency measure until their jobs come back, but they really want their jobs back.

But there is no jobs program in this country to really get this economy going. One of the reasons that there is no jobs program for America, no economic strategy for America, is all the time is spent coming up with an economic program for other countries—today Cambodia. I have nothing against the Cambodians. I want them to do well. But why do they come ahead of our people when you have people in our country in desperate need?

This is the worst recession that we have had in years. There is a need for these extended unemployment compensation benefits. In fact, of the money that might go to our own unemployed workers the President is saying let us send it over to the Cambodians because they need it more than our people do. That is in effect what is happening here.

It is just not right. We have gone down the list of countries. This administration has an economic program for Kuwait, has one for Turkey, has one now for the Soviet Union, what is left of it. Its communism has collapsed. It has fallen apart. So the administration has gotten very busy to come up with an economic program to try to help Gorbachev and the others over there. All this interest in the rest of the world, helping the Kurdish people—certainly they face problems—but what about the people in Saginaw or Pontiac or Flint or Detroit or Pittsburgh or Cleveland or Los Angeles or other cities across this country, or people out in the rural areas?

There was a story the other day that the rate of suicide among men who are farmers in this country has jumped way up in recent years. Why has that happened? The analysis that has been done indicates the reason more farmers are committing suicide is because they are under tremendous economic pressure and they are afraid they are going to lose their farms.

This administration shows no concern about that problem. They are to-

tally detached from that problem, just like they are totally detached from the problems of the unemployed workers but no detached from Cambodia, no sirree. Cambodia is important, so the administration announces today that there is a program for Cambodia and there is money for Cambodia.

The other day, the Census Bureau came out with statistics on what has happened to the living standard of a family of four in the United States over the last year. What the Census Bureau has found in their data is that the median income in this country for a family of four dropped last year. It did not go up; it went down. It went down, as I recall, about \$570. People are sliding backward in this country. The middle class is shrinking. The underclass is growing. Reaganomics and the economic strategies over the last decade are hurting the middle class, squeezing the middle class, grinding it down. That is what the census data shows.

Any concern about that in the administration? Any plan to do something about that? No. They have an idea they want to do something now in the area of the capital gains tax to help people who have assets—and the more assets the more help they would get from a capital gains tax improvement. That certainly would be of some benefit to people fortunate enough to be in that situation. Most people in this country do not have capital gains year to year. They are living on their income, and they are living on less and less income, and they are living less well because the deck has been stacked against them by the economic program of this administration, Reagan-Bush/Bush-Quayle.

And now we see all this focus on the rest of the world—trips here and there, aid programs here and there. Today, it is Cambodia. Today, Cambodia is up on the radar screen. That is what they are talking about down in the White House today: Let us get in there and really give old Cambodia a hand. Cambodians really need help.

I wish somebody down there would pipe up, some staff member in the White House, and say: "Mr. President, what about doing something for the unemployed in this country? There are a whole lot of them out there. Millions of them out there cannot find work. They have exhausted their benefits. There is \$8 billion sitting in the unemployment extended benefits trust fund. Why don't we take some of that money that was collected precisely for this problem of serious recession and put it out there so these families can hold their lives together?" Why doesn't somebody say that? Is there anybody down there with courage enough to slip a note under the door of the Oval Office and say, "Look, it is time to help the people of America because they need help, they deserve help"? Frankly,

they are more deserving of help than the people of Cambodia or the people of Kuwait or the people of Turkey or the people of Mexico or the people of China, all of whom this administration has an economic plan to help.

It is time to help America. We did not elect a President to be a President of the world. We elected a President to be President of this country and to look after the needs of this country, some 250 million out across this country. They need somebody to pay attention to what is happening in the United States of America.

We need a health care program. More and more people are losing their health insurance every day. The estimates are somewhere in the range of 35, 37 million people in American today are without a penny of health insurance. A million of them live in my home State of Michigan, 300,000 of which are children.

There was a story the other day in the Detroit News about a working mother, a single woman, Cynthia Fyfe. She has about \$3,000 in medical bills she cannot pay. She lives in a house-trailer. But there was with her in the picture in the paper her 6½-year-old son, a little fellow wearing a pair of eyeglasses. He has no insurance, no insurance whatsoever, no health insurance. If he gets sick, how do his bill get paid? Does he get to the doctor on time? Does he get the care he needs? Does he matter?

He matters to me, and he ought to this administration. But they cannot see that young boy because they are too busy coming up with a program for Cambodia. Let us help the Cambodians. Well, that little fellow in Michigan and the others, the 300,000 other children in Michigan who have no health insurance today, they need to get at least a minute or two of the President's thinking and concern one of these days.

It is time we do something about it. If the health insurance which is in place for the top officials of our Government—for the Senate, the President, the Vice President, the Cabinet officers, their families—if the health insurance that is in place that covers all the top officials of our Government disappeared this afternoon, how long do you suppose it would be before the administration would be in here with a plan to reestablish health insurance coverage? I would say maybe an hour or two. They would have a plan down here so fast it would be here in a matter of minutes. But can they come up with a plan—they have only been in office now, what, 8, 9, 10, 11 years? Eight years of Reagan and Bush, 3 years now of Bush and Quayle, 11 years. Is that long enough to study the health care issue and come up with some kind of a health care plan? They say they need more time. They want to do it after the next election. It is too tough, too difficult to tackle that problem.

I will tell you this: if that crowd lost their health insurance, they would tackle that problem today, and they would come up with an answer today. Cynthia Fyfe's son deserves health care coverage just as much as the child of any top official of this Government. We ought to do something about it.

If you ask yourself the question, why do they not come forward with a plan? One of the reasons is they are too busy coming up with a plan for Cambodia. It is Cambodia today. Who knows what country it will be tomorrow? But if you want a sure bet, the plan tomorrow will not be for America because they never seem to be able to come up with a plan for America even though they can find one for all these other countries. I am tired of spending money on other countries and ignoring the problems of our own people. It is just not right. It is just not right.

People are asked in public opinion polls, is the economy of the United States on the right track or the wrong track going into the future? Over 60 percent in public opinion polls are saying the country is on the wrong economic track going into the future.

We need to plan to do something about it. We can come up with a plan. We have put a plan out. We put any number of elements of a plan out on this side of the aisle.

Folks downtown do not think there is a need for a plan. Their view is, "If it ain't broke, you don't fix it." Well, that is not true if it is Cambodia. If it is Cambodia, then you fix it; if it is Kuwait, you fix it; Mexico, you fix it; China, well, we will fix that; Soviet Union, let us fix that; Turkey, let us fix it.

We have plans for everybody under the sun except our own people in real need here in the United States of America; the ones that build the country, fight the wars, pay the taxes, raise the children to go off and fight the next wars. They need some consideration, and they need some attention. They need an administration that comes down off that high elite plane and gets down there where the problems are and where people are struggling to make it through each day and each week.

Today our emphasis ought to be on our unemployed workers. Imagine being a worker unemployed for 6 consecutive months, exhausting your unemployment benefits, exhausting your savings, you are not called back to work, you are in an area of high unemployment so there are no other jobs, your kids are hungry. You know, school is starting again, they probably need clothes for school, new shoes and things of that kind. There is no money.

These are people with a work history. This administration has turned its back on that group of people. They say we cannot afford to help them even though there is \$8 billion sitting in the

extended benefits unemployment trust fund; just cannot afford to help them.

So when I see something like this today, that Cambodia deserves help, that the administration has decided to lend a helping hand to Cambodia, and the deal with Cambodia is for its moribund economy, they want to get their mission opened up there in Phnom Penh, getting this money flowing to Cambodia, it is just not right.

One of these days there is going to be a real backlash in this country against this insensitivity, this elite view, this preoccupation with foreign policy, this failure to address the problems of people in America, and this disinterest in what is really going on in the lives of everyday people in this country.

It is the reason we have a Government—to be there to help when the situation really becomes desperate. It has become desperate for so many of our unemployed people.

So, I do not know what country it will be next. There will probably be another country tomorrow, because there are an awful lot of countries out there, and they all want to get on the gravy train. And they are all getting on the gravy train. It just happens to be Cambodia today, but something needs to be done about it.

I hope that the new unemployment extended benefits program that we are able to put together will come through here. You know, the other day on the veto override, there were 65 votes—65 out of 100 Senators. You say to yourself, I thought we had majority rule in this country; if a majority of the Senators thought that there should be extended unemployment benefits, that would be enough to make the benefits happen and go out there. We had more than a majority. A majority would be 51. We had 65, both sides of the aisle. We had a substantial majority, but one person said no. The President said no for the second time. So no unemployment benefits, extended benefits, are flowing to the workers of this country who desperately need them. Instead, we are sending the help to Cambodia.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico [Mr. DOMENICI] is recognized.

Mr. DOMENICI. Mr. President, I really have difficulty understanding why we hear the same speech every day. Today we have changed it from other countries to Cambodia.

Let me repeat. I really do not know who is listening, but since it has been said I assume someone is and maybe I can set the record straight. In fact, I believe I will ask the Congressional Budget Office to give us a letter just in preparation for the next time the facts are presented improperly. It will not be a Republican answering a Democrat. It

will be the independent Congressional Budget Office.

Mr. President, the President of the United States has not used the emergency powers under this agreement to give aid to Cambodia and all the other countries that are spoken of. What he did is the following: Immediately after the war, the Democrat and Republican leaders of the Congress—not the Senate, the Congress—and the President agreed that we ought to help Turkey and Israel because they were in big trouble because of that war. That we did. If anyone wants to complain about that and say the President should not have done it, then remember it was Turkey and Israel, and Democrats and Republicans joining.

Other than that, all the other ones, the foreign programs, the job programs overseas, are absolutely unequivocally untrue. If one is seeking to tie those to the emergency provisions in the Budget Act, they are not emergencies under the Budget Act. The money that was used came from a separate pot of money that came to us from foreign countries who are our allies. This was money left over from the war in either accumulations or interest, and it was used for those countries that the President thought and the Congress thought it was necessary to assist. So that is one.

The gravy train that is being spoken of in that regard just is not true. But I assume there are some who think that if they say it enough times on the floor someone will believe it. Perhaps it takes another two or three opportunities on the part of someone from that side of the aisle to say it, and then maybe they think someone will believe it.

Let me talk about the trust fund again. The only thing we did not see today, and those who are watching and listening on C-SPAN television, the only thing they did not see, Mr. President, was the worn-out chart that has been here so many times it is no longer usable. I assume that is why it is not here. Maybe we ought to mark on it how many times we use the chart. That one would have marks all over it.

Every time they bring it up, they bring this poor chart. Maybe we ought to leave it here permanently on the floor since it is used about every day. The trust fund, and the fact that it has accumulated money, is totally, absolutely irrelevant to extended unemployment benefits.

And I repeat what I said yesterday, not because I do not think those who are listening understand me; I believe they do, but apparently some did not believe that one time is enough or two times is enough. We need maybe 10 times. So maybe 10 times stating the thing wrong, some people think that it will be believed.

The trust fund that is set up for unemployment compensation is not being

restricted for use by the President of the United States. It is being restricted for use by 75 U.S. Senators, who voted on this floor from that side and this side and who said: We are not going to use the accumulated trust funds for the unemployment compensation, for the highway trust fund, or any of the others. If you are going to use them, you have to replenish the amount used from some other source, such as new taxes or from programs you are going to have to restrain or cut. In other words, it is fill the trust fund with another source of income.

And we agreed to that. It is in the law of the United States, and the only way to get around it is to declare an emergency. I repeat: An emergency is a two-way street. The President and the Congress must declare it.

The President of the United States said: Pay for an extension, and I will sign it. So I do not think we need any more discussions.

I do not think we need any more air around the Senate. What we really need is Democrats and Republicans to get together and produce a bill that is budget neutral and extends the benefits, like the Dole-Domenici bill, or some other like it, where we pay for it with new revenues that we get into the Treasury of the United States that count under our budget process and replenish the used-up funds from the trust fund, or wherever.

I think that is what they want. That is what our people want. They do not want any more speeches, or any more accusations; they want a bill. And the bill that will get them benefits must pay for itself, must be budget neutral. That is what the problem is all about.

Senator DOLE, myself, and others have such a bill. They may be interested on the other side in looking at it, discussing it, or perhaps modifying it here or there. There is even another bill, a Durenberger bill. Then perhaps the unemployed working men and women would get some unemployment compensation. That is when it will happen. It will not happen with more speeches and charts. In fact, I submit it is time for a new chart, instead of a new speech.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed as in morning business.

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

#### SALUTE TO SENATOR THURMOND

Mr. DOLE. Mr. President, tomorrow at 2, Clarence Thomas will be sworn in as an Associate Justice of the U.S. Supreme Court.

The swearing-in will be a moment of great pride—great pride for Clarence Thomas and his family and friends;

Great pride for Americans, who called their Senators in record numbers, indicting their support for Judge Thomas;

And it will also be a moment of great pride for a colleague of ours, who, from the day Judge Thomas was nominated, played a leadership role in ensuring his confirmation.

I speak of the ranking minority member of the Senate Judiciary Committee, Senator STROM THURMOND.

There was one thing that Americans could count on throughout both the initial 8 days of hearings and the subsequent 3 days of additional hearings—and that is the fact that Senator THURMOND would be in attendance—listening carefully to the witnesses, treating them with courtesy, and asking questions that got to the bottom line.

In fact, I do not think the Senator from South Carolina missed one minute of the hearings—a remarkable record of endurance and diligence.

And during the difficult days this past weekend, committee members from our side of the aisle turned to Senator THURMOND for leadership. It was Senator THURMOND who appointed Senators SPECTER and HATCH to serve as Republican questioners.

It was Senator THURMOND who worked with Senator BIDEN in deciding who would testify, and the order and duration of their testimony.

It was Senator THURMOND who called the Republican members together for a meeting in his office the night before the recent hearings for a discussion of what was at stake.

It was Senator THURMOND who led the efforts to have all Republicans on the committee sign a letter to the Acting Attorney General, requesting an investigation as to who leaked information from the FBI reports.

And it was Senator THURMOND who was the floor leader for the Republican side when the nomination was at last considered and confirmed by the full Senate.

Tomorrow, Americans will say "Thank you, Clarence Thomas. Thank you for remaining true to yourself, and for having the courage to fight the good fight."

And this Senator also hopes they will be saying "thank you, Senator THURMOND. Thank you for your leadership in seeing that this courageous man got what he so richly deserved."

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I ask unanimous consent to proceed as if in morning business.

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

#### THE LIBRARY OF CONGRESS: FOSTERING DEMOCRATIZATION

Mr. PELL. Mr. President, in my capacity as chairman of the Joint Committee on the Library, I want to share with the Senate one of the truly remarkable, but largely untold stories behind the democratization of the former Soviet bloc of nations; namely, the influential role played by our own Library of Congress in helping to bring to life effective legislatures to assume the burden of representative government.

The process began in 1988 when a senior adviser to President Gorbachev suggested a continuing association between the Library's Congressional Research Service [CRS] and the Supreme Soviet, reflecting a desire on the part of the Soviets to establish a legislative research service on the model of CRS.

In 1990, the Joint Committee on the Library approved a proposal by the Library for a cooperative venture between CRS and the Secretariat of the Supreme Soviet, and later that year, an agreement in principle was negotiated between the two bodies. Exchange visits ensued, during which substantive discussions began on such topics as legislative research and analysis, constitutional foundations of legislation, executive-legislative relations and economic and budget policies.

The results of these cooperative efforts were very positive. The staff exchanges provided valuable insights for specialists on both sides, especially during a period of rapid change in the Soviet Union. In addition, the exchanges of documents have provided rapid CRS access to Soviet legislative information. The program resulted in the establishment of a direct electronic mail connection for more effective communication.

The dramatic events that have occurred in the Soviet Union since the failed coup in August, while virtually placing the central legislature on hold, have served to broaden the probable arena for constructive action. While the future of central Soviet institutions like the Supreme Soviet and its Secretariat may be uncertain, many of the individuals with whom Congress and CRS have worked closely, have become central figures in the democratization process. These include Georgii Shakhnazarov, one of President Gorbachev's leading foreign policy ad-

visers; Konstantin Lubenchenko, opposition candidate for chairman of the Supreme Soviet and a leader of the democratic movement, as well as a number of other prominent reformers.

Moreover, we now face a remarkable new era in which the Library may be called upon to deal with the fragmented remnants of the Soviet state. As the Soviet center dissolves, the legislatures of the 3 Baltic States and the 12 constituent republics will require the types of information and support that was previously provided by Congress to the center. Representatives of the Baltic States, the Russian, Ukrainian, and other republic legislatures have indicated a strong interest in establishing programs with Congress and CRS, similar to those existing with the Supreme Soviet.

While we must be cognizant of the limits of our own resources, I believe that we should offer our help to the legislatures of the Baltic States, the Russian, and possibly other republics. The staff time and resources that go into these projects are considerable, but I believe that the returns are immense. The success of the democratic revolutions in formerly Communist countries can strengthen and revitalize our own democracy and help promote a more just and stable world.

The extent and types of assistance we provide might vary from case to case, just as they have in our dealings with the Supreme Soviet or, more particularly, in two concurrent efforts to assist democratic evolution in Eastern Europe. Following the democratic revolutions in Eastern Europe in 1989, separate but complementary congressional initiatives, each utilizing the services of CRS, sought to provide resources necessary to building stable and effective parliamentary institutions.

The first of these, the Senate's Gift of Democracy to Poland Program in 1989, resulted in an allocation of \$1.5 million to provide computer and office equipment, library and other assistance to the Polish Legislature. The second, in 1990, was the House of Representatives' bipartisan task force to provide support for the new parliaments of Eastern Europe, focusing on Hungary, Czechoslovakia, and most recently Bulgaria, as well as supplementing the efforts of the gift of democracy in Poland.

Congress appropriated \$6 million for these parliamentary assistance activities for fiscal year 1991, as part of the funding for the Support for Eastern European Democracy Act [SEED]. The House task force has recommended another \$6 million for direct congressional assistance to the parliaments of Eastern Europe in fiscal year 1992.

I am convinced that these unprecedented congressional assistance programs are instrumental in building our relations with the new democracies. We

are helping to equip the parliaments of Poland, Czechoslovakia, Hungary, and Bulgaria with computers, printers, copiers, and other machinery necessary to the efficient operation of a legislature, years ahead of when they might have been able to do so with their own resources. By providing library and information resources, and advice in establishing research and analysis capabilities, we are strengthening the ability of these parliaments to rely on their own independent information systems—a prerequisite for any strong independent legislature.

Maybe we cannot implement programs as extensive as those for Eastern Europe in all the Soviet Republics. But we should do what we can to help the transition to democracy by providing technical assistance on difficult legislative, procedural, and infrastructure problems of new legislatures. These initiatives provide an American vote of confidence and strong moral support during the difficult democratic transition. What stronger statement could we make than helping to strengthen the most important yet fragile pillar of any democracy—namely, its freely elected legislature. I can think of no better form of foreign aid and no better investment in the future of world peace and security.

It is important to note that the U.S. Congress is the only Western legislature providing significant, direct assistance to the East European parliaments on an institution-to-institution basis. I can only say that this is a most appropriate area for the United States to take a leading role. I commend the dedication put into this effort by Members and staff of both Houses, as well as CRS, the Library of Congress, and House Information Systems Office.

I ask unanimous consent to place in the RECORD an article from the March issue of the CRS Review, by William Robinson, Deputy Director of CRS, describing ongoing congressional activities with the Soviet Union and Eastern Europe.

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

[From CRS Review, March-April 1991]

PARLIAMENTARY DEVELOPMENT IN CENTRAL EUROPE AND THE U.S.S.R.

(By William H. Robinson)

According to a recent review by Freedom House, 1990 was a year of profound transition for the world's governments. For the first time since World War II, the people living in relatively free societies outnumbered those living under governments denying basic political liberties to their citizens. Nowhere was the process of change more striking than in Central and Eastern Europe; nowhere was the possibility of change more enticing and uncertain than in the Soviet Union.

Partially competitive parliamentary elections were held in the Soviet Union in 1989 for the first time since the election of the Constituent Assembly in 1917. Following in

short order were the more genuinely open and competitive elections which ended Communist rule in Poland (June 1989), Hungary (March and April 1990), and Czechoslovakia (June 1990), and the formation of a united Germany (October 1990) less than a year after the dismantling of the Berlin wall in November 1989. Bulgaria and Romania also began moving, albeit slowly and unsteadily, down the road to reform.

The world watched these dramatic changes with some wonderment and considerable hope. There probably were few people who had witnessed the aftermath of World War II who thought they would live to see the end of the division of Europe, with the lifting of the Iron Curtain, the dissolution of the Warsaw Pact, the reunification of Germany, and the launching of significant political changes in the Soviet Union. Yet it began to happen swiftly and, for the most part, peacefully. For the first time since the beginning of the Cold War, people could actually conceive of a stable and peaceful world order built on hope rather than fear. Events of 1991 in the Persian Gulf and the Soviet Union have tempered that initial euphoria and the Asian communist bloc still exists, but the record of dramatic change in Europe remains largely intact.

Congress is not only monitoring developments in this important region of the world; it also is actively encouraging the development of political pluralism, market economies, and human rights programs. Congress also is directly supporting the evolution of effective legislatures in Central and Eastern Europe—especially in Poland, Hungary, and the Czech and Slovak Federal Republic and has launched two initiatives to strengthen democratic institutions in the area. The Congressional Research Service of the Library of Congress is assisting in these efforts and, at the encouragement of Congress, has entered into exchanges and cooperative efforts with the Supreme Soviet of the Soviet Union.

CONGRESSIONAL CONCERN

Congressional interest in helping to strengthen the nascent democratic institutions in Central Europe found its first formal legislative expression in the "Gift of Democracy to Poland" program. Senate Concurrent Resolution 74, submitted by Senator Pete Domenici (R-NM) in September 1989, authorized a staff delegation representing the House and Senate leadership to visit Poland to assess ways in which Congress might assist the new Polish Parliament through a "Gift of Democracy." The resolution directed that staff were to have "expertise in legislative systems management, legislative research, parliamentary procedure and related legislative matters." John Hardt and Walter Oleszek of CRS were invited to join representatives of the leadership of the House and Senate as members of the delegation.

The delegation was in Strasbourg, France, during February 8-11, 1990, to promote a coordinated effort with whatever assistance might be forthcoming from Western European nations. It then traveled to Warsaw for a fact-finding mission on February 11-17, 1990. On March 20, 1990, the delegation proposed the implementation of a three-phased technology assistance program for Poland's National Assembly (providing modern office equipment, microcomputers, word processing systems, and appropriate software); the organization of training programs for Polish parliamentarians and staff; and the development of research and information support for the Sejm (Poland's lower house) and the Polish Senate, including enhancement of its parliamentary library.

The spring of 1990 also witnessed the creation of a second congressional initiative, which came to be called the Frost Task Force. On April 6, 1990, Speaker Thomas Foley appointed Representative Martin Frost (D-TX) as Chairman of the Special Task Force on the Development of Parliamentary Institutions in Eastern Europe. The membership of this bipartisan Task Force was drawn from the House Rules Committee and the House Foreign Affairs Committee and included Representatives Jim Leach (R-IA), Bart Gordon (D-TN), Douglas Bosco (D-CA), and Gerald Solomon (R-NY). Aided by Francis Miko of CRS, the Task Force visited Poland, Hungary, and Czechoslovakia in May 1990 to assess the needs of their parliaments and to recommend initiatives to help build strong legislative institutions that can function effectively in a multiparty democratic environment. An in-depth needs assessment was conducted for the Czech and Slovak Federal Republic and Hungary later in the summer of 1990. The Task Force reported its recommendations to the Speaker on June 28, 1990.

The process for securing funds for these initiatives in Central and Eastern Europe had been launched earlier. In November 1989, Congress passed the Support for East European Democracy Act (SEED). The Act authorized almost \$1 billion of assistance to Eastern Europe for FY90-FY92. Of that amount, \$12 million was to go toward building democratic institutions, including democratic national legislatures. The FY91 appropriation for foreign operations increased the amount for that year alone for strengthening democratic institutions to \$19 million. It was agreed that \$6 million of that amount would be made available to implement the parliamentary support programs discussed above. In January 1991, \$4.25 million was transferred by AID to the Library of Congress and CRS to purchase equipment (working closely with the expert technical staff of House Information Systems), books, and library materials, and to provide training and technical assistance to the parliaments of Poland, Hungary, and the Czech and Slovak Federal Republic as recommended by the Frost Task Force. Another \$750,000 was to provide for continuation of the Gift of Democracy program in Poland. The remaining \$1 million was held in reserve by AID for other parliamentary support programs consistent with activities already undertaken in the region. In addition, CRS sought and obtained private funds totaling nearly \$600,000 from a combination of philanthropic foundations including Ford, MacArthur, IREX (International Research & Exchanges Board), and the German Marshall Fund of the United States.

The idea for a program of continuing cooperation between CRS and the U.S.S.R. Supreme Soviet was raised initially in October 1988 by Georgii Shakhnazarov, currently a close foreign policy advisor to Mikhail Gorbachev. The proposal was regularly repeated by high-level Soviet officials who wished to develop legislative research services for the Soviet parliament independent of the Communist Party and government bureaucracy. Seeing CRS as the major model in this regard, Soviet officials requested that the Service consider establishing formal ties with its nascent counterpart in the Supreme Soviet. As part of this effort, a delegation from the Soviet Union visited CRS in February 1990. With congressional support and approval, CRS engaged in joint staff working sessions in Moscow in May and November. These staff exchanges should continue to

provide valuable insights for specialists from both nations, especially during a period of crisis and uncertainty in the Soviet Union. An agreement outlining various possible modalities of cooperation at the legislative staff level between CRS and the Supreme Soviet Secretariat is currently being negotiated under the guidance and with the approval of the Joint Committee on the Library.

At the same time, congressional leaders asked the Service to play a coordinating role in U.S. Soviet interparliamentary exchanges. CRS has received and provided briefings for high-level parliamentary delegations, including one headed by Yevgenii Primakov, then Chairman of the Supreme Soviet, and another headed by Konstantin Lubenchenko, the democratic opposition's candidate for Chairman of the Supreme Soviet in March 1990. CRS has also been visited by scores of other deputies from the U.S.S.R. Supreme Soviet and from republic legislatures.

#### PROGRAM PRINCIPLES

Although the Gift of Democracy of Poland program and the Frost Task Force began by taking independent paths, they arrived at strikingly similar conclusions—in terms of findings, philosophy, and programs.

The delegations representing both of these congressional initiatives found that the legislatures of Central and Eastern Europe shared comparable problems that stemmed from decades of totalitarian rule. The effects of this legacy obviously were felt even more acutely in the Soviet Union. In all four countries, national legislatures had been preserved as nothing more than symbolic shells; they were parodies of democratic government, having no real responsibility other than to rubber-stamp whatever decisions the Communist Party leaders made. These vestigial legislatures had no need for, and hence no capacity to gather, the kind and quality of information and analysis required to make independent policy assessments. These bodies had inadequate space and staff, sometimes no offices or equipment, insufficient library resources, and a pressing need to educate and inform new members, most of whom were coming to government positions for the first time.

The Representatives and Senators participating in the Gift of Democracy program and the Frost Task Force have tacitly agreed on several basic principles and approaches. They have concluded that any congressional assistance program should:

Be conducted on an institution-to-institution basis, with national-level legislatures in the region, but not including direct assistance to political parties or subnational governments.

Focus on building the capacity of the legislature to participate effectively in an open and pluralistic political system, drawing on a wide variety of sources, techniques, and institutions for information and analysis.

Encourage coordination and cooperation among the many possible sources of assistance (governmental and nongovernmental; U.S., foreign, and international) to these legislatures.

The programs also share some common features:

#### Office equipment and automation

The legislatures in Budapest, Prague, and Warsaw simply lack the basic requisites for functioning as modern, effective legislatures. Many of their needs are basic—for example, copiers, computers, telefacsimile equipment, and telephone answering machines. The Gift

of Democracy program has already provided about \$1.5 million worth of equipment to Poland. The Library of Congress serves as the agent for congressional efforts to provide appropriate equipment for the parliaments in Hungary and the Czech and Slovak Federal Republic—including technical assistance, installation, and maintenance.

#### Library collections and resources

Parliamentary libraries in the region have had neither the funds nor the freedom to develop adequate collections of books and periodicals or to take advantage of the automated services and technologies that are so valuable to modern libraries. CRS is cooperating with other departments of the Library and with the U.S. Information Agency to begin remedying these deficiencies.

#### Research and analysis capabilities

Effective and independent legislatures need direct access to objective research and analysis. CRS has begun working with leading members and officials of the Central European and Soviet national legislatures to explain the principles and methods that guide the process of informing a complex modern legislature, so each national institution can develop approaches that suit its circumstances and resources.

#### Consultation on policy and operations

CRS also will be working with legislative leaders in Czechoslovakia, Hungary, and Poland to arrange staff exchanges on subjects of critical importance to their parliaments. These may be urgent policy matters or questions of legislative organization and procedure on which the Central and Eastern European legislatures would like to consult with CRS experts. Assistance has been requested in preparing training programs for new members of these parliaments after impending elections. CRS also will continue a series of joint seminars begun in November 1990 with the Soviet national legislature.

The congressional support for the three parliaments of Central Europe is unique. To date, no other government has launched such a comprehensive program of assistance. During the coming months, articles in the CRS Review will explore these developments in greater depth.

Mr. PELL. 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. BAUCUS. 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. BAUCUS. Mr. President, what is the regular order?

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

If there is no further debate on the motion, then the motion to proceed is agreed to.

The motion was agreed to.

#### FEDERAL FACILITIES COMPLIANCE ACT

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 596) to provide that Federal facilities meet Federal and State environ-

mental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senate now proceed to S. 596, and that no amendment or motion be in order regarding Alaska wilderness.

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

The Senate proceeded to consider the bill.

Mr. BAUCUS. Mr. President, I am pleased to bring before the Senate the Federal Facilities Compliance Act. The issue of Federal facilities compliance is really quite simple. Should the Federal Government be subject to the same environmental laws as everyone else?

Quite frankly, I had thought this question had been settled a long time ago—as far back as 1976—when Congress first enacted the Resource Conservation and Recovery Act. Section 6001 of RCRA states that—

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government \* \* \* shall be subject to, and comply with, all Federal, State, interstate and local requirements, both substantive and procedural \* \* \* in the same manner, and to the same extent, as any person is subject to such requirements.

Clearly, congressional intent in 1976 was to make sure that the Federal Government complies with all RCRA requirements. In 1976, Congress placed Federal facilities on an equal basis with private firms, municipalities, States, and individuals who violated RCRA. But that is not the case today.

Despite this clear language, the executive branch has continued to insist that it is not subject to the same environmental laws as everyone else.

Despite this clear language, three Federal courts of appeal have read congressional intent differently.

In cases before the 6th, 9th and 10th circuits, each court ruled that States could not seek civil penalties from the Federal facilities violating RCRA.

In these cases, the U.S. Department of Justice argued, and the courts agreed, the RCRA has not clearly and unambiguously waived sovereign immunity with respect to civil penalties. With all due deference to these courts, I think they plainly misinterpreted the law.

I agree with the U.S. District Court for Maine—which is the highly esteemed court on which the majority leader once served. This court has held that:

Any intelligent person reading the statute would think the message plain. Federal facilities will be treated the same as private institutions so far as enforcement of the solid waste and hazardous waste laws are concerned.

Mr. President, we need to make sure that all courts interpret congressional intent as it was meant to be; as the

U.S. District Court in Maine has done. We need to clarify the law so that RCRA clearly and unambiguously waives sovereign immunity with respect to civil penalties.

That is the purpose of S. 596, the Federal Facilities Compliance Act. Senator MITCHELL, who has been fighting for this legislation, is to be commended for his leadership, his patience, and his persistence on this issue.

I am convinced that fines and penalties for violations of the law are a necessary and effective method of enforcement. This is as true for environmental law as it is for any other type of law.

The EPA itself testified to the Environment and Public Works Committee that:

Penalties serve as a valuable deterrent to noncompliance and to help focus facility managers' attention on the importance of compliance with environmental requirements.

It's no wonder then that in May 1986 the General Accounting Office concluded that the Federal Government has been slow to comply with hazardous waste laws.

In its 1986 report, the GAO reviewed RCRA compliance at 17 Federal civilian agencies in 12 States. GAO found that almost half of the hazardous waste handlers inspected by EPA were cited for violations. Over one-quarter were out of compliance for 6 months or more. Some had been out of compliance for more than 3 years.

Similarly, in February 1991 the Office of Technology Assessment in a report on cleanup, stated that Federal weapons facilities have produced widespread contamination of the environment from toxic chemicals and radionuclides.

Mr. President, without this legislation, recalcitrant Federal facilities will continue to violate the law.

S. 596 will change that. It will ensure that the Federal Government must play by the same rules as everyone else. It does so in three fundamental ways.

First, according to some courts, RCRA is the only major Federal environmental statute that does not clearly waive sovereign immunity. S. 596 specifically states that it does.

Specifically, it provides that administrative orders, and all civil and administrative fines and penalties may be imposed for violations by Federal agencies.

Second, the bill rejects the Department of Justice position. It specifies that EPA may take enforcement actions against other Federal agencies.

Finally, the pace of cleanup at Federal facilities has been too slow. To speed it, this bill will require each Federal facility to conduct an environmental assessment and annual inspection.

Mr. President, the Federal Facility Compliance Act will without question,

give States what the Federal Government now has—the ability to enforce against violations of the law.

Some have argued, however, that this legislation is a budget buster. Critics have argued that fines and penalties will drain the Federal budget and divert limited funds for cleanup into State coffers.

This criticism is unfounded.

First, the Congressional Budget Office does not believe that the legislation will bust the budget. CBO said in a letter to Senator BURDICK:

\* \* \* the long-term cost of compliance would not change substantially as a result of this bill.

Second, in cases where sovereign immunity is clearly waived, under the Clean Air Act, for example, the size of fines and penalties collected has been minimal.

In Ohio, a \$25,000 penalty was assessed for 10,270 days of violations under the Clean Air Act. It cost Ohio \$30,000 to litigate that case.

In Tennessee an administrative penalty of \$10,000 for a clean air violation is being assessed by the State.

According to CBO, in 1990, DOD paid about \$150,000 in fines and penalties to EPA and various States. Since 1979, DOE has paid about \$1 million in environmental fines and penalties. Typical assessments against Federal facilities ranged from \$1,000 to \$250,000.

History demonstrates that States will not impose fines and penalties to raise money from the Federal Treasury. So this criticism is a red herring.

Other critics have argued that they can support this legislation but only if we eliminate some of the RCRA requirements that Federal facilities must meet.

Now this doesn't make sense. It's like agreeing to pay a speeding ticket but only after we raise the speed limit.

The standards are based on protection of health and the environment. We can't afford to change the requirements for the Department of Defense, the Department of Energy or for other Federal agencies. Federal facilities are among the worst offenders of the law.

The Department of Energy's Rocky Flats facility in Colorado, and the Fernald site in Ohio, for example have had a long history of environmental violations.

DOE has admitted full knowledge, since 1951 of pollution at Fernald. Moreover, DOE has conceded that it has released more than 300,000 pounds of radioactive uranium particles into the air at Fernald.

At DOE's Rocky Flats facility, the Federal Bureau of Investigation and the EPA have found numerous violations—including the illegal disposal and burning of hazardous waste and radioactive waste, and the illegal discharge of such wastes into nearby rivers.

The track record at the Department of Defense is not much better. DOD has

94 Superfund sites, and over 17,000 contaminated sites in every State in the Nation.

All told, some 63 percent of Federal facilities have serious RCRA violations for failing to protect ground water. But only 38 percent of all private facilities have similar violations.

This is wrong. The Federal Government should be the leader in compliance with our Nations environmental laws. But the fact is we are laggards, not leaders.

The reason is quite clear.

When three courts rule that RCRA fines and penalties do not apply to Federal facilities, there is little to force compliance. That is why this legislation is absolutely necessary. It will ensure greater compliance by Federal facilities with our solid and hazardous waste laws.

Finally, Mr. President, let me point out to my colleagues that last year, the Environment and Public Works Committee unanimously reported similar legislation. Unfortunately, there was not enough time at the end of the session for the Senate to consider the legislation.

We are fortunate, that we now have time to consider this legislation. And I urge all of my colleagues to support it.

#### AMENDMENT NO. 1263

Mr. BAUCUS. Mr. President, I send to the desk a series of managers' agreed-upon amendments and technical amendments, and I ask unanimous consent that it be in order to proceed to the immediate consideration of these amendments en bloc; that the amendments be agreed to; and that the motion to reconsider the adoption of these amendments be laid upon the table en bloc; further, that any statements relating to these amendments appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. Reserving the right to object, and to my knowledge there is no objection at this point on our side.

The PRESIDING OFFICER. Are there further reservations to the unanimous-consent request?

Without objection, it is so ordered.

The amendment (No. 1263), was agreed to.

The text of the amendment follows:

On page 2, strike subsection (a) on lines 7 through 23.

On page 2, line 24, strike "(b)".

On page 4, line 23, insert "(b)" before "Federal".

On page 5, line 14, strike "(b)" and insert in lieu thereof "(c)".

On page 6, line 9, strike "(a)".

On page 6, line 9, insert "of the Solid Waste Disposal Act" before "is amended".

On page 6, insert at the end the following new section:

"SEC. 5. (a) STORAGE OF MIXED WASTE.—Section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) is amended—

"(1) by striking 'In' and inserting in its place the following:

"(1) Except as provided in paragraphs (2) or (3), in"; and

"(2) by inserting at the end the following new paragraphs:

"(2) Until December 31, 1993, where technologies do not exist or sufficient treatment capacity is not yet available for treatment of mixed waste generated at facilities owned or operated by a department, agency, or instrumentality of the United States, or by a person acting as an authorized agent of such department, agency, or instrumentals, such mixed waste shall be stored in compliance with all applicable regulations promulgated under this subtitle except those promulgated to implement paragraph (1). After December 31, 1993, the regulations promulgated to implement paragraph (1) shall apply to all mixed waste except as provided in paragraph (3).

"(3) If the Administrator determines that compliance for a particular type of mixed waste is not possible by December 31, 1993, the Administrator may grant a variance from the regulations promulgated to implement paragraph (1) to any department, agency, or instrumentality of the United States, in accordance with the following procedures.

"(A) Where sufficient treatment capacity is not yet available, the Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis, for a particular type of waste, grant an extension of the effective date contained in paragraph (2) for up to one year, if the applicant demonstrates that treatment capacity cannot reasonably be made available by the effective date in paragraph (2) due to circumstances beyond the control of the applicant. Such extension may be renewed by the Administrator for additional periods of up to one year. In no case, however, shall the December 31, 1993, deadline for compliance with paragraph (1) be extended beyond July 1, 1997.

"(B) Where technologies do not exist, the Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis, for a particular type of waste, grant an extension of the effective date contained in paragraph (2) for up to two years, if the applicant demonstrates that treatment technology cannot reasonably be developed by December 31, 1993 due to circumstances beyond the control of the applicant. Such extension may be renewed by the Administrator for additional periods of up to one year. In no case, however, shall the December 31, 1993, deadline for compliance with paragraph (1) be extended beyond July 1, 1997.

"(C) Any variance granted by the Administrator under this paragraph shall be considered a final agency action and shall be subject to judicial review.

"(b) TREATMENT OF MIXED WASTE.—Section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) is amended by adding at the end the following new paragraphs:

"(3) Not later than 90 days after the date of enactment of the Federal Facility Compliance Act of 1991, the Administrator, after notice and opportunity for comment, shall issue a list of mixed wastes for which the Administrator determines treatment technologies do not exist or sufficient treatment capacity is not yet available. The Administrator shall update this list annually.

"(4) Not later than December 31, 1992, the Administrator, after notice and opportunity for comment, shall amend, as necessary, regulations promulgated under this subsection specifying those levels or methods of treatment which substantially diminish the tox-

icity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized and exposure to radioactivity during treatment is minimized.

SEC. 6. Nothing in this Act shall alter, modify or change in any manner any agreement or consent order regarding the management of mixed wastes in effect on the date of enactment of this Act and to which an agency of the Federal Government is a party.

SEC. 7. Any State may comment on any determination made by the Administrator pursuant to this Act with respect to the commingling of radioactive and hazardous waste.

On page 6, after line 9, insert the following:

SEC. 8. MIXED WASTE.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6902) is amended by inserting the following new paragraph at the end of the section:

"(4) The term 'mixed waste' means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)."

#### SURETY BONDS

SEC. 9. (a) SURETY CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any contract for hazardous substance response with any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

#### (b) SURETY BONDS.—

(1) APPLICABILITY OF THE MILLER ACT.—If under the Act of August 24, 1935 (49 Stat. 793 et seq., chapter 642, 40 U.S.C. 270a-270d), commonly referred to as the "Miller Act", surety bonds are required for any direct Federal procurement of a contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, and are not waived pursuant to the Act of April 29, 1941 (55 Stat. 147 et seq., chapter 81, 40 U.S.C. 270e-270f), the surety bonds shall be issued in accordance with such Act of August 24, 1935.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than the obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If under applicable Federal law, surety bonds are required for any direct Federal procurement of a contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to

indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by the breach of the bonded contract.

(4) **NONPREEMPTION.**—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(c) **APPLICABILITY.**—This section shall not apply to bonds executed before October 1, 1991, or after December 31, 1992. This section also shall not apply to facilities that are included on the National Priorities List as described in section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605). For the purposes of this section, the terms "hazardous substance" and "response" shall have the same meaning as given such terms under paragraphs (14) and (25), respectively, of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

SEC. 10. (a) This section may be cited as the "Federal Recycling Incentive Act".

(b) Subtitle F of the Solid Waste Disposal Act is amended by adding at the end thereof the following:

**"FEDERAL GOVERNMENT REQUIREMENTS**

**"SEC. 6005. (a) FEDERAL AGENCIES.**—Prior to the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency in consultation with the Administrator of General Services, by regulation, shall establish, and from time to time modify, a program pursuant to which each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be required to separate materials to be collected for the purpose of recycling from solid waste generated by such department, agency, or instrumentality. Such material shall not be collected if the Administrator determines that inadequate markets exist for such materials. The program established pursuant to this section shall seek to incorporate existing Federal programs to separate materials from solid waste for the purpose of recycling but in no case shall interfere with existing programs.

(b) **PUBLICATION IN FEDERAL REGISTER.**—Within 60 days following the establishment or modification of a program pursuant to subsection (a), the Administrator of the Environmental Protection Agency shall submit a copy of such program or modification to the Congress and publish a copy thereof in the Federal Register.

(c) **EFFECTIVE DATE.**—180 days following such publication in the Federal Register, each department, agency, and instrumentality of the executive, legislative, and judicial branches shall take action as may be necessary to carry out the program established pursuant to subsection (a) as published in the Federal Register.

(d) **PROCEEDS FROM SALE.**—Any moneys received by any such department, agency, or instrumentality from the sale of materials collected for the purpose of recycling shall be available for use by the department, agency or instrumentality of the Executive, Legislative and Judicial branches of the Federal

Government for activities which promote recycling. Nothing in this Act shall be construed to prohibit any agency from directing funds received from the sale of materials collected for the purpose of recycling for morale welfare or recreational purposes.

(e) **REPORT.**—Prior to the expiration of the 15-month period following the date on which such program takes effect, and annually thereafter, the Administrator of the Environmental Protection Agency shall report to the Congress with respect to the extent of compliance by each department, agency, and instrumentality of the executive, legislative, and judicial branches with the program established pursuant to this Act for the preceding 12-month period. Such report shall identify any such department, agency, and instrumentality which fails to comply, in whole or in part, with such program. A copy of the report shall be published in the Federal Register.

(f) **AUTHORIZATION.**—For the purpose of enabling the Administrator of the Environmental Protection Agency to carry out this section, there are authorized to be appropriated such sums as may be necessary.

SEC. 11. The Chief Financial Officers, of affected agencies, pursuant to 31 U.S.C. 501 shall submit an annual report to Congress on the activities of the Federal government regarding the disposal of mixed waste, subject to the Solid Waste Disposal Act. The report shall include, to the extent practicable, an estimate of the time required to develop adequate storage, treatment or disposal capacity for each mixed waste listed under the Solid Waste Disposal Act, an estimate of the costs expected to be incurred by the Federal government for such storage, treatment or disposal, a detailed description of the compliance activities expected to be accomplished by the Federal government during the period covered by the budget submission, and an accounting of the fines and penalties collected pursuant to the Solid Waste Disposal Act.

On page 2 line 6 strike line 6 and all that follows through line 14 page 3.

**SEC. 12. PUBLIC VESSELS.**

(a) Any solid of hazardous waste generated on a public vessel shall not be subject to storage, manifest, inspection, or record-keeping requirements under the Solid Waste Disposal Act, until such waste is removed from the public vessel on which it was generated. Nothing in this section shall affect, or in any way change the intention, implementation or applicability of 10 U.S.C. 7311, or the term "generator" as defined in 40 C.F.R. 260.10.

(b) For purposes of this section:

(1) the term "public vessel" means a vessel owned or bareboat chartered and operated by the United States or any other sovereign.

(2) waste transferred directly from one public vessel to another shall not be considered "removed from the public vessel on which it was generated" for as long as such waste remains on a public vessel.

**SEC. 13. FEDERAL WASTEWATER TREATMENT WORKS.**

(a) **APPLICABILITY.**—Subtitle F of the Solid Waste Disposal Act is amended by adding at the end thereof the following:

**"SEC. 6006. FEDERAL WASTEWATER TREATMENT WORKS.**

(a) **IN GENERAL.**—Except as provided in subsection (b), any wastewater treatment works owned by a department, agency, or instrumentality of the Federal Government shall be considered to be managing a solid waste, but not a hazardous waste, if:

(1) such wastewater treatment works receives and treats wastewater, the majority of which is domestic sewage;

(2) no solid waste in any unit that is part of the wastewater treatment works exhibits any hazardous waste characteristic as determined pursuant to test methods and criteria established by the Administrator under Subtitle C of this Act unless such waste is removed from the treatment works and is managed as a hazardous waste pursuant to subsection (b) and other applicable requirements of this Act;

(3) the wastewater treatment works has a permit issued pursuant to section 402 of the Federal Water Pollution Control Act and such permit includes conditions requiring that any individual wastewater received by the treatment works is pretreated (A) in accordance with national pretreatment standards promulgated by the Administrator pursuant to section 307(b) of such Act and applicable to each specific category of industrial wastewater received by the treatment works or (B) in the absence of national standards in accordance with local limits established pursuant to section 402(b)(8) of such Act, and (C) any solid waste rendered hazardous by any pretreated or non-compliant wastewater has been removed to the extent practicable;

(4) such treatment works complies with any other permit conditions as may be established by the Administrator or an authorized State pursuant to section 402 of the Federal Water Pollution Control Act.

(b) Notwithstanding subsection (a), the owner of a wastewater treatment works described in subsection (a) shall be required to—

(1) remove and manage as a hazardous waste any solid waste present in any unit of the treatment works that exhibits any hazardous waste characteristic as established by the Administrator under subtitle C of this Act; and

(2) take corrective action with respect to any release or threatened release of hazardous waste (including any solid waste present at the treatment works which exhibits any characteristic of a hazardous waste) or hazardous waste constituents from the treatment works in accordance with corrective action requirements under subtitle C of this Act.

(c) Subsection (a) does not constitute a waiver of any requirement under subtitle C of this Act with respect to any unit that is part of a wastewater treatment works that pretreats industrial waste prior to discharge to a treatment works described in subsection (a).

(d) **Relationship to Federal Water Pollution Control Act.**—Nothing contained in this section shall be construed, interpreted, or applied to include a wastewater treatment works owned by a department, agency, or instrumentality of the Federal Government within the definition of an "eligible treatment works" or "publicly owned treatment works" for purposes of Title II or Title III of the Federal Water Pollution Control Act.

(e) **TABLE OF CONTENTS.**—The table of contents for such subtitle F, of the Solid Waste Disposal Act is amended by adding the following new item at the end:

"Sec. 6006. Federal wastewater treatment works."

**SEC. 14. MUNITIONS.**

SEC. 6. Munitions, Section 1006 of the Solid Waste Disposal Act is amended by adding the following new subsection:

(d) **MUNITIONS.**—The Secretary of the Defense shall have the responsibility for carrying out any requirement of subtitle C of this Act with respect to regulations promulgated relating to the safe development, handling, use, transportation, and disposal of military

munitions. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection.

**SEC. 15. AMENDMENT TO THE FEDERAL FACILITY COMPLIANCE ACT OF 1991.**

In carrying out the provisions of Sec. 2 (a)(b), the administrator of the Environmental Protection Agency may utilize the Mine Waste Treatment capabilities operated by the Environmental Protection Agency and the Department of Energy at DOE's Pittsburgh Energy Technology Center's Component Development and Integration Test Facility. The treatment and assessment technologies will be supplemented and upgraded as required.

**SEC. 16. ESTABLISHMENT OF SMALL TOWN ENVIRONMENTAL PLANNING PROGRAM.**

(a) **ESTABLISHMENT.**—The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities.

(b) **SMALL TOWN ENVIRONMENTAL PLANNING TASK FORCE.**—(1) The Administrator shall establish a Small Town Environmental Planning Task Force shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups.

(2) The Task Force shall—

(A) identify areas of environmental and public health regulations developed pursuant to Federal environmental laws which pose significant problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) **IDENTIFICATION OF ENVIRONMENTAL REQUIREMENTS.**—(1) Not later than 6 months after the date of the enactment of this title, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including, but not limited to, any of the following:

(1) Newspapers and other periodicals;

(2) Other news media;

(3) Trade, municipal, and other associations that the Administrator determines to be appropriate; and

(4) direct mail.

**SEC. 17. SMALL TOWN OMBUDSMAN.**

The Administrator shall establish and staff an Office of the Small Town Ombudsman.

This Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts are also authorized to assist larger communities provided assistance is provided, on a priority basis, to small town.

**SEC. 18. MULTI-MEDIA PERMITS.**

(a) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of (1) environmental benefits and liabilities of a multi-media permitting program; (2) the potential of using such a program to co-ordinate a small town's environmental and public health activities; and (3) the legal barriers, if any, to the establishment of such a program.

(b) Within three years of enactment, the Administrator shall report Congress on the results of the evaluation performed in accordance with subsection (a). Included in this report shall be a description of the activities conducted pursuant to this Act.

**SEC. 19. DEFINITIONS.**

For the purposes of this Act, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

**SEC. 20. APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be needed to implement this title.

In an appropriate place in S. 596 insert the following:

**SEC. 21. SHORT TITLE.**

This Act may be cited as the "Metropolitan Washington Waste Management Study Act".

**SEC. 22. PURPOSES.**

The purposes of this Act are—

(1) to require an environmental impact statement prior to the expansion of the I-95 Sanitary Landfill, at Lorton, Virginia; and

**SEC. 23. FINDINGS.**

The Congress finds that—

(1) the I-95 Sanitary Landfill, in Lorton, Virginia, is located on Federal land, and the ultimate responsibility for maintaining environmental integrity at the I-95 Sanitary Landfill is on the Federal Government, as well as the signatories to the July 1981 Memorandum of Understanding, as amended;

(2) operators of the I-95 Sanitary Landfill, in Lorton, Virginia, may seek to expand the landfill by 148 acres in the so-called "Site C";

(3) there are concerns that the I-95 Landfill may be discharging leachate into the surface waters of Mills Branch, a tributary of the Potomac River;

(4) the Potomac River empties into the Chesapeake Bay, recognized by the President of the United States, Congress, the Governors of Virginia, Delaware, Pennsylvania, and Maryland as one of the Middle Atlantic region's environmental priorities;

(5) possible sources of pollution affecting the environmental integrity of the Chesapeake Bay must be fully investigated, and eliminated if possible;

(6) operators of the I-95 Sanitary Landfill established an enterprise fund with the tipping fees charged for the dumping of waste on this Federal land;

(7) the Washington metropolitan area's local governments, while aggressively pursuing integrated solid waste management, including recycling, are facing a serious problem with regard to landfill space;

(8) much of the waste generated by Federal facilities in the Washington metropolitan area is disposed of at the I-95 Sanitary Landfill and other municipal landfills in the same area;

(9) few Federal facilities in the Washington metropolitan area have waste management plans, and the plans that do exist are not coordinated with the local governments in which the facilities are situated; and

(10) Federal facilities in the Washington metropolitan area have no cohesive waste management and recycling program.

**SEC. 24. ENVIRONMENTAL IMPACT STATEMENT.**

(a) **ENVIRONMENTAL IMPACT STATEMENT.**—Except as provided in subsection (b)(1), in order to assure environmental integrity in and around properties owned by the Government of the United States, no expansion of the I-95 Sanitary Landfill shall be permitted or otherwise authorized unless—

(1) an environmental impact statement, pursuant to the National Environmental Policy Act, regarding any such proposed expansion has been completed and approved by the Administrator; and

(2) the costs incurred in conducting and completing such environmental impact statement are paid from the landfill's so-called enterprise fund established pursuant to the July 1981 I-95 Sanitary Landfill Memorandum of Understanding entered into by the jurisdictions utilizing such landfill, or some other payment formula based on past and projected percentage of the jurisdictional usage of the landfill.

(b) **CONDITIONS.**—(1) Notwithstanding the provisions of subsection (a), such landfill may be expanded for the purpose of the planned ash monofill which can be used solely for the disposal of incinerator ash from the parties of the July 1981 Memorandum of Understanding.

(2) After December 31, 1995, the I-95 Sanitary Landfill, including any expansions thereof, shall not be available to receive or dispose of municipal or industrial waste of any kind other than incinerator ash.

(3) After December 31, 1999, the I-95 Sanitary Landfill, including any expansions thereof, shall not be available to receive or dispose of any incinerator ash.

(4) Notwithstanding any other provision of this Act, the parties of the July 1981 Memorandum of Understanding, together with the Federal Government, shall continue to be responsible for maintaining environmental stability at the I-95 Sanitary Landfill, including any expansion, in accordance with applicable laws of the United States, and the Commonwealth of Virginia (including any political subdivision thereof which is a party to the July 1981 Memorandum of Understanding).

**SEC. 25. DEFINITIONS.**

For purposes of this Act, the term—

(1) "expansion" includes any development or use, after May 31, 1991, of any lands, other than those lands which were used as a landfill on or prior to May 31, 1991, in accordance with the July 1981 I-95 Sanitary Landfill Memorandum of Understanding, owned by the Government of the United States in and around Lorton, Virginia, for the purpose of, or use as, a sanitary landfill. The term also includes variances or exemptions from any elevation requirements relating to landfill operations established by the laws of the Commonwealth of Virginia, or any subdivision thereof, in connection with any such lands used on or prior to May 31, 1991;

(2) "lands owned by the Government of the United States" includes any lands owned by the United States, and any such lands with

respect to which the Government of the District of Columbia has beneficial ownership; and

#### FEDERAL RECYCLING INCENTIVE ACT

Mr. McCONNELL. Mr. President, I offer my amendment to the Federal Facilities Compliance Act gives Federal facilities an economic incentive to recycle.

Mr. President, we push a lot of paper in this town. It is about time we started recycling some of it.

How often we sit here from our pulpits and point the finger at the American people: Blaming them for our Nation's environmental problems. It's time to point the finger at ourselves, and the huge Federal bureaucracy we've created.

The Federal Government is already required by law to recycle but less than 200 of the nearly 6,000 Federal facilities nationwide had documented recycling programs in 1990.

The reason these facilities don't comply with the current law is that they simply do not have an economic incentive to do so. They obtain no benefit from recycling, and no punishment for wasting.

Federal facilities must spend money separating garbage to be recycled, but when this separated material is sold, the revenues are swallowed up in the abyss of the general fund of the Federal Government.

Managers of Federal facilities see no direct link between their efforts to recycle and the financial returns that recycling produces. So the bureaucracy continues to waste.

My legislation gives Federal facilities an economic incentive to recycle: It allows the managers of Federal facilities to keep the moneys derived from the sale of waste materials to be recycled.

My legislation also requires the Environmental Protection Agency to compile a list each year of those Federal facilities that do not comply with recycling regulations currently on the books. This list will be printed in the Federal Register for the public to see. It holds Federal bureaucrats accountable for their wasteful ways.

Mr. President, the impact of this simple legislation will be substantial. The Federal Government uses nearly 2 million tons of paper each year. This is 2.2 percent of all the paper consumed in the United States. Eighty-five percent of this paper is recyclable.

According to a 1989 General Accounting Office analysis, if the Federal Government recycled all of the paper it uses, it would save over 5 million cubic yards of landfill space, 3 million barrels of crude oil, and 26 million trees each year.

In 1989, the Federal Government received \$778,000 from the sale of source separated materials. The General Services Administration estimates that a comprehensive waste management re-

cycling program would increase revenues to GSA managed facilities by \$1.8 million per year.

My legislation provides the incentive for comprehensive waste management.

By returning this money to participating Federal facilities, I am convinced that the incremental costs of expanding the current Federal recycling program will be dwarfed by revenues generated from the expansion of recycling. Thus, my legislation will lead to a net increase in revenues to the Federal Government.

It is not often that legislation is introduced in Congress that will increase revenues, reduce the deficit and, in the process, helps save our Nation's natural resources.

Mr. President, I would like to thank the managers of this bill for accepting my amendment as a part of the Federal facilities compliance act. I look forward to working with them on solid waste in the future.

Mr. BAUCUS. I want to take a moment to explain some of the context of this amendment.

This amendment requires Federal agencies to recycle, and allows agencies to keep the proceeds from the sale of recyclable materials. Let me be clear that I support Federal recycling efforts. In fact, I have included provisions like this amendment in my comprehensive RCRA legislation that requires Federal facilities to prepare waste reduction plans and to purchase recycled materials.

I have just completed 10 days of hearings on RCRA. It is clear from those hearings that recycling will succeed only if we address three interrelated issues. The first is the development of a collection infrastructure for recyclable materials. Second is the quality of that supply. The last is the development of an infrastructure for purchasing recovered materials and their sale for processing and recycling. All three parts are necessary for recycling to succeed.

It must be understood by those supporting this amendment and by those affected by the amendment, that this amendment only addresses the first issue, that of collection. The comprehensive RCRA legislation that I am now working on will correct this by addressing all aspects of recycling.

It must be further understood that by adopting this amendment we will be requiring recycling Federal facilities to collect recyclables without providing recycling markets. This will lead to a glut of materials, lower prices for recyclable materials, and frustration by all involved in recycling.

Let me make a couple more points that illustrate the problem with this amendment. There are some 2,700 communities serving 40 million people which recover paper, glass, plastics, and other materials for recycling. Municipal and State representatives that testified at hearings on RCRA con-

vinced me that unless someone is available to purchase these materials, they will pile up or end up in landfills or incinerators. What I have learned is that comprehensive legislation is needed to address both supply and demand. If we only require collection as this amendment does, it will add further glut to the market place without resulting in greater recycling.

Increasing supply of recyclables absent a comprehensive approach which increases demand, as this amendment does, will have little or no effect on recycling at Federal facilities or elsewhere.

Without developing demand, like S. 976 does or by some other means, prices for recyclables will be depressed or markets will not be available. Supply may be sold for little or nothing. In some cases, Federal facilities may actually have to pay for their disposal.

Federal facilities unable to sell recyclables will have handling, management, and perhaps, storage costs. In some cases, collected recyclables may have to be dumped in landfills for lack of a demand-side market. In such a case there would be a net cost to the Federal Government.

In fact, we have evidence that without markets, material collected for recycling can end up in landfills.

At the hearing on recycling on June 5, city, State and waste management officials echoed these concerns.

Jane Witherige, a vice president of Waste Management Inc., the Nation's largest waste management company, who testified at the hearing said:

To focus recycling mandates on the collection of recyclables without a corresponding mandate or, at a minimum encouragement to industry and government to use recycled materials is, in short, a recipe for disaster \* \* \*.

Ms. Witheridge went on to say:

The fact of the matter is that a number of commodities that we now collect and process do not have their costs covered by market prices, even counting in avoided costs for disposal.

New York City's commissioner of sanitation, Steve Polan, who testified at the same hearing echoed similar views. The Commissioner said:

The underlying premise of the program—and that of many recycling programs—has been that if a supply of recyclables is created, investment dollars will flow to manufacturing facilities that process and utilize recyclables.\* \* \* It is clear that for several materials there will be at best a substantial time lag—several years, in some cases—between success in our collection programs and the development facilities that makes productive use of recyclables.

Furthermore, Mr. Polan went on to say:

As New York's collection programs expand dramatically, and other area localities do likewise, the problem of limited demand and consequent additional costs will be exacerbated.

Finally, an article in the Los Angeles Times last year, May 8, 1990, perhaps

best illustrates the problem with this amendment. In that article, city contractor said that "1,000 tons of glass that has been carefully separated by homeowners could end up in landfills." In fact, California's Conservation Department director, whose agency oversees the States bottle redemption program said that "7,000 tons of glass beverage containers \* \* \* collected for recycling last year, were sent to landfills because of the market glut."

Another concern with this amendment is that it is silent on the collection of plastics, tires, used oil, scrap metals, batteries and yard wastes for recycling. These make up a significant portion of the Federal Government's waste stream. If we are going to truly address Federal collection, than these too should be covered, and in the comprehensive RCRA bill I intend to cover these materials.

It would be my preference to maintain a consistent policy by not passing this amendment, which addresses recycling in a piecemeal way. Because recycling issues like collection of materials, the quality of materials collected and the availability of markets for recycling are interrelated and are very complicated, this amendment is best addressed as part of the comprehensive RCRA legislation that I am now considering. I have, however, reluctantly agreed to the amendment with the understanding that the proponents of the amendment recognize our intention to correct the deficiencies with this amendment.

#### EFFECTIVE OPERATIONS OF CLEANUP PROGRAMS

Mr. LAUTENBERG. Mr. President, I have an amendment, which has been cleared on both sides, to assure the effective operation of Federal facility cleanup programs across the country. Based on a similar provision enacted last year on Superfund, the amendment would assure that cleanup contractors can obtain the required bonding they need to move forward in addressing the serious threats at Federal facilities.

The amendment is designed to prevent any bottlenecks in the cleanup effort, and to foster greater competition among contractors bidding for cleanup work.

Mr. President, the provision before us today would extend the improvements provided by S. 3187 in the last Congress, and enacted as Public Law 101-584. The goal with that legislation was to remove existing impediments to cleanups at Superfund National Priorities List [NPL] sites. This provision responds to the same problem, but does so for the many seriously contaminated Federal sites, not on the NPL.

For federally funded cleanup construction contracts exceeding \$25,000, the Government, pursuant to the Miller Act, requires cleanup contractors to obtain bonding from sureties. Sureties which provide such bonding, in effect, guarantee the proper performance of

the contract, as well as the payment of subcontractors.

After hearings in my subcommittee last year, we confirmed that we had an immediate problem facing Superfund sites. According to cleanup contractors, environmentalists, and the laborers who do the actual cleanup work, the lack of bonding was resulting in very few contractors being able to bid on certain contracts. And an EPA-commissioned report by the Corps of Engineers documented the concerns many had raised about the effect this can have on the Superfund Program.

EPA and others confirmed that we were already seeing less competition for Superfund cleanups. Less competition means higher prices for a program whose funds are already stretched too thin, and for a nation struggling to deal with a massive budget deficit.

Following up on the report EPA commissioned from the Corps of Engineers, and based on extensive staff discussions with all interested parties, the Environment and Public Works Committee on October 4, 1990, reported S. 3187, which was designed to allow contractors and the Government to obtain the necessary bonding protections they need.

The bill—which was supported by the Sierra Club, the Environmental Defense Fund, the Laborers International Union of the AFL-CIO, the National Constructors Association, the Associated General Contractors of America, and the American Insurance Association—essentially clarified two principles. First, where a surety steps into the shoes of a cleanup contractor, and takes over the cleanup work, the surety's liabilities and access to indemnification should be the same as the contractor's. Second, a surety's contractual liabilities should be only those obligations for which the surety contracts.

The consensus among the diverse groups supporting the bill last year suggested that these are two sensible, noncontroversial principles, consistent with the intent of currently applicable laws. These measures provided sureties with the certainty they needed to reenter the market, and provided the Government with the protections it needs.

The bill did this in a way that narrowly addresses the essential issues, without upsetting the scheme of current Federal or State law. My amendment would apply these same improvements and clarifications to cleanup work at Federal non-NPL sites.

Mr. President, I am pleased to report that last year's provision is working. It is my understanding that in the single contract let for bids governed by the Miller Act since the enactment of S. 3187, seven contractors were able to submit bids. Prior to enactment of this new law, only two contractors had been able to obtain the legally required bonds to bid on this project.

However, in the case of non-NPL sites, the necessary clarifications of the law do not yet exist. But as cleanups move forward at non-NPL Federal facility sites, the same impediments will arise and jeopardize the remediation effort.

This amendment, however, will prevent a repeat of the same bottleneck we were seeing at NPL sites. And it will provide the same benefits, of greater competition and resulting lower costs for Federal facility cleanup.

Mr. President, last year Senator METZENBAUM, offered amendments that limited the application of Public Law 101-584 to the period starting October 17, 1990 and ending December 31, 1992. That amendment was designed to afford redress for the immediate problems facing cleanups over the next 2 years, but envisioned that we would revisit this approach based on the provision's implementation. The current amendment, consistent with last year's measure, preserves the sunset.

Mr. President, the amendment takes a sound approach necessary to respond to an immediate threat to the environmental cleanup effort, and I ask for its immediate adoption.

#### SMALL TOWN ENVIRONMENTAL PLANNING ACT

Mr. JEFFORDS. Mr. President, I rise today to speak on two issues. The first is on Senator MITCHELL's Federal Facilities Compliance Act of 1991. I strongly support this bill. In spite of the importance of environmental compliance, the message has still not been received by some at our Government installations. Several contractors have told me of the difficulties they have experienced at Federal facilities in trying to get the facility personnel to assist them in reaching compliance. The frequent reply is, "Federal laws don't apply to us." No longer shielded from liability, I believe this perception will rapidly change.

I am also pleased to see that an amendment I made to the bill in the committee process is still an important part of this bill. EPA is to inspect Federal facilities. To ensure that budget constraints are not used to inhibit or stop EPA inspections, DOD and DOE are to reimburse EPA for their costs. Thus, EPA's budget will not have to be stretched to do quality inspections.

While we address liability at the highest levels of government, we must also remember that the lowest levels of government are also struggling with liability. That is the second issue I would like to address, the problems our small towns are facing. Last June, several of my colleagues and I introduced the Small Town Environmental Planning Act of 1991. Twenty-one cosponsors supported this effort. Since introduction, my staff and I have talked to numerous municipal officials and have written to all of the States seeking their counsel. What this effort has

made clear is that small towns and the State agencies overseeing their activities need help in two areas. The first is financial assistance. Regulations that cost \$5 per household per year for large cities can cost \$1,000 or more for our smallest cities. The second area is in implementation of regulations. Many of our colleagues have recognized the importance of financial assistance and have supported Senator BURDICK's efforts in this regard. I, too, support the senior Senator from North Dakota in this effort. Money alone, however, will not solve our small town's problems.

When my colleagues and I put together the STEP Act, one of our goals was to create a process in which a small town could prioritize their compliance activities so as to achieve the maximum environment benefit for the available funds. However, what became clear from the comments I received is that many small towns felt uncomfortable with trying to prepare such a plan. Technical support from the States would be needed, and the States felt they had inadequate resources to provide this assistance. Thus, in practical terms, only the largest of the small towns would be able to participate in this process.

I also learned a great deal about how our small towns work with the Environmental Protection Agency. I believe there is room for improvement in this area. Many small towns frankly expressed hostility toward EPA, feeling that they only hear from the Agency when they're in trouble. All levels of government need to have a good working relationship if we are to reach our goal of a clean environment.

With this background and numerous other comments, my colleagues and I reevaluated our proposal. We came to the conclusion that, at this time, we should concentrate our efforts in four areas. First, we need to foster a dialog between EPA and small towns as to the problems each face. Second, we need to identify the requirements to which small towns are subject more clearly. Third, small towns need a friend within the bureaucracy. Right now, many small town officials feel afraid to even contact the Agency, seeing them more as prosecutor than friend. Fourth, we need to develop a mechanism for small towns to coordinate their compliance activities. With these goals in mind, we sought the counsel of Senators MITCHELL, BURDICK, BAUCUS, and CHAFEE. Together, we developed a revised Small Town Environmental Planning Act. I propose that this act be included as a separate title of this bill and would briefly like to describe the purpose of my amendment.

First, the act authorizes the creation of a Small Town Environmental Planning, or STEP, Task Force. This task force is to be composed of representatives of small towns, States agencies, and public interest groups. We had en-

visioned the representatives of the small towns being actual small town residents. While the number and selection of these individuals is at the discretion of the Administrator, we had envisioned that the Administrator should consider selecting one individual from each Federal region. Perhaps one State agency from each two Federal regions could be represented. Last, representatives of public interest groups should be included. At a minimum, representatives of the environmental and public health communities should be part of this task force.

This task force is to evaluate a number of areas including how EPA and the towns can work together better. In addition, many small towns have complained to me that they have difficulty understanding how to implement various regulations. One goal of the task force is to evaluate significant proposed regulations and suggest modifications that could improve a town's ability to comply without reducing protection of public health or the environment.

Many towns have also complained to me that they do not know about regulations until after they have been effective for some time. In this act, the Administrator is thus tasked with finding better ways to communicate new, proposed, and existing regulations to small towns.

Another section of the act requires EPA to issue a list of regulations to which towns are subject. The Administrator is required to notify the towns of the availability of this document through an appropriate mechanism as determined by the Administrator. I recognize that distributing this listing to all towns could pose significant hardship on the Agency's resources. This is not our intent. The Agency can use the National Technical Information Service as a means to distribute this listing. I envision that such a listing will help us determine the requirements we have placed on our larger towns.

In this act, we require the Administrator to establish an Office of the Small Town Ombudsman. This Office is to be the designated friend of our small towns. Many towns feel overwhelmed by the bureaucracy. The small town ombudsman can be their initial contact for information as well as a contact to explain procedures and provide assistance should the town get in trouble. Each regional office shall designate a small town contact to provide assistance at the regional level.

The last major element of this act is an evaluation of multimedia permits as an enforceable means to balance a town's compliance activities. Several States wrote to me saying that they have a process in place to consider a town's situation when setting compliance deadlines. Thus, I know it is possible to look at the big picture and

prioritize a town's activities. The permit process has several advantages over our earlier proposal. First, it does not add an additional burden on our small towns. They must go through the permit process already. Second, a multimedia permit offers the advantage of one-stop shopping. All of their environmental requirements can be negotiated at one time. Thus, a town need not negotiate a wastewater permit one year, and a drinking water permit the next, and a solid waste permit still another year. The small town could conclude all of its business at once. Another advantage is that public notice and comment is part of the permit process. Thus, an opportunity exists for the public to express its concern. Last, the permits are enforceable.

These steps alone will not solve all of our small town's problems, but they are a step toward solving the problem. In taking this course of action, my colleagues and I feel it best to make what progress we could rather than to wait. We appreciate Senator MITCHELL's assistance in this regard. The information developed pursuant to this act can then help us identify new ways to assist our communities.

Before closing, I would like to again thank Senators MITCHELL, BURDICK, CHAFEE, and BAUCUS for their assistance in developing this amendment. I would also like to recognize the co-sponsors of the STEP Act: Senators AKAKA, BOREN, BREAUX, BURNS, COCHRAN, COHEN, CONRAD, DASCHLE, FORD, GARN, GORTON, HATCH, JOHNSTON, LOTT, PRESSLER, SIMPSON, SPECTER, STEVENS, SYMMS, WALLOP, and WOFFORD. Their contributions to this effort are greatly appreciated, and I hope they will be recognized by their constituents. Senators CONRAD, DASCHLE, and COHEN should be noted, in particular, for their assistance. Last, I would like to acknowledge Representative TIM JOHNSON for his efforts on our behalf in the House of Representatives.

Mr. MITCHELL. Mr. President, I rise in support of the amendment by Senator JEFFORDS to assist small communities in planning projects to protect public health and the environment.

Many small communities in my home State of Maine are working hard to plan and finance infrastructure projects. The provisions of this amendment will assist these communities in this difficult effort.

I hope the amendment we are considering today will be only the first step in addressing the many problems small communities face in planning and financing major environmental infrastructure projects.

I am a sponsor of legislation introduced by the chairman of the Environment and Public Works Committee, Senator BURDICK, to provide financial assistance to small communities. This legislation, S. 729, is very similar to

legislation developed and reported by the Environment and Public Works Committee last year.

S. 729 proposes a significant loan and grant assistance program for environmental and public health projects in small communities with funding of over \$2.5 billion over 5 years. Projects for sewage treatment, drinking water quality, and solid waste disposal would be eligible. The bill also authorizes the Army Corps of Engineers to assist financially distressed communities with these projects.

I expect that the Burdick small communities bill will be reported from the Environment and Public Works Committee as part of the clean water legislation now under development. This legislation will complement and support the authority included in the amendment we are considering today.

Mr. CONRAD. Mr. President, I am pleased to rise today with my colleague, Senator JEFFORDS, in support of the Small Town Environmental Planning Act [STEP Act]. The amendment we are offering today, along with Senators DASCHLE, COHEN, GORTON, and BURNS is a modified version of S. 1226, legislation to provide smaller towns with relief from the crushing weight of environmental mandates. S. 1226 would allow towns to prioritize environmental compliance activities to achieve the greatest health and environmental benefits within limited resources.

At the beginning of this year, I wrote to all of the mayors of communities in North Dakota and asked them to share with me the challenges they face in the years ahead. For smaller communities, meeting environmental requirements within very limited resources topped the list of urgent needs.

These communities do not have the resources to employ an office full of regulatory experts to keep them apprised of the latest regulatory requirements. Many towns are strapped for resources and have limited ability to raise necessary funds and have restricted access to credit. They see the Environmental Protection Agency [EPA] as uninterested in the special challenges they face. Because of their size, they face tremendous household-by-household costs to meet environmental requirements. EPA has reported that small communities pay the highest user charges for environmental protection, and will continue to do so.

Small communities need assistance in order to comply with Federal requirements. Mr. President, I joined Senator JEFFORDS to introduce the STEP Act to bring flexibility and reasonableness to the process of environmental compliance. After a great deal of comment on this legislation and advice from the Senate Environment and Public Works Committee, we have concluded that some changes in the legislation were warranted. The amendment

we are offering today is the result of extensive comment on the STEP proposal.

The amendment requires the EPA, which administers most Federal environmental laws, to establish a program to assist small communities in planning and financing environmental facilities. The amendment establishes a small town environmental planning, or STEP, task force within the EPA to address the needs of small towns and make certain that the Agency is responsive to the needs of small towns. This task force will include representatives from small towns, State agencies, and other interested parties.

Furthermore, the amendment requires that EPA prepare a list of Federal environmental requirements and public health statutes applicable to small towns. The EPA will be required to establish a program to make certain small towns are notified of regulatory actions. This will be of special assistance to towns which lack full-time regulatory staffs. I have been informed that some towns do not know of a proposed requirement until much too late in the process to comment, and sometimes do not know of requirements until long after their effective date.

A small town ombudsman will also be established to assist small towns in their interactions with the EPA. This office will be the initial point of contact for small towns with the EPA, and the office can act as a friend and advisory to small towns.

Finally, the amendment calls for a study of multimedia permitting program for small towns. Such permitting would allow towns to receive one permit for all the various requirements they must meet, which would allow the development of a plan to prioritize actions which must be taken to meet Federal requirements. A town will have one-stop shopping if such permitting is adopted, and towns and States will have the ability to look at the big picture when determining compliance priorities. I understand that some States are already looking at a town's whole situation when establishing compliance plans, so I hope such a proposal will be given very serious consideration.

I want to thank members of the Senate Environment and Public Works Committee, especially Chairman BURDICK and Senators MITCHELL, BAUCUS, and the ranking member, Mr. CHAFEE. Senators BURDICK and BAUCUS have long worked to improve the ability of small towns to meet environmental mandates. I am strongly supportive of their efforts, and I appreciate the advice and assistance of the whole committee.

I also want to thank my colleague, Senator JEFFORDS for his tremendous work on this legislation. He has been a tireless advocate for small towns' needs. I would also like to give special

thanks to Senator DASCHLE, who understands the plight of small towns so well, and has worked hard to see that the Federal Government is responsive to smaller communities' needs.

Finally, I would like to thank Senator MITCHELL. His willingness to entertain this amendment on this legislation is greatly appreciated.

Mr. President, this legislation is a first step, a very important step, to addressing the needs of small communities in this country.

Mr. BAUCUS. I want to thank the distinguished Senator from Vermont for developing this amendment to assist the Nation's small communities around the country in planning projects to protect public health and the environment. This amendment will be valuable to many communities in my home State of Montana, and I fully support it.

I expect to further address the environmental needs of small communities in legislation to reauthorize the Clean Water Act. Clean water legislation is now before my Subcommittee on Environmental Protection in the Environment and Public Works Committee.

The clean water legislation I plan to report from my subcommittee will include major provisions of S. 729, introduced by the chairman of the Environment and Public Works Committee, Senator BURDICK. S. 729 is very similar to legislation developed and reported by the committee last year.

Senator BURDICK's bill authorizes a major loan and grant program totaling over \$2.5 billion over a 5-year period for environmental and public health projects in small communities. The bill authorizes the Army Corps of Engineers to assist financially distressed communities with these projects.

I look forward to working with the Senator from Vermont in developing provisions in the clean water legislation to assist small communities.

Mr. JEFFORDS. I thank the Democratic floor manager for his support. I share his determination to enact legislation to provide financial assistance to small communities. I support Senator BURDICK's bill, S. 729. It is an important and necessary complement to the amendment we are considering today, and I look forward to reporting it from the Environment and Public Works Committee at the earliest possible date.

Mr. BAUCUS. I thank the Senator from Vermont.

Mr. BURDICK. Mr. President, I rise in support of Senator JEFFORDS' amendment to help small towns plan and implement projects to protect public health and the environment.

Many small communities in my home State of North Dakota are in the process of developing plans to build needed infrastructure for environmental protection and public health. This amendment is an important step forward in

addressing the needs of these communities.

I am the sponsor of legislation which would go beyond the amendment we are considering today to provide direct grant and loan assistance to small towns to finance environmental projects. This legislation, S. 729, is very similar to legislation developed and reported last year by the Environmental and Public Works Committee, which I chair.

The Environmental and Public Works Committee held hearings on small community environmental financing in May 1990. At the hearings, we heard compelling testimony about the difficulties faced by small communities in building infrastructure which meets the same public health and environmental standards which apply in other parts of the country.

In a major report on this issue, the Environmental Protection Agency [EPA] stated:

Most municipalities will be able to meet the expected increase in environmental expenses and still remain financially sound. The municipalities most likely to experience difficulties will be those with populations of 2,500 or less.

The EPA stated:

Most of the households that are expected to experience initial "rate shock" when confronted with rising user fees are in communities with fewer than 2,500 persons.

S. 729 proposes a significant loan and grant assistance program for environmental and public health projects in small communities with funding of over \$2.5 billion in 5 years. Projects for sewage treatment, drinking water quality, and solid waste disposal would be eligible. The bill also authorizes the Army Corps of Engineers to assist financially distressed communities with these projects.

I expect that my small communities bill will be reported from the Environmental and Public Works Committee as part of the clean water legislation now under development. This legislation will complement and support the authority included in the amendment we are considering today and is essential if we are to effectively address the needs of small communities.

#### METROPOLITAN WASHINGTON WASTE MANAGEMENT STUDY ACT

Mr. ROBB. Mr. President, I want to take this opportunity to thank the chairman of the Environmental Protection Subcommittee, the floor manager for S. 596, the Federal Facilities Compliance Act. Senator WARNER and I introduced S. 1089, the Metropolitan Washington Waste Management Study Act, in May, in an attempt to relieve many of the fears of the residents in the Lorton, VA area. Senator BAUCUS has agreed to accept the bill as an amendment to S. 596, with the understanding that section 5 of S. 1089—a provision calling for a General Services Administration study of the waste

management plans of Federal facilities in the Washington, DC, area—will be deleted for now, and discussed during the reauthorization of the Resource Conservation and Recovery Act [RCRA]. As I understand the situation, the Environment and Public Works Committee has some concerns that a Federal agency other than GSA may be better suited to conduct that study.

Mr. BAUCUS. Mr. President, I want to thank the two Senators from Virginia, especially Senator ROBB, for working closely with the committee on this issue. I understand that this is a very important issue to the residents of northern Virginia, and we are willing to accept the language included in S. 1089 that will close down the I-95 sanitary landfill by 1996, and the site's ash monofil by 2000. At the same time, Senator ROBB has agreed to discuss his feasibility study provision as part of a comprehensive RCRA reauthorization.

I understand that the I-95 sanitary landfill is located on Federal land in northern Virginia, and has been operating as a landfill for local governments and the District of Columbia of nearly 20 years. If this site were located in Montana, I would demonstrate the same kind of concern that Senators ROBB and WARNER have demonstrated. I appreciate the efforts of the two Senators from Virginia to bring this issue to the attention of the U.S. Senate, and I look forward to working closely with them during RCRA reauthorization next year.

#### FEDERALLY OWNED TREATMENT WORKS

Mr. BAUCUS. The amendment to the Federal facilities bill includes an amendment to the Solid Waste Disposal Act to clarify the treatment of federally owned sewage treatment works.

Mr. NUNN. The Senator is correct; the amendment would address the concerns of the Department of Defense with regard to federally owned sewage treatment facilities.

Mr. BAUCUS. I want to take a moment to explain some of the context of this amendment.

Many Federal facilities operate sewage treatment systems. Municipal sewage treatment plants, but not Federal treatment plants, operate under a policy called the domestic sewage exclusion which excludes hazardous waste at a treatment works from coverage under the Solid Waste Disposal Act and prevents many municipal sewage treatment works from being treated as hazardous waste facilities.

Unfortunately, the domestic sewage exclusion as it now applies is poor policy. It results in the transfer of large amounts of hazardous materials to municipal sewage systems which are not prepared to deal with it.

The Environment and Public Works Committee is now considering legislation, which I introduced with Senator CHAFEE, to reauthorize the Clean

Water Act which includes an amendment to correct the domestic sewage exclusion to assure that wastes discharged to municipal systems are as free of hazardous substances as possible.

The amendment before us today, rather than correcting the domestic sewage exclusion, would extend its coverage to sewage treatment works owned by the Federal Government.

It must be understood by those supporting this amendment and by those affected by the amendment, that future amendments to the Clean Water Act are likely to change the obligations of Federal facilities established by this amendment. The Clean Water Act amendments will both correct the domestic sewage exclusion and apply the policy equally to both Federal and municipal sewage treatment facilities.

It would be my preference to maintain a consistent policy by no passing this amendment or passing the amendment with all the safeguards we have proposed in the Clean Water Act. We have reluctantly agreed to the amendment, however, with the understanding that the proponents of the amendment recognize our intention to correct this policy and will not use the argument of a changing policy against future efforts to correct the policy.

Mr. NUNN. I recognize the concern expressed by the distinguished floor manager of the bill and I understand that the policy we adopt may well be changed in the near future. I support the ultimate goal of treating Federal and municipal sewage systems equally and I recognize that equal treatment may in the future require that the policy of this amendment be changed. This amendment requires the Department of Defense to operate its plants in a manner that brings greater protection to the environment than current practices at municipal sewage treatment plants. I look forward to working with the Senator to eliminate hazardous wastes from all sewage treatment plants.

#### JOHNSTON AMENDMENT ON MIXED WASTE

Mr. SIMPSON. Mr. President, this amendment represents the best possible compromise between the divergent philosophies regarding forcing mixed waste treatment and disposal technology.

The treatment technologies for mixed waste, for a number of waste streams, have not yet been developed. In fact, the estimates as to developing such treatment technology are actually very much guesses since in some cases we do not even know what kind of technology might even apply.

Even in the case of known technology, long lead times to develop and commercially deploy that technology with the appropriate environmental siting and permitting, will take years. Optimistic estimates by the Department of Energy range from 7 to 10

years—and this is for known technology.

Factors influencing development of treatment technology:

Technology evaluation and design, 7 to 10 years;

Development of environmental documentation under National Environmental Policy Act, appropriately 3 years;

Prototype demonstration, testing and evaluation, 1 to 2 years;

Submission and approval of RCRA permits by EPA or State regulator, 2 years;

Procurement and facility construction, 3 to 5 years; and

Facility demonstration prior to full-scale operations, 6 months.

It is my earnest hope that during conference committee action on this bill, the provisions which have been fashioned out of this compromise here today will prevail throughout the conference.

#### IMPACTS OF NOT LEGALIZING THE STORAGE OF RADIOACTIVE MIXED WASTE

Waiving the Federal Government's sovereign immunity under the Resource Conservation and Recovery Act [RCRA] without resolving the statutory impossibility for strong radioactive mixed waste could have significant impacts on DOE and other Federal agencies.

DOE, veterans hospitals, National Institutes of Health and the Food and Drug Administration only have the option of storing this waste safely until treatment technologies and facilities are constructed to deal with the waste.

This prolonged storage is illegal under RCRA as currently written. Unlike the Clean Air Act and Clean Water Act regulations that do recognize radioactive elements, it is estimated that these violations will allow the possibility of substantial fines and penalties to be assessed. For example: where a violation is assumed to occur on a daily basis at 10 percent of DOE's storage units the annual total amount of fines could average approximately \$505 million. Leaving open the possibility of being fined and penalized for exercising the only environmentally responsible option—indeed the only option—is unacceptable.

This situation merits correction now. The passage of this bill without mixed waste provisions will force DOE into site specific agreements that could require the construction of duplicative and excessive treatment capacity. This approach completion would increase the cost of DOE's waste management complex by \$400 to \$800 million.

Site managers may be compelled to suspend operations at facilities that generate mixed waste while site-specific agreements are being negotiated. Shutdown of Defense facilities for 6 months while an agreement is negotiated—a conservative time estimate—could cost DOE \$550 million in lost pro-

duction. This bill could have national defense implications.

All of these unnecessary actions will be triggered by the passage of this bill without fixing a problem that currently exists. Most importantly, these actions will have no positive effect on present compliance or future compliance. In fact, environmental efforts already underway will be hampered and diversion of funding for unnecessary litigation cost and fines will further delay mixed waste treatment and disposal.

This country needs a national compliance plan to deal with this problem because it is national in scope. Such a plan would outline schedules for treatment technology and facility development. A national plan is the most cost and risk effective approach, as well as the most expeditious way to treat this waste.

I ask unanimous consent that the following letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MAY 29, 1991.

HON. JOHN H. CHAFEE,  
*Ranking Minority Member, Environment and Public Works Committee, U.S. Senate, Washington, DC.*

DEAR SENATOR CHAFEE: President Bush is committed to improving the environmental performance of facilities owned by the Federal Government. The substantial increases in the President's last two budgets for environmental compliance and cleanup, at the Departments of Energy and Defense and other Federal departments and agencies, reflect this commitment.

The administration has put substantial effort into crafting amendments to S. 596 in an effort to break the stalemate that has prevented passage of Federal facility environmental compliance legislation. The amendments we are proposing would ensure that the authority provided in this bill to impose fines and penalties against Federal facilities is exercised within a fair, workable statutory and regulatory framework.

The Resource Conservation and Recovery Act [RCRA] currently requires Federal facilities to comply with Federal and State hazardous waste laws and makes them subject to certain judicial enforcement actions. S. 596 would take the additional step of allowing civil penalties to be assessed administratively against Federal agencies for violations of Federal and State hazardous and solid waste requirements. It would also grant the Environmental Protection Agency the authority to issue administrative orders to other Federal agencies.

We opposed similar legislation during the 101st Congress, because of the concern that the authority to impose fines and penalties, by itself, will not achieve the desired environmental improvements. Because President Bush is committed to ensuring that Federal facilities comply with our Nation's environmental laws, we are submitting with this letter a new package of amendments.

Unless S. 596 addresses the underlying issues that contribute to the poor environmental compliance record at Federal facilities, it will not improve the compliance record of those facilities. Our proposed amendments address these issues. The

amendments correct problems in S. 596 and RCRA that: (1) make compliance impossible; (2) inadvertently impose health risks; (3) do not adequately address unique Federal problems; or (4) treat Federal facilities differently from private entities. The proposed amendments, as well as an explanation and rationale for each, are attached.

We are ready to work with the Congress to develop a bill that provides the necessary accountability at Federal facilities for environmental cleanup and compliance and recognizes the unique situations of Federal facilities. If adopted, our proposed amendments will allow the administration to support S. 596. However, unless the bill adequately resolves the issues addressed in these amendments, the administration will be forced to strongly oppose the bill.

The Office of Management and Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,  
DONALD J. ATWOOD,  
*(For Richard Cheney,  
Secretary of Defense).*  
WILLIAM K. REILLY,  
*Administrator, Environmental Protection  
Agency.*  
Adm. JAMES D. WATKINS,  
*Secretary of Energy.*

NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION,  
*Washington, DC, August 6, 1991.*

HON. QUENTIN N. BURDICK,  
*Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: As the Senate prepares to consider S. 596, the "Federal Facility Compliance Act of 1991," NASA would like to express its belief that the amendments the administration submitted to the Senate on May 29, 1991, make a major improvement in the bill. If adopted, the amendments will enhance the statutory and regulatory framework under which S. 596 would be implemented.

With this letter, NASA wishes to emphasize its support for the administration's amendments concerning, particularly, the management of radioactive mixed wastes. The Department of Energy [DOE] produces plutonium-238 (a nonweapons grade of plutonium) for use in Radioisotope Thermoelectric Generators [RTG's], which are devices that convert the heat produced by the natural radioactive decay to provide electrical power for the spacecraft including its instruments. These RTG's have been used on a number of NASA's space missions where nuclear power is the only feasible alternative. If the administration's amendments are not adopted, the DOE's facilities required to produce plutonium-238 may be seriously jeopardized, because these facilities generate radioactive mixed waste in the production process. Should our country no longer be able to have the ability to produce plutonium-238 for fueling RTG's, NASA's space exploration programs would be severely compromised since several potential outer solar system missions would not have alternative power sources. The opportunities to further our understanding of the origin and evolution of our solar system and advance the understanding of Earth by comparative studies of the outer planets would be considerably curtailed.

We strongly support the administration's amendments and urge their adoption.

This letter has also been sent to the Chairman of the Committee on Energy and Natural Resources, United States Senate.

The Office of Management and Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this letter to the Congress.

Sincerely,

RICHARD H. TRULY,  
Administrator.

Mr. BAUCUS. Mr. President, I want to commend the majority leader. We know our leader to be a patient man. I think that his work on the Federal facilities bill is the best testament to his patience.

He first introduced this bill several years ago. The House has passed it several times. We are now passing that legislation this year. He has worked long and hard on it, and we are here tonight passing legislation which puts Federal agencies on the same playing field as private operations, private landowners, insofar as the Resource Conservation Recovery Act is concerned and other environmental legislation is concerned.

The Senate, and more important, the American people, owe a deep debt of gratitude to the leader for his very persistent yeoman's work in shepherding this bill through final conclusion.

Mr. MITCHELL. Mr. President, I thank my colleague for his kind words. I appreciate his effort and the efforts of Senators JEFFORDS and CHAFEE and all the others who contributed to the progress we made on this bill so far.

Mr. President, have the amendments been agreed to?

The PRESIDING OFFICER. The amendments have been agreed to.

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

Mr. DOMENICI. Will the leader let us give some remarks about the bill before he does that, and about the amendments?

Mr. MITCHELL. Certainly.

I withdraw my request.

Mr. WALLOP. Mr. President, I do not want the majority leader to think these are related only to the amendments. I have a comment on the bill.

Mr. MITCHELL. Yes.

Mr. WALLOP. Mr. President, it is a mistake for the Senate to believe that Government agencies are like the private sector. It is also a mistake to think that, like the private sector, Government agencies can go out of business if simply forced beyond their economic capabilities of compliance. You are not going to lose the Department of Defense because they are fined. You are not going to lose the National Institutes of Health because they are fined.

What nobody seems to be focusing on is that all of this is dependent on a couple of things. First, science and technology, which in many instances does not now exist. Second, the willingness and the ability of the Environmental Protection Agency to promulgate regulations which are clear, understandable, and with which other

agencies can comply. Third, having promulgated those regulations, that other environmental laws do not enter into the picture to prevent them from constructing facilities which are capable of handling these wastes. And fourth, and most important of all, I do not know anybody in this body who can guarantee that the funds will be made available to the agencies in question to be able to comply. And at some moment in time, Mr. President, we will be fining these agencies to take away the money that we have made available to them, in whatever sparse or generous amounts, to comply with the requirements of this act.

This Senate has spent the week fighting with itself and it ill-behoves us to create a circumstance where agencies of the U.S. Government are put into combat with each other, where the lawyers of each agency are required by law to spend taxpayers' hard-earned money, not getting to the resolution of the problem, but keeping each other in court and fining each other for lack of compliance when, oftentimes, the agency doing the suing is the agency responsible for the inability to comply.

It is my hope—and I ask for just a moment of the majority leader's attention, if I could have it. We have yet in this body to reauthorize RCRA. At some moment in time we will have to do such a thing. And it seems more than a little bit important that at that time we take a look at what we have created to see if it is possible under any set of good will efforts to comply. And it is my hope that the majority leader will at least consider a request that at that time we might, as a body, consider sequential referrals to other committees whose agencies are affected by the provisions of RCRA, just to talk about the realities of the ability to comply.

So I hope that maybe, when the RCRA reauthorization comes about, we could have a sequential referral period, with a confined moment in time, to the Department of Defense—the Armed Services Committee, to the Energy Committee, probably to Health and Human Services whose wastes are much in play here. I ask the majority leader if he would at least consider, at that moment in time, assisting in such a request.

Mr. MITCHELL. Mr. President, I assure my colleague that I will consider it seriously and as carefully as possible. As my colleague knows, sequential referral would require unanimous consent.

Mr. WALLOP. I do, indeed.

Mr. MITCHELL. Maybe it could be obtained. But I assure my colleague I will do that in good faith and seriously consider it with him and any other Senator who is interested.

Mr. WALLOP. I say to the majority leader, I am fully aware it requires unanimous consent. But I am also fully

aware that the support and efforts of the majority leader have calming effects on the desire to raise objections.

Mr. President, let me conclude, and I will very briefly because we have been here, and I appreciate not only the majority leader's staff's work, but that of the committee.

We are able often, as a body, only to look at one devil at a time. In this instance the devil is mixed waste, waste containing chemicals and low levels of radioactivity.

The devil we are overlooking is that, in pursuit of this, without ever looking at the cost/benefits of what we are doing and the hazards which the public may or may not—most important—be exposed to, we run the risk of putting American medical technology out of business. Eighty percent of medical research contains low levels of radioactive waste.

The research into heart disease, the research into cancer, the research into AIDS, the research into preventive medicine—all of it requires trace elements of radioactivity. All of it lays in some small element of radioactive waste. We are now already in the position of having put costs up to \$50,000 per cubic foot to store that waste. And the rationale behind this is the consumer can pay, the consumer is the beneficiary of medical research. And who pays for that, but governments in the United States, primarily? Precious little medical research is done by private endowment. It is the National Institutes of Health, the great medical universities of America. And what we are on the threshold of doing is making it so expensive that medical research in America will be an option that cannot be accepted.

What we have done is to soften that and give ourselves time to work on it. But I assure this body if we do not take advantage of the time that we have given ourselves to work on it, this Nation is in the pattern of self-destruct over the most important and wonderful things that we have been able to provide the world.

It is insane that somehow or another we take such things as medical waste and make them so expensive that the universities and the National Institutes of Health cannot afford to engage in that research.

Mr. President, we have this peculiar Catch-22, whereby it is illegal to store it, illegal to transport it, and are subject to \$25,000 a day fines for having it.

If we wish to have this marvelous, advanced medical technology which has made our country the envy of the world, has given us Nobel Prizes and given hope to people with AIDS and cancer and heart disease and all the other things, we better be careful as to how we proceed from here.

So, while I am very grateful for the cooperative nature which brought us to the moment where we have bought our-

selves time, in no way, Mr. President, in the end will I be able to support this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I want to assure the majority leader and manager on our side I will be brief.

This year our Government appropriated \$7.1 billion for environmental cleanup that the Government has to do. That is 22 percent higher than last year. And just to see the steep increase, it is 98 percent more than 2 years ago.

It is obvious to me, to do the cleanup that the Government is responsible for, that dramatic incline, from somewhere around \$1 billion or \$1.5 billion 2 years ago to \$7.1 billion in just the beginning of what it is going to cost our Government to clean up—whether it be a national laboratory or the National Institutes of Health or some other facilities around the country where we have waste products that have accumulated over the years and are not now in technical compliance with our environmental laws.

I am going to support this bill because it is obvious to this Senator we want to push our Government to do the kind of cleanup we are requiring of others. The reason we should be doing this is because we do impose mandates on the private sector and others than Government, and we expect them to meet them. We have not been doing that for some of our Federal facilities. So the distinguished majority leader is saying, "Let's do it."

For those who wonder why there has been a delay this afternoon, I hope they understand it is not because a Senator like this one did not want to force the cleanup of Government waste that is currently not in compliance with out laws. Frankly, the reason I delayed it and tried to work out something was very simple. We have mixed waste in abundance. That is waste that is radioactive and contains chemical or other toxicities—mixed.

The problem with that is not that we do not want to clean it up but in some cases we do not know how. In many cases we do not have a technology. And it was obvious today, as this bill came to the floor, that everyone who knows about this problem admits that there is no way we can have compliance by next year or even the year after.

So what we have done in this bill is to compromise and say, as to that portion, the mixed cleanup, the cleanup of mixed waste, we have until 1997 to be in compliance. Some will say that is too long. Frankly, I am firmly convinced we will not get there even by 1997. But at least it gives us an opportunity to build in our system of cleanup a regularizing of this process.

And then we added another provision in these amendments that says every

year the Government, that is the executive branch, in a very precise way will give us an accounting and an inventory of both what we are doing, what we have spent, and what technology is available and what the prognosis is. We have never had that. That is a very good provision, it seems to this Senator, because year by year we will know how close we are getting to reaching compliance. It seems to me in 3 or 4 years we ought to have a pretty good history and inventory of what we have done, a prognosis of what remains to be done, a listing of the technologies that will accommodate the cleanup, and where we have not yet achieved exact compliance with our laws.

Mr. President, it seems to me that that makes eminent sense. I do not see how it makes any sense to say we will meet these technical requirements next year when we know we cannot, even though we might be angry because we have not done it right in the past. The truth of it is we cannot meet these deadlines next year.

So, should we start fining ourselves, let a fine be imposed on DOE, and send that money into the general fund? Should we let the States start to cite us for violations and start fining us when we absolutely know that as to mixed waste in most cases we will not meet compliance next year?

I thank all of those who worked on this. I think it keeps our feet to the fire. Those who are concerned about cleanup, it gives them a map. And it says to those Federal installations and departments, get on with it and give us your best advice and recommendations each year as we proceed.

Mr. President, I want to make part of the RECORD a letter, dated October 17, from the Executive Office of the President, essentially the Office of Management and Budget. I do it only because I do not want anyone to think if we go to conference and the 1997 date is done away with—which I understand we do not want to do—and if we make it next year, I believe that bill in that manner may, indeed, be subject to a Budget Act point of order, because it has some expenses that are not currently expected that are in the nature of an entitlement. And if we do it on a 1-year basis, we probably can calculate it sufficiently to cause it to be looked at as possibly subject to a point of order.

This letter from the OMB explains that and other things about the cleanup. So I would like to make it a part of the record. I ask unanimous consent it be printed in the RECORD. And with its submission I yield the floor.

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

OFFICE OF MANAGEMENT AND BUDGET,  
Washington, DC, October 17, 1991.

STATEMENT OF ADMINISTRATION POLICY  
(S. 596—Federal Facility Compliance Act of 1991—Mitchell of Maine and 48 others)

The Administration is committed to ensuring Federal facility compliance with environmental statutes and to improving the environmental performance of Federal facilities. The President's FY 1992 Budget includes \$7.1 billion to speed the cleanup of Federal facilities—an increase of 24 percent over FY 1991 and 89 percent over FY 1990.

S. 596 would allow the assessment of fines, penalties, and orders against Federal agencies for violations of Federal, State, interstate, and local hazardous and solid waste requirements under the Resource Conservation and Recovery Act (RCRA).

S. 596, however, will not achieve its desired environmental improvements, because the bill does not address the problems specific to Federal facilities that have led to difficulties in complying with environmental law. The Administration has provided Congress with amendments which will ensure that the authority provided in S. 596 to impose fines, penalties, and administrative orders is exercised within a fair, workable statutory and regulatory framework.

The Administration strongly opposes S. 596, as reported by the Environment and Public Works Committee, and will continue to seek its amendments during further congressional consideration of this legislation. If the Administration's amendments are adopted, the Administration would support S. 596. The Administration's amendments include:

**Mixed Waste Treatment Technology Development.**—It is widely known that it is impossible to comply with certain statutory storage restrictions for radioactive mixed wastes because treatment technology or capacity for these wastes does not currently exist. The Administration's amendments provide for the development of a national compliance plan to establish schedules for development of the necessary treatment technology and capacity within enforceable prescribed timeframes.

**Military-Essential Activities.**—The Administration's amendments provide for the development of regulations that permit the conduct of military-essential activities (e.g., the manufacture, testing, and handling of ordnance and munitions) and fully protect human health and the environment. Existing regulatory requirements can lead to unsafe practices and may hinder the ability of the U.S. military to function effectively.

In addition, the Administration's amendments provide for the development of alternative waste management requirements where existing requirements for radioactive mixed waste would result in radiological exposure of workers that exceeds applicable numerical health and safety standards.

Finally, the Administration's amendments would ensure that public vessels and Federal wastewater treatment works are treated in a manner comparable to non-Federal entities.

To the extent that the Judgment Fund is not available to pay fines and penalties under this Act, they will be paid by agencies from funds which must be appropriated specifically for this purpose. Under the caps established by the Budget Enforcement Act, funds appropriated to pay fines will necessarily reduce funds available for other purposes. Thus, it is likely that the imposition of fines will reduce funds available for cleanup activity.

SCORING FOR THE PURPOSES OF PAY-AS-YOU-GO AND DISCRETIONARY CAPS

To the extent that S. 596 would increase direct spending it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. No offsets to the direct spending increases are provided in the bill. A budget point of order would lie in both the House and Senate against this bill because, in the Administration's view, its costs have not been offset. The effects of enactment of this legislation would be included in the look back pay-as-you-go sequester report at the end of the Congressional session.

S. 596 will increase costs in two ways—payments from appropriated funds and payments from the Judgment Fund. S. 596 has a pay-as-you-go impact to the extent that the Judgment Fund is used to make payments under this Act.

If sovereign immunity is waived under RCRA without addressing the lack of current capacity to treat mixed waste, fines and penalties of up to \$25,000 per day per violation could be imposed against Federal agencies. The fines would be imposed for storing radioactive mixed waste out of compliance with RCRA's prohibition on storage of restricted waste. Although it is impossible to predict with precision, the potential total Federal exposure for fines and penalties related to this situation could range up to about \$5 billion per year.

At this time, it is difficult to predict what proportion of fines and penalties under S. 596 would be paid from the Judgment Fund. The high-range estimate noted below assumes that fines and penalties are sought for 10 percent of the violations for mixed waste at Department of Energy facilities.

Mixed waste is also produced in conjunction with most biomedical research. The National Institutes of Health and other Federal facilities engaged in biomedical research face similar mixed waste disposal problems and would be subject to fines and penalties. To the extent that fines and penalties were imposed, the funds available to support biomedical research may be reduced.

OMB's preliminary pay-as-you-go scoring estimates of this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If S. 596 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

Estimates for pay-as-you-go

Outlays:	Millions
1992 .....	\$15-500
1993 .....	15-500
1994 .....	15-500
1995 .....	15-500
1992-95 .....	60-2,000

The PRESIDING OFFICER (Mr. BUMPERS). The majority leader is recognized.

Mr. MITCHELL. I thank my colleague from New Mexico and my colleague from Wyoming for their constructive remarks. I hope we will be able to get the bill passed and ultimately into law in a manner all will find acceptable and accomplishes the objective we seek.

I will yield now to the Senator from Idaho for 3 minutes without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 3 minutes.

Mr. CRAIG. Mr. President, I associate myself with the remarks of my colleagues from Wyoming and New Mexico on the amendments en bloc that have just been offered to S. 596. With these amendments I can now in good faith support legislation that would not have been in the best interests of this Government, let alone its citizens, had we not have been able to offer the flexibility that I think these amendments now offer. It would not have been right for us to say that there is a double standard in this country. I think the author of the legislation was saying that, that there should not be. But we were putting some of our Federal agencies, especially DOE and DOD, into situations where they were in an ultimate catch-22 that they simply could not have lived with.

As effectively explained by my colleague from New Mexico, we were saying that by next year you had to be in compliance in a way that you could not get there. You had to be able to develop techniques you could not develop. Simply, we would not, in the issue of mixed waste, have been able to come on line. So we would have been throwing money around, not resolving the issue, and clearly saying to the citizens of this country who had a fundamentally legitimate concern about some of the mistakes that have gone on at Federal facilities, that have gone beyond the borders of those facilities, that we were merely creating a crisis without a solution.

I think these amendments now offer the kind of flexibility that we have to have. In my State, with a large Federal laboratory, with mixed waste, it says to them that they are not going to be allowed to be different. They are going to have to comply with RCRA, as they should, and that the citizens of the State and the State itself has a right to be a participant and a partner.

But it does not have a right to be superior. It should not have a right to be superior. Clearly, all ought to participate, all ought to be concerned for the kind of programs that run there that we know are correct and environmentally sound and do not put the citizens of the region or the area in any kind of danger. That is what we are attempting to do now.

I am glad that negotiations were able to go forward, we were able to gain the flexibility, we were able to arrive at a 1997 case-by-case extension and also recognize agreements that are already in existence continue to exist and that the agencies involved will continue to work correspondingly with those.

It is a block that serves us well and I think perfects the legislation to make it so that a substantial larger number of Senators can support it. I yield back the remainder of my time.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I thank my colleague from Idaho for his comments.

Mr. President, I am advised by the managers that action has now been completed on all amendments that are relevant to this bill.

Previously, I discussed with the distinguished Republican leader the possibility that he and I and other interested Senators meet on the possibility of other amendments being offered which are unrelated to this bill, and until I have the opportunity to do so, that is to meet with the Republican leader, which I hope to do shortly along with other interested Senators, I ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein.

Mr. CHAFEE. I wonder if the majority leader can hold for just 2 minutes on that.

Mr. MITCHELL. Mr. President, I yield to the distinguished Senator from Rhode Island 2 minutes, without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. MITCHELL. Does the Senator wish more than 2 minutes?

Mr. CHAFEE. No, that is fine.

Mr. President, I just want to say I think the majority leader deserves a lot of credit for this piece of legislation. Really, this is his bill. We have wrestled with this in the Environment Committee I guess now for about 3 to 4 years. I must say that I was very strongly opposed to the original language. It was an unequal contest. He blew me away in the votes we had, as I recall. But nonetheless, he did say that when we got to the floor, we would try to fix it up, amend it in a satisfactory way to satisfy the deep concerns that I and others had in the original legislation. And, indeed, he did that.

So I want to thank the majority leader who has been, as I say, the real pusher for this legislation. I think he is right in many respects on it. As the distinguished Senator from Idaho who previously spoke indicated, we cannot have a double standard in this country with DOE and our Department of Defense facilities able to carry on in a fashion that private industry cannot.

So I am very glad we have arrived at this situation. Again, I want to salute the distinguished majority leader who has been such a valued member of the Environment Committee.

Mr. MITCHELL. Mr. President, I thank my colleague for his comments, and I appreciate his valuable contribution to this bill.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SEYMOUR. 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 from California is recognized.

#### SEYMOUR AMENDMENT NO. 1260

Mr. SEYMOUR. Mr. President, I just want to state for the record that I have been waiting throughout the day for an opportunity to present an amendment to the bill that is under consideration. It is an amendment that I submitted to the desk yesterday. The desk now has that amendment, amendment No. 1260. It is a very simple amendment, Mr. President. In fact, it is so simple I will just read it. It says:

The Federal Bureau of Investigation is hereby authorized and directed to require by subpoena the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such sworn testimony and to make such expenditures out of any funds appropriated and not otherwise obligated to make an investigation into the matter of releasing of confidential documents transmitted to the Senate Committee on the Judiciary regarding Professor Anita Hill of the University of Oklahoma and to report to the Congress the results of this investigation not later than 30 days after the date of enactment of this Act.

That is the amendment, Mr. President, that I submitted to the desk yesterday. I also said yesterday it was my intent to take that amendment up, where appropriate, as soon as possible to the next bill under consideration. I just want to state for the record, Mr. President, that I have been waiting most of the day to take up such an amendment and at the first appropriate time, as I said yesterday, it was and still is my intent to move forward with this amendment.

Mr. WALLOP. Mr. President, will my colleague from California yield for a question?

Mr. SEYMOUR. Yes.

Mr. WALLOP. Mr. President, I would simply ask, is it the intent of the Senator from California to have a long debate on this or would he be quite willing to enter into a very short time agreement with the majority leader? After all, every Senator in the body knows what it is about. It does not need a debate. The amendment that he would have would simply be offered and voted upon. Then we could, however the disposition of that went, go to the disposition, final passage of the bill.

So my question is to my colleague, would he be interested in entering into a very short time agreement, say 10 minutes equally divided?

Mr. SEYMOUR. Mr. President, I say to my distinguished colleague from

Wyoming that I have no intent, nor desire, to delay action on this bill and would be more than willing to accept a very short time period to debate my amendment. Ten minutes equally divided on either side would certainly be sufficient. I just would like to get the amendment up and get a vote taken on this amendment because I think it is a matter of great import to the Senate.

Mr. WALLOP. I thank my colleague. It seems clear, Mr. President, that we could settle this matter in a very short period of time were the spirit so willing.

Mr. DOMENICI. Will the Senator yield for 2 minutes?

Mr. SEYMOUR. Certainly, I yield.

Mr. DOMENICI. Mr. President, I note that the majority leader and—

The PRESIDING OFFICER. Does the Senator from California yield the floor?

Mr. SEYMOUR. Yes, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I ask for 2 minutes.

Mr. President, I notice that the majority leader and the minority leader are not present, but I think even in their absence I could say what I am going to say. I believe the majority leader and the minority leader ought to support this amendment. Whether it is this amendment or whether it is a freestanding bill, we ought to agree to dispose of it and let the Senate vote rather quickly.

The media is filled with concern about our institution, and perhaps it is the Congress, not just the Senate. But the last episode that causes great discouragement among our people is our inability to maintain confidentiality of information we receive in confidence. Actually, we should have within our institution the wherewithal to find out who breached this confidence with Anita Hill.

I submit the Senator from California has a very simple way and the best way I have heard—take it out of the Senate. Do not appoint a new commission. Just give the Federal Bureau of Investigation authority to make the investigation, to swear the witnesses, to issue subpoenas, and to report back to us their findings. They only have one goal and that is to find out who breached the confidence of Anita Hill in the submission of her statement.

Now, Mr. President, it is not difficult. It is somebody who works for the Senate. It has to be, because even if somebody from the Senate leaked it through a third party, who leaked it and breached the confidence, it was the Senate that did it. It is either a Senator or a staff person who works for us.

I think we ought to adopt a simple measure tonight, or at the earliest time our leaders should help us do it, not resist it, unless they have something better. It seems to me this is as

good as I have heard. The FBI does this well. They can give the reports to whomever we like. Maybe it would be the majority leader and minority leader who would get the reports. But it would be done. In a month or so we would know.

I think we ought to say in it that they can subpoena and take testimony from anyone who has relevant information—maybe a staffer has left. I am not suggesting such a thing, but if they have, they ought to be subject to interrogation.

I thank the Senator from California. I support his amendment and I hope we adopt it soon.

Mr. THURMOND addressed the Chair. The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise to endorse the amendment of the distinguished Senator from California. I think it is important this matter be acted on promptly.

The majority leader says he wants to get to the bottom of it. The Republican leader says he wants to get to the bottom of it. I might say that the Republicans on the Judiciary Committee, at my request, have already signed a letter to the acting Attorney General requesting that the FBI investigate this matter.

Now, it could be investigated in various ways, but the FBI has the reputation for being unbiased, nonpartisan, and in my opinion they would probably be the best agency to investigate this matter, and I heartily endorse the amendment of the able Senator from California.

Mr. GRAMM. Mr. President, I congratulate our colleague from California. A lot of people have talked about the problem. I guess all 100 Members of the Senate at one time or another in the last 2 weeks have talked about this violation of the confidence of the Senate, violation of the confidentiality of the people who came forward to present information that the Senate had asked for and they gave in a belief that it would be kept confidential.

What our colleague from California has done is not just complain about it, he has put together, I think, a clearly drafted amendment that is very straightforward. We all have great confidence in the FBI; the FBI operates independent of the Senate; and this amendment would give it the authority and the mission of conducting a thorough investigation and reporting to the Senate on the findings of the FBI.

I think it is very important we not give the American people any reason to believe that anything is being swept under the rug. I think a failure to vote on this amendment, a failure to deal with it suggests we are not living up to the call for action that was issued during all the indignation expressed about the violation of confidence.

So I congratulate our colleague from California. I think this is an excellent

amendment. I hope it would pass 100 to zero.

I also want to thank our colleague for making it clear that it is not his intention to delay what we are doing, that he is not doing this in any way to oppose the pending bill.

But the point is this. For 2 weeks Member after Member stood up and expressed outrage. Now is the time for action. Were we just expressing outrage because something had become public or were we expressing outrage because the rules of the Senate had been violated as was the confidentiality of people who had every right to expect that confidentiality to be respected?

So I congratulate our colleague, who has said he is willing to have 10 minutes of debate equally divided. This will hardly delay the Senate. I think it is very important that we vote on it. Again, I congratulate our colleague for providing the leadership.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I know the majority leader feels very deeply about what the Senator from Texas has just said. I could not agree with the Senator from Texas more, that we have some institutional rebuilding to do. It is a real tragedy, what has happened to the credibility of this body in the past week. It would be easy to point to that side of the aisle or that side of the aisle to point to this side of the aisle, but the truth is everybody will have to deal with this in his or her own way with his constituents.

I was very pleased when I picked up the paper yesterday morning to see that the majority leader said, "I intend to get to the bottom of this."

I have a great deal of confidence in him. I have not studied the amendment of the Senator from California and I would want to look at it. It may be the best possible way to restore confidence. I want the amendment of the Senator from California, or an amendment of his leader or my leader, whichever one will do the best job in this Senator's opinion, to begin that laborious tedious job of convincing the American people that this very important body, one of the most important bodies in America, is going to deal with this problem.

Mr. President, you might elevate the degree of respect of such an investigation if you appointed an independent counsel and give him access to the very best investigators the FBI or the GAO—both of them—have. I think it is going to be a complicated investigation, quite frankly. Everybody should understand there is a possibility that a definitive conclusion will not be reached. There is a possibility that there was no lead even of the FBI report.

Professor Hill and four witnesses Sunday afternoon testifying in her be-

half. Each of them said that she had confided in them years go her charge, her allegation. If those four people knew, and each one of them told four more people, and awful lot of people in this country knew that Professor Hill had something sticking in her craw about Judge Thomas.

So there is a possibility that all kinds of findings are going to be made other than the fact that a Senator or a staff member of a Senator leaked this report. That might be a happy, clean, satisfactory conclusion, and it might make people feel better to know precisely what happened. But I think that the Members of this body should understand that might not happen.

But having said that, Mr. President, I want to say I will vote for what I think is the very strongest measure to investigate this. It is a travesty that it happened. Judge Thomas and Professor Hill have not had their careers ruined but they certainly have gone through a traumatic experience because of this.

Let me refer my colleagues to a statement that Senator NUNN made yesterday on the floor of the Senate about this process. These things are never quite as easy as they seem, and Senator NUNN makes the point in his statement yesterday of some of the things, as chairman of the Armed Services Committee, that he and the other members of the Armed Services Committee have gone through from time to time on this.

We all remember that there were so many allegations against John Tower flying over the transom they could not keep up with them. It was impossible to sort them out. They were trying to decide which ones warrant further investigation. Should we confront some of these people and allow John Tower, our former colleague, to confront them?

So you have a host of concerns. You have people who say the public has a right to know. It seems to me that this country right now is pretty much divided between people who think this should have been handled behind closed doors and others who say the public has a right to know.

Mr. President, in the interest of fairness—and quite frankly I will be candid with you—I think the outpouring of support of the last few days for Judge Thomas was based on the proposition not dealing with his competency or incompetence or qualifications to serve on the Court but somehow or other he was being treated unfairly. The American people have very strong feelings about this issue of fairness. They will go to bat for almost anybody that they think is being treated unfairly.

But here is the point. Judge Thomas, First, was entitled to be confronted by his accuser.

So then the question becomes was he entitled to be confronted by his accuser

in public for all the country to see and for his own satisfaction?

I think the answer to that is obviously, yes.

I can tell you as an old trial lawyer I always believed strongly in the accused being faced by his accuser.

Next question: Is it fair to the American people, and does it comport with what we believe is right, to do it behind closed doors or must it be done in public?

Three: If you have this public airing of accusation, do you not also inhibit the quality of the reports by any investigating team? The FBI takes statements all the time from people who give those statements based on the assurances of anonymity.

A lot of information is given to the FBI and other investigators on the basis that their names will be kept anonymous—good information.

So, Mr. President, all I am saying is this is not quite as simple as it looks. I know the majority leader and the minority leader are both determined to come up with a solution to deal with this in a way that will convince the American people that this body is genuinely concerned about a national tragedy. And we are not trying to hang scalps on the wall necessarily. We are also trying to figure out how to remedy this problem so that we can be assured it will not happen again, or at least that we have done everything we possibly can to keep it from happening again.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### FEDERAL FACILITIES COMPLIANCE ACT

The Senate continued with the consideration of the bill.

##### MODIFICATION TO AMENDMENT NO. 1263

Mr. BAUCUS. Mr. President, I ask unanimous consent that the amendment No. 1263 be modified with a technical correction that I now send to the desk.

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

The modification to amendment No. 1263 is as follows:

On page 18 strike line 1 and 2.

Mr. BAUCUS. Mr. President, this modification has been cleared on the Republican side.

Mr. MITCHELL. Mr. President, the legislation I introduced, the Federal Facilities Compliance Act, has a very simple premise. The Federal Govern-

ment should be held to the same standard of accountability as everyone else regarding hazardous waste.

This legislation places private industry, States, individuals, towns and cities, and the Federal Government all on equal footing. Each should be required to meet the same environmental standards and should be subject to the same enforcement actions if they fail to comply with the law. Similar legislation has been adopted overwhelmingly by the House three times, including once earlier this year.

In 1976, when Congress enacted the Resource Conservation and Recovery Act, or RCRA, the intention was to waive sovereign immunity so everyone would be treated equally. In fact, the language of the 1976 amendments was directly in response to a 1974 Supreme Court decision, *Hancock versus Train*, in which the High Court held that sovereign immunity had not been completely waived because Congress had not addressed both substantive and procedural requirements.

It is more than mere coincidence that the language of section 6001, which waives sovereign immunity, uses practically identical language and states that the Federal Government must comply with all—

Federal, State, interstate, and local requirements, *both substantive and procedural*." (emphasis added).

We waived sovereign immunity in 1976. However, some courts have held that Congress has not yet found the magic words to effect such a waiver.

The magistrate states in *State of Maine versus Department of the Navy* that:

An intelligent person reading the statute would think the message plain: Federal facilities will be treated the same as private institutions so far as enforcement of the solid waste and hazardous waste laws are concerned. Indeed, if legislation is considered the means by which the Congress communicates its wishes to the Court and to the country, it is hard to imagine clearer language short of listing every possible variation of such requirements. (702 F.Supp. at 333)

The magistrate's opinion was upheld by Judge Carter of the Maine Federal District Court.

I think this is the correct decision. It would be unworkable for Congress to contemplate every type of requirement, fine, penalty, or enforcement action that could conceivably be brought against the Federal Government and then list such requirements exhaustively in each statute where we intend to waive sovereign immunity.

We waive sovereign immunity routinely in our Federal environmental laws. It is not questioned and was not throughout the lengthy Clean Air Act reauthorization process that the act waives sovereign immunity.

We intended to waive sovereign immunity in the Clean Water Act and again waived sovereign immunity in

the Safe Drinking Water Act. Congress has been clear and consistent.

However, the courts have been neither. Thus the need for this legislation.

We are today clarifying what the courts have blurred: that sovereign immunity is completely waived under existing section 6001 of RCRA. It apparently is necessary to restate this proposition ourselves so there can be no further confusion in the courts.

Federal facilities noncompliance is legion and is not merely a theoretical problem. As President Bush stated while a candidate in Seattle on May 16, 1988:

Unfortunately, some of the worst offenders are our own Federal facilities. As President, I will insist that in the future Federal agencies meet or exceed environmental standards: the Government should live within the laws it imposes on others.

I agree. This legislation holds the Federal Government accountable. The courts have created a situation where the Federal Government has had a period of voluntary compliance. It is well documented that such a system of compliance does not work.

We do not allow private individuals, industrial facilities, towns and cities or States to be subject to voluntary compliance or let them offer to comply if they can afford it.

The Comptroller General of the United States testified in 1989 that there is "widespread contamination" at Department of Energy [DOE] sites and that "some sites may be irreversibly contaminated and DOE may have to place them in long-term institutional care."

Earlier this year the Office of Technology Assessment [OTA] found in its report "Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production" that:

The waste and contamination problems at the DOE Weapons Complex are serious and complicated, and many public concerns about potential health and environmental impacts have not yet been addressed. \* \* \* Many sites may never be returned to a condition suitable for unrestricted public access.

OTA, like GAO before them, is telling us that the extent and level of contamination may be so severe that some Federal facilities may be permanently off limits to the rest of society.

While DOE may be one of the best known examples of Federal noncompliance with our environmental laws, other agencies, including the Department of Defense, have their own serious problems.

Enactment of this legislation will not eradicate the public health and environmental threats overnight. What this legislation will do is return to the States the enforcement tools we thought we had given them in 1976.

Enforcement is key. EPA requires States to demonstrate they have adequate enforcement capability before the agency agrees to delegate programs to the States. EPA has frequently

taken such enforcement action against noncomplying States and municipalities and insists that such authority is essential to assure compliance.

States have noted repeatedly in hearings before Congress and in arguments before the courts that civil penalties are a key tool in achieving compliance. The fines and penalties that are infrequently paid are minimal compared to full cleanup costs, or the costs of injunctive relief already available under current law. The adverse publicity and the deterrent effect are potent influences in assuring compliance, which is the ultimate goal.

Without a waiver of sovereign immunity, such as that envisioned in current law, there is no enforcement.

The administration has adopted a unitary executive theory that bars EPA from enforcing the law against other Federal agencies. EPA is reduced to jawboning other agencies, according to a former EPA Assistant Administrator responsible for implementing RCRA. Jawboning is not enough, as history has demonstrated.

Some agencies have interpreted the courts' ambiguities about the waiver of sovereign immunity as license to damage the environment.

The Department of Energy, for example, did not acknowledge that RCRA applied to its activities at all until 1987. However, this does not justify the agency's failure to take even reasonable steps to protect public health and the environment. One need not comply with the letter of every RCRA requirement in order to accept the spirit of environmental protection embodied in that statute.

Today we have an opportunity to begin to right these wrongs, to eliminate the special exemption the courts have created for Federal agencies. This legislation, once enacted, will assure that in fact the Federal Government is not above the law and that enforcement actions can and will be taken where there are violations.

I urge my colleagues to support this measure.

Mr. BROWN. Mr. President, I rise in strong support of S. 596. "Do as I say and not as I do" is the old political adage. The Federal Government follows that adage is spades when it comes to the environmental regulations.

Federal facilities in this Nation has disregarded our environmental laws and endangered their neighbors, and this activity is not going to end until this Congress says they have to live by the same rules as everybody else does. Allowing Federal facilities to be exempt may sound good to some, but I will guarantee that it does not sound good to the neighbors of such facilities.

In Colorado, there is a facility called the Rocky Mountain Arsenal. A few years ago, water draining from the site polluted, and some say poisoned, the drinking water of the adjacent commu-

nity. We came to the Defense Department to ask that they help filter the water that was endangering the lives of the neighboring communities. Does anyone know what they said? Their initial response was: "We do not want to pay a penny to help filter the drinking water of our neighbors."

Is there anyone in the Senate who would like to defend that kind of callous attitude that endangers the health and safety of neighbors of Federal facilities? I would like to hear someone justify poisoning the water of their neighbors and then refuse to come up with a penny to correct it.

The truth is that nobody can justify it. The laws we have that exempt federal facilities from the responsibilities we demand of everybody else are just plain wrong and that is why this bill is needed. This bill is needed to make the Federal Government act responsibly.

Mr. President, environmental problems of our Nation's Federal facilities represent some of the most flagrant violations of our environmental statutes.

In Colorado, we have witnessed, in addition to Rocky Mountain Arsenal, a myriad of problems at the Department of Energy's Rocky Flats nuclear weapons facility—which fully came to light a couple of years ago after an FBI raid of the facility uncovered a multitude of environmental violations. By failing to comply with these laws, we endanger the neighbors who have a right to expect the Federal Government will follow its own statutes.

I believe the Federal Government, like all other entities, must be held accountable. Our States have the ability to protect the health and safety of their citizens and the quality of the environment, and they ought to do it.

S. 596 is a step forward in requiring Federal facilities to comply with the same environmental laws with which everyone else must comply. The Senate ought to enact it, not just because it is good law, but because it follows the good neighbor policy this Nation is concerned about.

Mr. LIEBERMAN. Mr. President, as an original cosponsor, I am proud to rise in support of S. 596 and I congratulate the majority leader for his perseverance in bringing forward this bill.

The passage of this bill will not only allow those who enforce the law to do it in a way that will truly protect the environment and people who might be affected by Federal facilities. It will also increase our own credibility as law makers and the credibility of the Federal Government enforcing the law because it is very hard to justify why we would protect the Federal Government from the full and equal enforcement of the law that we would demand of all other private and governmental entities who might be violating the law.

As former attorney general of Connecticut, I know that the State attor-

neys general are committed to an equal and full enforcement of the law. It has been extremely frustrating to State law enforcers to have full authority to take action against other local government entities and to seek fines and penalties against them, but not to have the same authority against Federal facilities in their States. It is wrong to do that. In Connecticut, we repeatedly took action against municipalities violating the Clean Water Act provisions by dumping sewage into Long Island Sound, but we could not take action against a military base for not fulfilling obligations under the hazardous waste laws, even when these actions also resulted in contamination of Long Island Sound.

There is no doubt that the Federal Government's lack of compliance with the Nation's hazardous waste laws is shameful. Numerous investigations by the GAO have concluded that the Federal Government has not complied with the waste management laws. In May 1986, the GAO released a report reviewing RCRA compliance at 17 Federal civilian agencies in 12 States and found that almost half of the hazardous waste handlers inspected by the EPA were cited for violations. Similarly, the EPA has reported difficulties with Federal facility compliance. Federal facility RCRA compliance statistics supplied by EPA indicate that 63 percent of Federal treatment, storage or disposal facilities were found to have one or more class I RCRA violations in fiscal year 1989, compared to a 38-percent rate for private facilities. A class I violation is defined as a violation that results in a release or serious threat of release of hazardous waste to the environment, or involves the failure to assure that ground water will be protected, that proper closure and postclosure activities will be undertaken, or that hazardous waste will be destined for and delivered to licensed facilities.

As a result of this failure to comply with the laws, there has been massive pollution of our Nation's air, surface water, ground water and lands. We are confronted with thousands of leaking waste disposal units, spills of toxic and radioactive substances, and the release of other hazardous materials into the environment.

During the 1988 campaign, then Vice President Bush firmly committed to address this problem. He stated:

As President, I will insist in the future that Federal agencies meet or exceed environmental standards and that the government should live within the laws it imposes upon others.

But without this legislation, President Bush's campaign promise becomes merely environmental rhetoric, not backed up by a commitment to action.

The bottom line is simple and something which the most junior prosecutor knows: without the threat of penalties

for failure to obey the law, an enforcement program collapses.

Of course, we would all like to resolve matters through a voluntary process. Federal facilities should be the first in line to sign agreements with EPA and the States to correct violations and to clean up the environmental mess they created.

The States' ability to assess penalties will help to insure that Federal facilities exercise care in the future in complying with our environmental laws and that they swiftly enter into agreements to clean up past problems. The prospect of penalties will also ensure that Federal facilities stick to the consent agreements they sign. All prosecutors know that a consent order without the threat of penalties for non-compliance is an unenforceable agreement.

In conclusion, Mr. President, I think this is a critical piece of legislation, not only to protect the environment, but to uphold and elevate our own credibility as lawmakers and law enforcers.

Mr. WOFFORD. Mr. President, I rise in support of this bill, and I applaud the efforts of the distinguished majority leader on this important issue.

Pennsylvania, fortunately, has so far escaped an all-out environmental disaster like Rocky Flats in Colorado and Hanford in Washington. It is clear, however, that in the event of such a catastrophe, the State is unable to enforce its environmental laws with respect to Federal facilities. These facilities have routinely resisted State efforts to enforce Pennsylvania's laws, claiming a lack of jurisdiction.

Most Federal facilities in Pennsylvania are industrial, and should be subject to the same kind of environmental regulation as private industry. Pennsylvania has absolutely no desire to be more or less stringent with Federal facilities. Rather, the State wants to insure that all of its lands and waterways are offered equal environmental protection, and that all of its citizens benefit from environmental protection, including those who reside near Federal facilities. As the State Department of Environmental Resources testified last May, the Agency has had trouble clarifying both the substance and the application of its environmental laws to Federal facilities within the State.

It is imperative that Congress spell out the remedies available to States and the EPA in these cases. The environment hazards posed by Federal facilities are every bit as dangerous as those resulting from private sector industries.

I urge my colleagues to support this long-overdue legislation, and quickly send it to the President.

Mr. JOHNSTON. Mr. President, I want to thank the majority leader for his help in working to fashion an amendment to address the problem

with mixed waste storage at Federal facilities. I believe we have fashioned an amendment that addresses the problem in a sensible and straightforward manner that also includes an opportunity for involvement by the States.

The problem with mixed waste arises from a conflict in our laws and regulations. It is not legal to store some of these mixed wastes but yet we cannot dispose of them either. There are insufficient regulations. There is insufficient treatment technology. There is insufficient treatment capacity. It is a problem that is impossible to solve without this amendment.

Section 3004 of RCRA prohibits the land disposal of certain hazardous waste unless the waste has been treated and specifies that such waste can be stored only to allow the accumulation of sufficient quantities for treatment. This prohibition also covers mixed waste, where radioactive waste is mixed with hazardous waste.

The Department of Energy, the National Institutes of Health, and the Veterans' Administration have a serious problem with compliance with this storage prohibition because treatment technologies and/or capacity do not yet exist for most types of mixed waste streams that now exist or are stored at the Department of Energy's facilities. In addition, there are no existing regulations specifically for the treatment of mixed waste.

Specific provisions of the amendment would require the Environmental Protection Agency to publish within 90 days a list of radioactive mixed waste for which the Administrator determines that treatment technologies do not exist or sufficient treatment capacity is not yet available. This list shall be updated annually.

The amendment would also require EPA to promulgate regulations specifically for the treatment of mixed waste by December 31, 1992.

It would also exempt listed mixed wastes from the land disposal storage prohibition in RCRA until December 31, 1993.

In addition, it would provide an opportunity to obtain a variance from the land disposal storage prohibition in RCRA beyond December 31, 1993, where technology or capacity continues to be unavailable. Any variance granted by EPA would be subject to judicial review.

Finally, it would require the President to develop a national compliance plan for mixed waste.

To ensure that existing agreements between the States and the Federal agencies would not be adversely affected, the amendment specifically grandfathered these agreements.

Many Senators were involved in negotiating the specific language of this amendment and I think it truly represents the will of the Senate. It is my hope that when the Senate conferees

meet with the House of Representatives on this legislation that they will stand firm in their commitment to this amendment.

Again, I am very appreciative of the efforts of the majority leader in addressing this problem.

I ask unanimous consent that the attached background information be included in the RECORD with this statement.

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

S. 596 ISSUES: STORAGE AND TREATMENT OF MIXED WASTE AT FEDERAL FACILITIES

1. REGULATIONS

Existing EPA regulations do not establish a level of treatment specifically required for mixed waste. Regulations must be in place before it is appropriate to assess fines and penalties for noncompliance.

2. TECHNOLOGY

Technology does not now exist for treatment of certain mixed waste streams. Technology must be developed before it is appropriate to assess fines and penalties for noncompliance.

3. FACILITIES

Even where technology exists, there is not now adequate treatment capacity (facilities) for processing of mixed waste. Facilities must be developed before it is appropriate to assess fines and penalties for noncompliance.

4. APPROPRIATIONS

Federal agencies should not be subject to fines and penalties for noncompliance where adequate funding has not been provided by Congress specifically for that purpose. The Secretary of Energy should have the discretion to establish priorities and not subject to fines or penalties at one facility if he determines that cleanup at another facility is a higher priority.

5. WAIVER OF SOVEREIGN IMMUNITY

The waiver of sovereign immunity should be dependent on the defendant's ability to comply. In situations where the defendant cannot comply, sovereign immunity should not be waived.

FACTSHEET ON MIXED WASTE PROBLEM IN FEDERAL FACILITIES COMPLIANCE ACT (S. 596) PROBLEM

S. 596 makes all federal facilities subject to fines and penalties to be paid from the federal treasury for violations of RCRA. RCRA precludes land disposal of hazardous waste that has not been treated. RCRA also precludes storage of such waste.

The Department of Energy, the National Institutes of Health and the Veterans' Administration generate mixed waste (having both radioactive and hazardous components) which is not accepted by commercial hazardous waste treatment facilities because of its radioactive component.

Mixed waste requires treatment technology different from hazardous waste. The technology is currently being developed but does not exist at present for all forms of mixed waste. There are no existing EPA regulations regarding mixed waste for which treatment technology does not exist.

Additionally, even though technology exists for some waste streams, there has been insufficient time to construct enough facilities to process those mixed waste streams.

It was not clear until four years ago that mixed waste was covered by RCRA. It would

take at least six years after the technology is developed just to gain approval for a site, obtain the necessary environmental permits, and conclude required NEPA compliance activities.

Therefore, it is impossible for DOE to comply until the technology is developed and treatment facilities are constructed.

The potential drain on the Federal Treasury could approach \$5 billion. The fines and penalties would do nothing to correct the environmental problems for which they are levied.

MIXED WASTE PROBLEM AT DOE SITES

Section 3004 of RCRA prohibits the land disposal of certain hazardous waste unless the waste has been treated and specifies that such waste can be stored only to allow the accumulation of sufficient quantities for treatment. This prohibition also covers mixed waste, where radioactive waste is mixed with hazardous waste.

The Department of Energy has a serious problem with compliance with this storage prohibition because treatment technologies and/or capacity do not yet exist for most types of mixed waste streams that now exist at the Department's facilities.

Waste for which technology does not exist

The Department of Energy has identified over 25 discrete mixed waste streams for which there is no available treatment technology. DOE estimates that may take 10 or more years to develop appropriate treatment technology. These wastes represent about 30 percent of the total DOE inventory of mixed waste. Examples of these waste streams are the following:

High-level radioactive liquid waste—such as the high-level waste tanks at Hanford;

High-level radioactive waste safety and control rods from nuclear reactors—such as those from Savannah River reactors;

Tritiated process equipment contaminated with mercury—such as that located at Savannah River;

Concrete bricks of low-level mixed waste—such as that stored at Idaho National Engineering Lab;

Radioactive and lead-contaminated debris; Soil contaminated with radioactive waste and chlorinated hydrocarbons;

Acidic liquids and sludges containing hazardous constituents and radioactive waste;

Equipment filters contaminated with transuranic waste;

Explosive uranium and tritium mixtures containing hazardous constituents; and

High-level radioactive waste contaminated with sodium and sodium-potassium alloys.

Waste for which inadequate capacity exists

The Department of Energy has also identified over 250 discrete waste streams for which there is either inadequate capacity for treatment of existing volumes of stored waste and newly generated waste, or for which identified technology exists but requires demonstration, permitting, or other actions to meet federal and state requirements prior to its use. This represents about 70% of the total DOE inventory of mixed waste. Examples of such radioactive mixed waste include the following:

Radioactive trichloroethylene—currently stored at Fernald and at Savannah River;

Radioactive-contaminated lead solids—currently stored at Idaho, Oak Ridge Reservation, Rocky Flats, Savannah River, and other smaller DOE sites;

Radioactive and mercury-contaminated solids—currently stored at Oak Ridge, Savannah River, Hanford, and other smaller DOE sites;

Radioactive contaminated waste oil and sludge—currently stored at Hanford;  
 Organic laboratory waste—currently stored at Idaho;  
 Radioactive trichloromethane;  
 Radioactive freon-113;  
 Rags and wipes contaminated with hazardous solvents and transuranic waste;  
 Rags and wipes contaminated with hazardous solvents and low-level radioactive waste; and  
 Radioactive contaminated paint materials.

#### IMPACTS OF NOT LEGALIZING THE STORAGE OF RADIOACTIVE MIXED WASTE

Waiving the Federal government's sovereign immunity under the Resource Conservation and Recovery Act (RCRA) without resolving the problem of a statutory impossibility for storing radioactive mixed waste could have significant impacts on DOE and other Federal agencies.

#### BACKGROUND

Congress dictated in section 3004(j) of RCRA that restricted wastes can be stored only to allow the accumulation of sufficient quantities of waste to facilitate proper recovery, treatment or disposal. It is impossible for DOE to comply with this statutory storage prohibition for radioactive mixed waste. DOE's only option is to store this waste, because treatment capability for these wastes does not currently exist and the waste cannot be disposed of without first being treated.

Currently, DOE seeks to enter into compliance agreements with EPA and the States to establish enforceable schedules to treat and dispose of this waste. Such agreements allay liability concerns and provide DOE's contractors with some protection from fines and penalties. However, these site-specific agreements are not conducive to developing an integrated and comprehensive national approach to a problem that is national in scope.

#### FINES AND PENALTIES

If sovereign immunity is waived and mixed waste amendments are not adopted, regulators could impose fines and penalties of up to \$25,000 per day per violation against the Department of Energy, National Institutes of Health, and Veterans Administration for storing radioactive mixed waste out of compliance with RCRA's storage prohibition.

The total theoretical maximum possible exposure for fines and penalties for this illegal storage is about \$5 billion for DOE. If one violation is assumed to occur on a daily basis at 10 percent of DOE's storage units the annual total amount of fines could average \$505 million.

#### IMPACTS TO CLEANUP AND CORRECTIVE ACTION

DOE will need to divert money from the Environmental Restoration and Waste Management budget to pay fines and penalties for RCRA violations. Diversion of these monies will delay environmental restoration and improvements to waste management facilities but will neither resolve the noncompliance nor deter future noncompliance.

#### CRIMINAL LIABILITY

If storage of mixed waste is not made legal while treatment technology and facilities are being developed, Federal and contractor employees will continue to face criminal prosecution for violating RCRA when they are exercising the only option available to them.

#### TREATMENT COSTS

DOE may be forced to enter into site-specific compliance agreements to protect itself

from fines and penalties and to allay the liability concerns of its contractors and employees.

Requirements in site-specific agreements may force site managers to construct treatment capacity at each site to treat waste from that site. DOE had not planned to construct treatment facilities at each site. Such an approach could increase the cost of DOE's waste management complex by approximately \$400 to \$800 million.

The resulting treatment complex would have repetitive capacity, would not be cost-effective, and may well delay the actual treatment of wastes. In addition, site-specific treatment may increase the overall risk to human health and the environment of treating DOE's waste.

#### INTERRUPTION COSTS

While site-specific agreements are being negotiated, DOE or its contractors may be compelled to suspend operations at those facilities that generate mixed waste subject to the storage prohibition. This could have a serious impact on DOE's ability to fulfill its mission. Shutdown of defense facilities for 6 months while an agreement is negotiated (a conservative time estimate) could cost DOE \$550 million in lost production.

#### SUMMARY OF WASTE STREAM TREATMENT TECHNOLOGY INFORMATION

##### 1. Radioactive Mixed Waste Stream Summary:

Total Volume—approximately 525,000 cubic meters.

Total Number of Streams—approximately 700.

2. Technology currently available but needs demonstration etc.

(This includes TRU waste destined for the WIPP under the no migration petition).

Volume—367,419 cubic meters or 70 percent of total volume.

Streams—672 or 95.5 percent of the total number of streams.

3. Technology not currently available but will be within 10 years:

Volume—14,776 cubic meters or 2.8 percent of total volume (3 percent).

Streams—18 or 3 percent of total number of streams.

4. Technology not available until after 10 years:

Volume—142,805 cubic meters or 27.2 percent of total volume (27 percent).

Streams—10 or 1.5 percent of total number of streams (2 percent).

Mr. CHAFFEE. Mr. President, today we consider S. 596, a bill sponsored by the distinguished majority leader, that gives the State the authority to impose fines and penalties on the Federal Government for failure to comply with all Federal, State, and local solid and hazardous waste laws. This bill was reported out of the Committee on Environment and Public Works, on which I serve as the ranking member, by a unanimous vote of 15-0 on May 15 of this year. Before I discuss the substantive provisions of this bill, Mr. President, I would like to provide Senators with a little background on how we got to where we are today.

During the 101st Congress, Senator MITCHELL introduced S. 1140, the Federal Facility Act of 1990—legislation virtually identical to the legislation before us today. The Bush administration opposed that legislation. In par-

ticular, the Departments of Defense and Energy expressed serious concerns that devoting Federal funds to fines and penalties would divert scarce Federal resources away from the most important goal: that of cleaning up contaminated sites. In addition, those departments stated their belief that aggressive State attorneys general would disrupt Federal budgets and cleanup priorities by imposing enormous fines and penalties.

Last year, during committee consideration of S. 1140, I tried to address some of these concerns by introducing substitute language that would have waived sovereign immunity unconditionally for ongoing compliance violations. In contrast to S. 1140, though, my substitute would have waived immunity for failure to clean up old, inactive sites only in cases in which such failure violates an agreement or commitment to clean up. The substitute would not have affected the Federal Government's ongoing obligation to clean up its facilities, but would have allowed more Federal dollars to be devoted to that end. Unfortunately, the committee failed to approve the substitute, and instead reported S. 1140 to the full Senate with minor amendments. The full Senate did not take up S. 1140 before the 101st Congress adjourned.

Senator MITCHELL again introduced legislation waiving sovereign immunity for Federal facilities at the beginning of this Congress. As introduced, S. 596 raised the same concerns expressed last year. Despite these concerns, over the last several months, the administration has been attempting to shift the focus of the debate away from opposition to waiving sovereign immunity onto issues that make compliance with RCRA at Federal facilities difficult or impossible. At a hearing before the Committee on Environment and Public Works' Subcommittee on Environmental Protection earlier this year, the witnesses from the Environmental Protection Agency and the Departments of Defense and Energy testified that the administration would drop its opposition to S. 596, provided that the committee would attempt to address their RCRA compliance concerns.

Mr. President, on a number of occasions I have expressed my support for the administration's effort to develop a new approach to S. 596. I had hoped that, by the time the full Committee on Environment and Public Works met to mark up the legislation on May 15 of this year, the administration would have presented us with precise articulations of its problems and suggested legislative language. Unfortunately, that did not occur. However, during the markup session, I sought agreement from Senator MITCHELL that the administration's concerns be thoroughly considered prior to floor consideration

of S. 596. Senator MITCHELL agreed to that request.

Shortly after the committee reported S. 596 to the full Senate, the administration submitted 11 amendments for consideration by the bill's sponsor, and the committee as a whole. From the day that the amendments were submitted, Senator MITCHELL has honored his commitment to give those amendments full consideration.

During the last several months—up to today as a matter of fact—representatives of the administration, members of the Environment Committee staff, as well as staff members from the Committees on Armed Services and Energy, have conducted a long series of discussions concerning the administration amendments. At this point, I would like to express my sincere gratitude to the distinguished majority leader for his cooperation and patience, and that of his staff, in dealing with this matter. I am pleased to say that we will be offering amendments to S. 596 that would remove most of the obstacles to administration support for this legislation. As amended, the bill will continue to require that the Departments of Energy and Defense comply with Federal and State hazardous and solid waste laws.

That, Mr. President, is a brief summary of the road we have traveled to arrive at floor consideration of S. 596 today. Now, I would like to discuss briefly the provisions of S. 596. As I have indicated on many occasions, S. 596 has a noble purpose. That purpose is stated in the enacting clause of the bill:

A bill to provide that Federal facilities meet Federal and State environmental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements.

No one can disagree that the facilities of the Federal Government must comply with all environmental laws. The fact is, Mr. President, that the Federal Government is already required to do so, just like any other private citizen or corporation. What S. 596 would do is give the States the additional tool of fines and penalties to ensure compliance with the substantive requirements of RCRA and other States and local solid and hazardous waste laws.

Clearly, fines and penalties are useful tools and should be made available to State and local governments in their efforts to clean up contamination of Federal facilities. The Solid Waste Disposal Act currently allows for the imposition of civil penalties against private persons for violations of the act's requirements and should treat the Federal Government no differently. However, since three Federal courts of appeal have held that the act does not effectively waive sovereign immunity, Congress must take legislative action to make it clear that we are waiving sovereign immunity.

Mr. President, the need for this enforcement authority is illustrated by the current record of compliance at Federal facilities across the Nation. Although the precise extent of the Federal Government's hazardous waste problems is not yet fully known, it is clearly quite significant. As of November 1989, of the approximately 1,200 facilities on the national priorities list requiring cleanup under the Superfund law, 114 were Federal facilities. In addition, there are more than 7,100 properties formerly owned by the Federal Government for which the Federal Government may be liable for hazardous waste contamination. According to the Department of Defense, more than 14,400 of its sites are contaminated by hazardous waste.

Although DOE owns far fewer sites that contain hazardous waste, that Department is faced with a far more serious contamination problem. Specifically, the Defense Weapons Complex, a group of 20 facilities where U.S. nuclear weapons are designed, tested, and produced, are contaminated with large quantities of mixed wastes—that is, wastes containing both radioactive and hazardous components.

So far, Mr. President, cleanup at these facilities has in many cases been painfully slow. In some situations, remediation has been found to be impossible using currently available technology. In addition to the Superfund list of 1,200 sites, EPA has a hazardous waste compliance docket for Federal facilities. That docket identifies 724 Federal facilities that may require hazardous waste cleanup. Of these 724 sites, only 29 comprehensive investigations have been completed and only 30 facilities cleaned up. Of the more than 8,000 additional Federal facilities that are not on EPA's docket but may contain significant hazardous waste contamination, fewer than 200 have been the subject of some remedial action.

So, in conclusion, Mr. President, I think these numbers illustrate that the Federal Government has a big job ahead of it. While I have been heartened by the new culture of environmental stewardship instituted by the Secretaries of both the Departments of Defense and Energy, it is clear that even more of the Federal Government's attention and resources needs to be devoted to the task of cleanup. It is my hope that adding fines and penalties to the arsenal of enforcement tools at the States' disposal will encourage an even more concerted and targeted effort toward that end at Federal facilities.

I thank the majority leader, and the distinguished chairman of the Environmental Protection Subcommittee, who serves as the manager for the majority, for bringing this bill before us today.

Mr. LAUTENBERG. Mr. President, I rise in strong support of S. 596, the Federal Facilities Compliance Act of 1991. And I commend our distinguished

majority leader for introducing this important legislation, which I have co-sponsored.

The bill answers a very simple question. Does a town with a contaminated water supply care whether the polluter was a private corporation or Federal installation? Or does that town really care about getting that water cleaned up?

The answer is fairly obvious. People expect our environmental laws to guarantee protection and cleanup, regardless of who the polluter is.

That is what Congress intended back in 1976 when we passed the Resource Conservation and Recovery Act. We intended that States could use the same enforcement tools against Federal facilities as they use against private parties.

And the Federal court in Maine has properly interpreted the law's intent. Unfortunately some misguided courts and the administration have concluded that the law creates a double standard. They have suggested that States can obtain fines and penalties against private parties that violate RCRA, but not against Federal agencies.

I think the law is clear on this point. But to assure that courts universally follow the law's original intent, this bill clarifies the principle.

The key is for States to have all the enforcement tools in their arsenal. The need is obvious. DOD and DOE together annually generate about 20 million tons of hazardous or mixed hazardous and radioactive waste.

And double standards for enforcement may be contributing to double standards for compliance. In fiscal year 1990, 59 percent of inspected Federal facilities had RCRA violations. That's compared to about 51 percent for private facilities.

My State has several major Federal installations that are involved with hazardous waste. It is important that to the health and safety of New Jerseyans and protection of my State's environment that States clearly have the power to require Federal facilities to comply with environmental standards.

Mr. President, in the past we have heard some arguments against clarifying State enforcement powers. Some have argued that States will abuse fines and penalties. Some have argued that States will interfere with cleanup priorities.

But without any evidence that States will abuse enforcement powers, some have suggested that we have to be careful when it comes to Federal facilities. This ignores the mandate facing the Nation and this Congress.

Our mission must be to assure compliance with our laws by everyone—whether it is the Defense Department or a private company.

That is what this bill does, and that is why I urge my colleagues to give S. 596 their support.

Mr. SARBANES. Mr. President, I would like to engage the distinguished Senator from New Jersey [Mr. LAUTENBERG] in a colloquy concerning a matter of great importance to our ongoing efforts to restore the Chesapeake Bay. It had been my intention to offer an amendment to the Federal Facilities Act which would require Federal facilities in the bay watershed to comply with the toxic chemical release reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act, also known as title III of SARA, the Superfund Amendments and Reauthorization Act of 1986.

Under the provisions of that act, certain businesses are now required to submit annual reports on their chemical inventories and the amount of toxic chemicals their facilities release into the environment, including both accidental spills and routine emissions. These reports show the releases of any of more than 300 chemicals which may pose health and environmental hazards into the air, water or land; the amount of chemicals stored at the facilities; and the treatment or disposal methods used for wastes, among other things. EPA is responsible for compiling these reports into a national computerized data base known as the Toxics Release Inventory or TRI.

While some 30,000 facilities nationwide are subject to reporting, Federal facilities which meet the same usage criteria are not subject to these requirements.

Why is this important? The purpose of this reporting requirement is to inform the Government and the public about releases of toxic chemicals into the environment. The Community Right-to-Know Act was based on the premise that citizens have a fundamental right to know what toxic chemicals are being emitted by facilities in their communities. The TRI data can pinpoint the source, location, volume and type of chemicals that could cause pollution problems. EPA, the States and others are using this information to strengthen the regulation of toxic releases, for legislative efforts to curb the release of toxic chemicals and for development of effective pollution prevention programs.

Although the inventory has been available only for the past 2 years, the results have been dramatic. Data generated by the 1989 Toxics Release Inventory show that industrial plants have reduced their toxic emissions by approximately 800 million pounds or 11 percent, compared to the previous year. And companies are finding that it pays to reduce these toxic emissions, by cutting raw material inputs and waste disposal costs.

Unfortunately the TRI data is limited when a substantial source of toxic chemical releases—Federal facilities—are excluded from the reporting re-

quirements. It is estimated that Federal facilities may be releasing up to 5 billion pounds of toxic chemicals into the Nation's air, water, and land—without reporting these releases. EPA has identified some 850 Federal facilities currently subject to other environmental statutes which would likely be required to report their emissions if the law was changed to make Federal reporting mandatory. The General Accounting Office, in a recently released report on the collection and use of data in the TRI, has recommended that Federal facilities be mandated to undertake these reporting requirements.

In the Chesapeake Bay area, EPA has tried to get the Federal installations in the bay watershed to undertake this TRI reporting on a voluntary basis, but has been frustrated in this effort. Few facilities have voluntarily reported their releases. To their credit, the 50 Federal facilities in the bay watershed are making substantial progress with improving their compliance with pollution laws. However, if we are to achieve a " \* \* \* toxics-free Bay by eliminating the discharge of toxic substances from all controllable sources" as called for under the 1987 Chesapeake Bay agreement, we will need the latest available information on pollution loadings from all potential sources as a baseline for further pollution prevention efforts.

Mr. President, it is my understanding that my good friend from New Jersey is preparing legislation that would require Federal facilities across our Nation to meet these reporting requirements.

Mr. LAUTENBERG. The Senator from Maryland is correct. I share his strong support for requiring Federal facilities to comply with these requirements and I am in the process of drafting legislation that would mandate compliance by facilities in the Chesapeake Bay area and throughout the country and require them to submit annual reports. On June 6, 1991, I along with Senator DURENBERGER, broadly circulated a discussion draft to expand the current Right-to-Know Program to include additional facilities, including Federal facilities, and more toxic chemicals. On June 27, 1991, I chaired a hearing in the Subcommittee on Superfund, Ocean and Water Protection on the Draft, and called for additional comments on the proposal. Based on the hearing record, and the additional comments, we are considering revisions to the draft, and hope to introduce a bill in the near future.

Mr. SARBANES. I thank the Senator for his assurance and commend him for his own commitment to environmental issues. Given his plans to introduce a comprehensive bill, I will not propose the amendment that I had drafted.

Mr. LAUTENBERG. I appreciate the Senator's willingness to work with me on this issue.

Mr. SARBANES. Mr. President, again I want to thank my friend from

New Jersey. More than a year ago, EPA Administrator Reilly set a goal of bringing all 50 major Federal facilities in the Chesapeake Bay watershed into compliance with Federal environmental laws, and good public policy. The Senator from New Jersey's legislation will be an important step in that direction and I look forward to working with him on this important issue.

Mr. WARNER. Mr. President, I rise today in support of S. 596, as amended. This legislation should address the perceived inequities between Federal facilities and other facilities relative to compliance with environmental requirements.

I thank Senator MITCHELL, Senator CHAFEE and other members and staff of the Environment and Public Works Committee for their good faith negotiations, which have now resulted in needed amendments to the bill. These amendments address the major concerns of the administration with this bill.

Without these amendments, the Defense and Energy Departments would have been subjected to unfair results under this bill. These agencies have unique characteristics that require unique language. The amendments do insure these agencies will be required to comply with the law while ensuring that enforcement of these laws is fair and realistic.

Getting to the point has taken about 2 years, including long hours of debate over issues and impacts. Hopefully, this investment will result in a better environment.

I thank the managers of the bill, the majority leader, and all that have contributed to this achievement.

I urge the conferees to support the Senate positions in the conference with the House.

Mr. ADAMS. The Federal Facilities Act is an important piece of legislation for the State of Washington and for the Nation as a whole. I commend the distinguished majority leader for his foresight and perseverance in bringing this bill to the floor.

At the Hanford reservation in my State, one of the largest such facilities in the Nation, mixed waste has been a fundamental stumbling block to timely cleanup. The mixed-waste provisions in this bill will help resolve this problem, and will ensure that the Department of Energy moves as quickly as possible to develop adequate mixed-waste treatment technologies.

Mr. President, I would like to clarify one point with the majority leader. This is of tremendous concern to myself and to those most affected by and concerned about the waste problem at Hanford. We have worked very hard to hammer out an agreement between the State, the Department of Ecology and the Department of Energy on the timely cleanup of Hanford. This is an excellent agreement. It sets forth both an

overall timetable and specific milestones for cleanup. Anything that could be construed to undermine the agreement or its enforceability would be devastating to our efforts to clean up Hanford.

Mr. President, is it the majority leader's intention that the Federal Facilities Act of 1991 shall have no effect whatsoever on such agreements and their enforceability, including the agreement worked out in my State to clean up Hanford?

Mr. MITCHELL. I share the Senator's concern about preserving the agreement reached in your State, and the many other such agreements reached by other States. These agreements have engendered real progress on the cleanup of Federal facilities across the Nation, and this legislation should be in no way construed to undermine the enforceability of those agreements.

Mr. ADAMS. I thank Senator MITCHELL for that clarification. He has done an excellent job managing this bill. This will ensure the continued integrity and enforceability of these kinds of agreements.

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

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

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar No. 332, Elizabeth Anne Moler and Branko Terzic to be members of the Federal Energy Regulatory Commission.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate 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 ENERGY

The following-named persons to be members of the Federal Energy Regulatory Commission:

Elizabeth Anne Moler, of Virginia, for the term expiring June 30, 1994.

Branko Terzic, of Wisconsin, for the term expiring June 30, 1995.

#### NOMINATION OF ELIZABETH ANNE MOLER

Mr. WALLOP. Mr. President, on October 16, 1991, the Committee on Energy and Natural Resources favorably reported the nomination of Elizabeth Anne Moler to be a member of the Federal Energy Regulatory Commission by a vote of 19 to 0. Ms. Moler was reappointed by the President to be a member of the FERC and was last confirmed by the Senate 3 years ago. Before joining the FERC, she served as senior counsel to the U.S. Senate Committee on Energy and Natural Resources.

Mr. President, as the national energy strategy legislation unfolds, the challenges to the FERC will continue. I believe that Betsy Moler will continue to serve the FERC in a thoughtful and professional manner, and that her past experience will be invaluable as the Commission strives to meet these challenges.

Mr. President, I believe Ms. Moler to be very well qualified and committed to the work of the commission. I also believe that she has been fair in her assessments of the issues that have come before her.

I urge my colleagues to join me in supporting her confirmation.

#### CONFIRMATION OF BRANKO TERZIC

Mr. WALLOP. Mr. President, on October 16, 1991, the Committee on Energy and Natural Resources favorably reported the nomination of Branko Terzic to be a member of the Federal Energy Regulatory Commission by a vote of 19 to 0. Mr. Terzic has been reappointed by the President to be a member of the FERC and was last confirmed by the Senate a year ago. Prior to his service with the Federal Energy Regulatory Commission, Mr. Terzic served as group vice president for a consulting firm specializing in regulatory policy, valuation and depreciation, acquisition and divestiture, and strategic planning for regulated public utilities and the investment community. Mr. Terzic is a former public service commissioner for the State of Wisconsin and holds a bachelor of science degree in energy engineering.

Mr. President, I believe Mr. Terzic to be very well qualified and committed to the work of the Commission. I also believe that he has been fair in his assessments of the issues that have come before him. I urge my colleagues to join me in supporting his confirmation.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

### 200TH ANNIVERSARY OF THE MACLAY MANSION

Mr. SPECTER. Mr. President, it is my distinct pleasure to bring to the at-

tention of my colleagues the 200th anniversary of the Maclay Mansion, currently headquarters for the 28,000 members of the Pennsylvania Bar Association. The Maclay Mansion is being honored on Friday, October 18, 1991. It is certain to be a day of historic remembrance and celebration.

The Maclay Mansion, which was built in 1791, is located at Front and South Streets in Harrisburg, PA, our State capital. The mansion is named for its founder, builder, and distinguished original owner, the Honorable William Maclay. This national historic site is a beautifully constructed three-story, limestone house. From 1827 to 1908, it served as the site of the Harrisburg Academy. It was then sold to the Bailey family of the Harrisburg National Bank, today's Commonwealth Bank. The Bailey family sold the property to the Pennsylvania Bar Association in 1948, whereupon the bar association began restoration of the mansion. The Maclay Mansion restoration was completed in 1975, and has served the association and the State well.

In its day, the site sheltered the mural works of Violet Oakley, which now hang in the hallowed chambers of the Pennsylvania State Supreme Court and Senate, and served as the American Red Cross blood bank during World War II. Interestingly enough, the gardens of the mansion produced the first tomatoes ever grown in central Pennsylvania.

I am informed that the Pennsylvania Bar Association will express its appreciation of the 45 years of public service of William Maclay—the first U.S. Senator from Pennsylvania, a U.S. Congressman, a Pennsylvania State senator, a State representative, and speaker of the Pennsylvania State House—by unveiling a monument in his memory during the ceremony. William Maclay dedicated his life to Pennsylvania and the newly formed United States of America.

Mr. President, it is with great delight that I offer my commendations to the Pennsylvania Bar Association for preserving this historical site and sponsoring this bicentennial celebration of the Maclay mansion. The restoration of the mansion is certainly a great accomplishment and a necessary preservation of one component of Pennsylvania's rich historical participation in our country's development and stability. I ask that my colleagues join me today in offering the best wishes of the U.S. Senate to all those participating in the 200th anniversary celebrations of the Maclay Mansion.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## ANNUAL REPORT OF THE TOURISM POLICY COUNCIL—MESSAGE FROM THE PRESIDENT—PM 85

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

*To the Congress of the United States:*

In accordance with section 302 of the International Travel Act of 1961, as amended (22 U.S.C. 2124a(f)), I transmit herewith the annual report of the Tourism Policy Council, which covers fiscal year 1990.

GEORGE BUSH.

THE WHITE HOUSE, October 17, 1991.

## REPORT ON EMIGRATION LAWS AND POLICIES OF THE CZECH AND SLOVAK FEDERAL REPUBLIC—MESSAGE FROM THE PRESIDENT—PM 86

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Finance:

*To the Congress of the United States:*

I hereby transmit the documents referred to in subsections 402(b) and 409(b) of the Trade Act of 1974 ("the Act"), 19 U.S.C. 2432(b) and 2439(b), with respect to the consistency of the emigration laws and policies of the Czech and Slovak Federal Republic with the criteria set out in subsections 402(a) and 409(a) of the Act. These documents constitute my decision that a waiver of subsections (a) and (b) of section 402 of the Act will no longer be required for the Czech and Slovak Federal Republic.

I include as part of these documents my determination that the Czech and Slovak Federal Republic is not in violation of paragraph (1), (2), or (3) of subsection 402(a) or paragraph (1), (2), or (3) of subsection 409(a) of the Act. I also include information as to the nature and implementation of the emigration laws and policies of the Czech and Slovak Federal Republic and restrictions or discrimination applied to or against persons wishing to emigrate, including those persons wishing to emigrate to the United States to join close relatives.

GEORGE BUSH.

THE WHITE HOUSE, October 17, 1991.

## REPORT ON NATIONAL EMERGENCY WITH RESPECT TO THE LAPSE OF THE EXPORT ADMINISTRATION ACT—MESSAGE FROM THE PRESIDENT—PM 87

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

*To the Congress of the United States:*

1. On September 30, 1990, in Executive Order No. 12730, I declared a national emergency under the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. 1701, *et seq.*) to deal with the threat to the national security and foreign policy of the United States caused by the lapse of the Export Administration Act of 1979, as amended (50 U.S.C. 2401 *et seq.*) and the system of controls maintained under that Act. In that order, I continued in effect, to the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, the Export Administration Regulations (15 C.F.R. 768, *et seq.* (1991)), and the delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, Executive Order No. 12214 of May 2, 1980, and Executive Order No. 12131 of May 4, 1979, as amended by Executive Order No. 12551 of February 21, 1986.

2. I issued Executive Order No. 12730 pursuant to the authority vested in me as President by the Constitution and laws of the United States, including IEEPA, the National Emergencies Act ("NEA") (50 U.S.C. 1601, *et seq.*), and section 301 of title 3 of the United States Code. At that time, I also submitted a report to the Congress pursuant to section 204(b) of IEEPA (50 U.S.C. 1703(b)). Section 204 of IEEPA requires follow-up reports, with respect to actions or changes to be submitted every 6 months. Additionally, section 401(c) of the NEA requires that the President, within 90 days after the end of each 6-month period following a declaration of a national emergency, report to the Congress on the total expenditures directly attributable to that declaration. This report, covering the 6-month period from April 1, 1991, to September 30, 1991, is submitted in compliance with these requirements.

3. Since the issuance of Executive Order No. 12730, the Department of Commerce has continued to administer the system of export controls, including antiboycott provisions, contained in the Export Administration Regulations. In administering these controls, the Department has acted under a policy of conforming actions under Executive Order No. 12730 to those required under the Export Administration Act, insofar as appropriate.

4. Since my last report to the Congress, there have been several significant developments in the area of export controls:

We continued to address the threat to the national security and foreign policy interests of the United States posed by the spread of weapons of mass destruction. In Executive Order No. 12735 of November 16, 1990, and the Enhanced Proliferation Control Initiative of December 13, 1990 ("EPCI"), we had announced major steps to strengthen export controls over goods, technology, and other forms of assistance that can contribute to the spread of chemical and biological weapons and missile systems.

—On March 7, 1991, the Department of Commerce issued two new regulations and a proposed rule to implement EPCI. The new regulations controlled the export of 50 chemicals as well as dual-use equipment and technical data that can be used to make chemical and biological weapons. (56 F.R. 10756 and 10760, March 13, 1991.)

—On August 15, 1991, the Department of Commerce made the proposed rule final. The final rule expands controls to cover exports when the exporter knows or is informed by the Department of Commerce that an export will be used for missile technology or chemical or biological weapons, or is destined for a country, region, or project engaged in such activities. The rule also restricts U.S. citizen participation in such activities, as well as the export of chemical plants and plant designs. (56 F.R. 40494, August 15, 1991.)

—The Department of Commerce also issued a new regulation that revises the list of items subject to control for nuclear nonproliferation reasons. The updated list reflects technological developments in the field, as well as U.S. nuclear nonproliferation policy. (56 F.R. 42652, August 28, 1991.)

In light of the changes that have occurred in Eastern Europe, negotiations with our Coordinating Committee (COCOM) partners yielded a streamlined Core List of truly strategic items that will remain subject to multilateral national security controls. The Department of Commerce implemented this new Core List effective September 1, 1991. In implementing the Core List, the Department totally revised its Commodity Control List, now called the Commerce Control List (CCL), and made certain additional substantive changes in controls. (56 F.R. 42824, August 29, 1991.)

—For the first time, all controlled software and technical data have been integrated into the CCL, including definitions for these items that parallel those of our COCOM partners.

—Following my decision to remove certain sanctions under the Comprehensive Anti-Apartheid Act, controls on certain exports to South Africa of computers, aircraft, and petroleum products have been removed. Other controls affecting South Africa, such as those implemented pursuant to the United Nations arms embargo, remain in place.

—On August 28, 1991, the Department of Commerce submitted a report to the Congress indicating that the Department was reformulating controls on exports to countries that had been designated by the Secretary of State as repeatedly having provided support for acts of international terrorism. In a few instances we reported that controls were being expanded, particularly with respect to Iran and Syria, the only two of the six countries designated as terrorist-supporting not presently subject to separate trade embargoes. In addition, the report indicated that the Department was expanding controls on items of missile proliferation concern. The changes reported to the Congress were implemented in the course of revising the CCL.

Enforcement efforts have continued unabated:

—On August 21, 1991, the Department of Commerce renewed a previous Temporary Denial Order to withhold the export privileges of a Dutch company, Delft Instruments N.V., and certain related companies, in connection with an investigation of illegal reexport of U.S.-origin night vision equipment to Iraq. (56 F.R. 42977, August 30, 1991.)

—On August 28, 1991, Special Agents from the Department of Commerce's Bureau of Export Administration arrested two Iranian businessmen in Newport Beach, California, on charges of illegally exporting to Iran U.S.-origin equipment with possible nuclear and/or missile technology applications. The two businessmen were subsequently charged in a 17-count indictment with conspiracy, illegally exporting U.S.-origin equipment, and making false statements to the United States Government in connection with the exports.

—Following numerous discussions with officials of Czechoslovakia, Hungary, and Poland, the Department of Commerce has assisted the new East European democracies to implement and strengthen their export control systems, including prelicense inspections and postshipment verifications. These developments will allow for enhanced and much-needed trade in high technology items in the region, while helping to prevent un-

authorized shipments or uses of such items.

5. The expenses incurred by the Federal Government in the 6-month period from April 1, 1991, to September 30, 1991, that are directly attributable to the exercise of authorities conferred by the declaration of a national emergency with respect to export controls were largely centered in the Department of Commerce, Bureau of Export Administration. Expenditures by the Department of Commerce are anticipated to be \$20,390,000.00, most of which represents wage and salary costs for Federal personnel.

6. The unrestricted access of foreign parties to U.S. goods, technology, and technical data and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, continue to constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I shall continue to exercise the powers at my disposal to retain the export control system, including the antiboycott provisions, and will continue to report periodically to the Congress.

GEORGE BUSH.

THE WHITE HOUSE, October 17, 1991.

#### PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following enrolled bills and joint resolutions:

On May 24, 1991:

S. 248. An act to amend the Wild and Scenic Rivers Act to designate certain segments of the Missouri River in Nebraska and South Dakota as components of the wild and scenic rivers system, and for other purposes.

On June 18, 1991:

S. 483. An act entitled the "Taconic Mountains Protection Act of 1991."

S.J. Res. 111. Joint Resolution marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America.

On June 19, 1991:

S. 292. An act to expand the boundaries of the Saguaro National Monument.

June 27, 1991:

S. 64. An act to authorize appropriations to establish a National Education Commission on Time and Learning and a National Council on Education Standards and Testing, and for other purposes.

On June 28, 1991:

S. 909. An act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities.

S.J. Res. 159. Joint resolution to designate the month of June 1991, as "National Forest System Month."

On July 10, 1991:

S. 674. An act to designate the building in Monterey, Tennessee, which houses the primary operations of the United States Postal Service as the "J.E. (Eddie) Russell Post Office Building," and for other purposes.

On August 2, 1991:

S.J. Res. 121. Joint resolution designating September 12, 1991, as "National D.A.R.E. Day."

On August 6, 1991:

S.J. Res. 40. Joint resolution designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week."

S.J. Res. 142. Joint resolution to designate the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week."

On August 10, 1991:

S.J. Res. 179. Joint resolution to designate the week beginning August 25, 1991, as "National Parks Week."

On August 14, 1991:

S. 1593. An act to improve the operation and effectiveness of the United States National Commission on Libraries and Information Science, and for other purposes.

S. 1594. An act to honor and commend the efforts of Terry Beirn, to amend the Public Health Service Act to rename and make technical amendments to the community-based AIDS research initiative, and for other purposes.

S.J. Res. 72. Joint resolution to designate the week of September 15, 1991, through September 21, 1991, as "National Rehabilitation Week."

On August 17, 1991:

S. 1608. An act to make Technical Amendments to the Nutrition Information and Labeling Act, and for other purposes.

On October 1, 1991:

S. 296. An act to amend the Immigration and Nationality Act to provide immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

On October 3, 1991:

S.J. Res. 73. Joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

S.J. Res. 125. Joint resolution to designate October 1991 as "Polish-American Heritage Month."

S.J. Res. 126. Joint resolution to designate the second Sunday in October of 1991 as "National Children's Day."

S.J. Res. 151. Joint resolution to designate October 6, 1991, and October 6, 1992, as "German-American Day."

On October 4, 1991:

S. 363. An act to authorize the addition of 15 acres to Morristown National Historical Park.

On October 7, 1991:

S. 1106. An act to amend the Individuals with Disabilities Education Act to strengthen such Act, and for other purposes.

S.J. Res. 95. Joint resolution designating October 1991 as "National Breast Cancer Awareness Month."

On October 8, 1991:

S.J. Res. 78. Joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

S.J. Res. 156. Joint resolution to designate the week of October 6, 1991, through October 12, 1991, as "Mental Illness Awareness Week."

On October 9, 1991:

S. 1773. An act to extend until October 18, 1991, the legislative reinstatement of the power of Indian tribes to exercise criminal jurisdiction over Indians.

S.J. Res. 172. Joint resolution to authorize and request the President to proclaim each of the months of November 1991 and 1992 as "National American Indian Heritage Month."

On October 10, 1991:

S. 868. An act to amend title 10, United States Code, and title 38, United States Code,

to improve the educational assistance benefits for members of the reserve components of the Armed Forces who served on active duty during the Persian Gulf War, to improve and clarify the eligibility of certain veterans for employment and training assistance, and for other purposes.

S.J. Res. 132. Joint resolution to designate the week of October 13, 1991, through October 19, 1991, as "National Radon Action Week."

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 6:10 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2426. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes;

H.R. 2698. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1992, and for other purposes; and

H.R. 2942. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1992, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 6:35 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1415. An act to authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes;

H.R. 2608. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1992, and for other purposes;

H.R. 3280. An act to provide for a study, to be conducted by the National Academy of Sciences, on how the Government can improve the decennial census of population, and on related matters; and

S.J. Res. 107. Joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 17, 1991, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 107. Joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2032. A communication from the General Sales Manager and Vice-President of the Commodity Credit Corporation, transmitting, pursuant to law, a report on section 416(b) monetization programs for fiscal year 1990; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2033. A communication from the President of the United States, transmitting, pursuant to law, a report on Verification of Nuclear Warhead Dismantlement and Special Nuclear Material Controls; to the Committee on Armed Services.

EC-2034. A communication from the President of the United States, transmitting, pursuant to law, a report on Possible Effects of a Strategic Arms Reduction Agreement on the Trident Program; to the Committee on Armed Services.

EC-2035. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the initial report on Missile Proliferation; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FORD, from the Committee on Rules and Administration, without amendment:

S. 239. A bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia (Rept. No. 102-192).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 470. A bill to authorize the Secretary of Transportation to release the restrictions, requirements, and conditions imposed in connection with the conveyance of certain lands to the city of Gary, Indiana (Rept. No. 102-193).

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. DURENBERGER (for himself, Mr. DANFORTH and Mr. BURNS):

S. 1836. A bill to provide economic incentives through Medicaid bonus funds to promote State alternative dispute resolution systems, to assist States in the creation and evaluation of alternative dispute resolution systems, to encourage State-based quality improvement programs, and to provide comprehensive reform of State tort law to curb excesses in the current liability system, and for other purposes; to the Committee on Finance.

By Mr. REID (for himself and Mr. BRYAN):

S. 1837. A bill to repeal a provision of Federal tort claim law relating to contractor liability for injury or loss of property arising out of atomic weapons testing programs, and for other purposes; to the Committee on the Judiciary.

By Mr. PRYOR (for himself and Mr. MITCHELL):

S. 1838. A bill to amend title XVIII of the Social Security Act to provide for a limitation on use of claim sampling to deny claims or recover overpayments under Medicare; to the Committee on Finance.

By Mr. MCCONNELL:

S. 1839. A bill to prevent the disclosure of confidential information in the Senate ad-

vised and consent process; to the Committee on the Judiciary.

By Mr. GLENN:

S.J. Res. 216. A joint resolution requiring a report under the Nuclear Non-Proliferation Act of 1978 on United States efforts to strengthen safeguards of the International Atomic Energy Agency; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWN (for himself and Mr. BOND):

S. Res. 199. A resolution calling for an investigation of the unauthorized disclosure of a confidential Senate committee report during the consideration of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court; to the Committee on Rules and Administration.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. Res. 200. A resolution expressing the sense of the Senate with respect to the important contributions of the men and women in the number one industry in New York State, the agriculture industry; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SANFORD (for himself, Mr. KERRY, Mr. LEVIN, Mr. KENNEDY, Mr. BUMPERS, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. LEAHY and Mr. WELLSTONE):

S. Con. Res. 70. A concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant; to the Committee on Foreign Relations.

By Mr. MACK:

S. Con. Res. 71. A concurrent resolution condemning the unconditional seizure of power by elements of the Haitian military and consequent violence, and calling on the Attorney General to suspend temporarily the forced return of Haitian nationals in the United States during the crisis in Haiti; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURENBERGER (for himself, Mr. DANFORTH, and Mr. BURNS):

S. 1836. A bill to provide economic incentives through Medicaid bonus funds to promote State alternative dispute resolution systems, to assist States in the creation and evaluation of alternative dispute resolution systems, to encourage State-based quality improvement programs, and to provide comprehensive reform of State tort law to curb excesses in the current liability system, and for other purposes; to the Committee on Finance.

AMERICAN HEALTH QUALITY ACT

Mr. DURENBERGER. Mr. President, I appreciate having the opportunity this morning to listen to my colleague, Senator WOFFORD, speak on the issue of national health insurance, and I compliment him for his interest in the

subject. Many people in this body and others have come to do that in recent years.

I also appreciate the fact that Americans want comprehensive change in our health care system. The question is mainly how are you going to go about it?

I was happy to see my colleague from Pennsylvania talk about small group insurance reform which is something I have been trying to do here for a couple years, and I trust it will be included in leadership package coming out quite soon.

I would hope that we would endorse the concept of national basic benefits plans. I heard words like national health insurance and words like comprehensive coverage. I am back to thinking about the way most Americans think about the health plan. They expect it to be a bill paying service rather than providing them with financial security that they need.

I hope that he and others will also endorse the concept of tax equity. We are spending \$100 billion a year today in non-means-tested payments, people who work for big companies so they can buy their health insurance while self-employed persons, people in small businesses and low-income people generally in this country get nothing or little or nothing. I hope that when I make that proposal he and others will support that as well.

I say, Mr. President, that whether you use a comprehensive approach or you use an incremental approach, we have to take on the cost of health care or we will never be able to guarantee universal access.

This morning I would like to talk about a proposal that several colleagues on this side of the aisle are working on which is different from what others have proposed, some similarities, but a little different.

Let me start with the premise that every American citizen wants the same three things from their health care system.

The first thing they want is access to care. They want it there when they need it. The woman in Methodist Hospital in Philadelphia that Senator WOFFORD referred to is a good example of that.

The second thing they want is quality care. They want to know that they are going to have the best care that is available.

The third thing they need is to have both access to quality at a fair price.

The problem with the American health care system today is that it cannot deliver on these three at the same time or the same place. The reasons are many but it boils down to this: The health marketplace in this country does not function like it should. We need to set about repairing that marketplace so it produces what it should, how it should, and at the price that is should.

So today I am focusing on one part of that broken system: The part that is supposed to guarantee quality care, the so-called malpractice or medical liability system. This is the part that is so badly broken that not only does it not give us quality, but it impedes both access and raises cost.

The bill Senators DANFORTH, BURNS, and I are introducing today tries to turn that around and get the system headed in the direction of serving patients better by genuinely improving health care quality.

Let us look from the patient's point of view at the current malpractice system as it relates to access, quality and cost.

What does the current system do to access for Americans?

Mr. President, we have reports from over 150 communities in 26 States that they are losing doctors, particularly in the field of obstetrics, because they are unable to pay their malpractice premiums. Fifteen counties in Alabama have no obstetrical care. Nineteen counties in Colorado had no private obstetricians. The list goes on and on.

What are the women in those communities supposed to do? How are they going to get the care they need? Who is going to deliver their babies?

Every place where the financial condition of the health care system is marginal—rural areas and core inner-cities especially—malpractice premiums are becoming the last straw that break's the system's back.

What does the current system do to costs?

If you look at the chart behind me, it reflects the average rate of increase of three items during the last decade.

The first of these, the green line, over the decade of the 1980's, are CPI average cost increases for all goods and services in America.

The second one is the physician fees.

The third line is the cost of the malpractice or professional liability premiums.

The chart reflects the average rate of increase of three items during the last decade. At the bottom is the inflation rate for all items—about a 30-percent increase. The next line is physician fees: it shows a 50-percent increase.

The top line is what the cost issue is all about: a 160-percent increase in about 7 years. Mr. President, in terms we can understand, could any of us handle an increase in the price of a fill-up at the gas station that went from \$15 to \$39? Or the cost of a mortgage payment that went from \$750 to \$1,950? That is the kind of price rise physicians went through during the middle 1980's.

The CPI has gone up 30 percent during the decade, physicians fees going up 50 percent in the decade, but professional liability premiums have gone up 160 percent without guaranteeing any American they are getting better health care.

Let us not be naive. Who is really paying for all these increases? All of us. The lady in Methodist Hospital in Philadelphia is among them. As bill payers, as premium payers and taxpayers, we are all footing this enormous bill.

Let us look at the actual impact of that increase in some selected States. This is the situation faced by 44 million people living in these States.

This is illustrated by this chart right here to give you some idea of the premium cost.

When you go to see your doctor in Florida, he or she is working and charging enough to pay \$21,000 a year, more than most Floridians make, just for liability insurance in internal medicine.

A general surgeon pays \$1,900 in premiums each week, just to open the office door in Florida.

An obstetrician in Florida who worked a normal work week has to earn \$700 a day just to pay his insurance bill.

Is it any wonder, Mr. President, that medical costs are skyrocketing?

As you can see, this is the case in the rest of the States as well. We are all paying a heavy price for the way the current system works, if I can use that term.

And the big question, Mr. President, is, What kind of quality is the system producing for that price?

Unfortunately, we have a situation like the kid who tells his basketball coach, "I may be small, but I can't jump!" We have a system that costs us an arm and a leg and doesn't get the job done.

Quality can be simply defined as patients getting what they need from their doctor and not getting what they do not need. Our current system delivers billions of dollars of care that American patients simply do not need.

The term for this is "defensive medicine." Physicians who are fearful of lawsuits prescribe unnecessary tests and perform extra procedures—not to benefit the patient—but to protect themselves from lawsuits.

The cost of defensive medicine is understandably hard to estimate but the American Medical Association says they may be as high as \$15 billion a year. That is an unconscionable waste of money. And that is what our current system encourages.

Skyrocketing judgments may also drive innovators out of the medical field, depriving patients of new, life-saving cures.

What about controlling medical errors and injuries, the kind of thing most of us think about when we hear about the malpractice system? Does the system give injured patients fair and timely compensation for their losses? Does it force doctors to shape up?

Regrettably, Mr. President, the current system is so unfair, so fraught

with delay for victims of negligence and so skewed by financial motives that it does none of those things we intend it to do.

The civil courts of this country are jammed with a huge backlog of litigation which mean years of waiting before any claim can be settled. The wait for a trial date in many States in this country is well over 2 years. A person trying to bring a liability suit just across Minnesota's southern border in Iowa would have to wait 39 months for a trial date. If justice delayed is justice denied, we have an unjust system.

But Mr. President, a recent study at Harvard University uncovered a level of unfairness of an even greater magnitude.

The Harvard researches found that 97 percent of the people who are actual victims of negligence, for one reason or another do not even sue for damages. Ninety-seven percent of those who have been hurt by this system got less than quality care.

Equally amazing is the fact that 80 percent of people who do sue had no basis for doing so; they had frivolous claims.

This system does not work

Peter Huber, a renowned legal scholar put those numbers in this perspective:

Imagine that the manufacturer of a car or a contraceptive delivered a product that was defective 80% of the time. Imagine a diagnostic laboratory that ran tests that produced 97% false negatives and 80% false positives. Or imagine that some doctor failed to diagnose 97% of all patients with gangrene, and that when he did reach for a scalpel, he applied it to the wrong limb 80% of the time.

Who could support the continuation of such a system?

My next chart answers that question. The blue and red chart. For every dollar that is thrown into the system, only 56 cents ever ends up with patients, the people this system is supposed to serve. The rest goes to lawyers. This is a full employment program for lawyers.

So, Mr. President, the system fails the test of access, the test of cost and the test of quality.

We must do better.

And we can do better. That's why we're here this morning.

The American Health Quality Act we are introducing today turns a costly, unfair and debilitating system into one that will bring about genuine improvement in the health care Americans receive. It is based on three principles.

First, serious reform must be comprehensive in scope

The health care system we have in America is extraordinarily complex. When I was growing up in rural Minnesota, health care came from Dr. Baumgartner, from Albany, 12 miles away. He came with his black bag when my mom called him. He fixed me up and my dad paid him out of this next

paycheck. Everything about that system has changed.

The specialization of physicians is incredible.

The exponential growth of medical technology which replaces that black bag is staggering.

And instead of cash, the doctor patient transaction now involves thousands of insurance companies, employers and government programs.

That means problems spread throughout the system, and solutions therefore have to involve all the actors in the system. That is what this bill does. It deal not only with malpractice, but also with medical devices and pharmaceuticals as well. And it does more than try to solve problems; it points the whole system in the direction of quality improvement.

I ask unanimous consent that a list of the national organizations who have announced support for this bill be printed in RECORD.

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

AMERICAN HEALTH QUALITY ACT OF 1991

(Prepared by the Office of Senator Dave Durenberger)

The following groups have expressed support for the goals of the bill:

American Academy of Orthopedic Surgeons.

American Association of Nurse Anesthetists.

American Chiropractic Association.

American College of Obstetricians and Gynecologists.

American College of Physicians.

American College of Radiology.

American College of Surgeons.

American Dental Association.

American Group Practice Association.

American Healthcare Systems Institute.

American Hospital Association.

American Medical Association.

American Osteopathic Hospital Association.

American Podiatric Medical Association, Inc.

American Protestant Health Association.

American Society for Healthcare Risk Management.

American Society of Internal Medicine.

American Thoracic Society.

American Tort Reform Association, representing 400 professional societies, trade associations and corporations.

Association of Private Pension and Welfare Plans.

Catholic Health Association.

College of American Pathologists.

Federation of American Health Systems.

Group Health Association of America.

Kaiser Permanente.

MMI Companies, Inc.

Medical Alley, 175 members including Minnesota's medical device manufacturers, hospitals, healthcare professionals, and health maintenance organizations.

Minnesota Medical Association.

National Association of Manufacturers.

National Association of Pediatric Nurse Associates and Practitioners.

National Medical Liability Reform Coalition.

Physician Insurers Association of America.

Voluntary Hospitals of America.

Washington Business Group on Health.

Mr. DURENBERGER. Second, we need to curb the excesses in the current liability system, while we maintain patient's rights to compensation for real economic losses.

Reform must include limitations on attorney's contingency fees, reducing the lawyer's slice of the liability pie I showed earlier. We also need to cap noneconomic damages, such as pain and suffering, and punitive damages at a reasonable level. In addition, we need to expedite settlement provisions to speed up the process. Uniform national rules for statutes of limitation, joint and several liability among defendants and other sources of compensation need to be set to bring greater certainty to all parties. That is what this bill proposes.

If I can refer back to my earlier chart. If you look at the difference between these States here, the first five States, Florida, Michigan, New York, Alaska, Arizona, and the State of California—let me say, California has enacted a lot of these reforms. And if you compare the impact on premiums even in a State like California, which has such an incredibly expensive medical system, you could see that in 1983 California obstetrical premiums were well above the national average. Now they are much below the average and the departure of obstetricians has slowed.

Third, if we want genuine quality improvement we need get as many of these matters as we can out of the court room and into a setting where there can be constructive resolution and some learning from the process.

There is a fundamental culture clash between the legal liability system and medical quality improvement. This is not the fault of doctors or hospitals, nor is it the fault of insurance companies, or even, Mr. President, is it the fault of lawyers. It is inherent in the litigation process.

The culture of liability litigation is adversarial, punitive, and confrontational. Mistakes are opportunities for lawsuits. The law looks for someone to blame.

In contrast, the growing literature on quality improvement in health care teaches us that mistakes are opportunities, even treasures. Improvement in quality comes through sharing information to aggressively confront failure and thus prevent it. Quality improvement requires all the participants to trust one another in order to work cooperatively toward the improvement.

Mr. President, the road to quality health care does not pass through the courtroom. We simply cannot get here from there.

We have to develop alternative systems that will fairly compensate individuals for medical mistakes while improving the quality of care for everyone. This bill offers incentives for States to achieve these goals. It creates affirmative incentives for States

to develop alternative dispute resolution [ADR] systems outside of the courts.

In this bill, up to 10 States will receive Medicaid bonus funds to experiment with ADR systems. The Agency for Health Care Policy and Research, the Federal body with the greatest sophistication in issues relating to quality of care, will oversee the bonus program.

This offers a "win-win" solution for qualifying States. There will be more resources for care under the bonus plan, and patients will benefit from ADR systems that are likely to develop cost-efficient, quality-enhancing programs to compensate for health care injuries.

The bill also includes similar incentives for quality improvements in State health professional licensing boards, grants for private sector experimentation with ADR's, some special protection for certain obstetrical cases and programs for community and migrant health centers to finance coverage for liability claims.

This bill calls for a modest Federal expenditure for this experimentation with the ADR concept, about \$100 million. However, we anticipate that Federal and State governments will reap the benefits of cost savings as rates decline and defensive medicine slows. This should be reflected in a lower malpractice adjustment in the physician fee schedule under Medicare.

In conclusion, Mr. President, it is the sad truth that the current medical liability system is the worst of all possible worlds for the American people. It impedes access, it damages quality and it raises costs; while at the same time it compensates only 3 percent of the people who are actually injured. This system makes everybody in America losers.

We have a huge task ahead of us in trying to reform the American health care system. It will be costly. It will be difficult. It will require sacrifice. This reform is one hopefully that we can agree upon.

We simply cannot afford the system we have now. We have so much to gain from a system that produces better and better quality as time goes by.

The time has come for change and we offer this proposal to our colleagues as the right way to start.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed at this point in the RECORD.

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

S. 1836

*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 "American Health Quality Act".

#### SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government has a major interest in health care as a direct provider through the Public Health Service, as a source of payment for health care through Medicare, Medicaid, and other programs;

(2) the Federal Government has a demonstrated interest in assessing the quality of care, access to care, and the costs of care through the evaluative activities of several Federal agencies;

(3) the Federal Government has a long-standing interest in the quality of medical practice through its support for medical education and training of professionals under grant and loan programs, including the National Health Services Corps.

(4) there is increasing concern that health care liability claims have significant negative effects on the health care system, including—

(A) increasing costs attributable to defensive medical practices, the cost of medical liability insurance, and costs attributable to the inefficiencies in the civil justice system;

(B) adversely affecting the quality of health care through the encouragement of defensive health care practices including unnecessary tests and procedures; and

(C) adversely affecting patient access to care because of the threat of liability suits and liability costs, including the ability of health care professionals to continue to practice in high risk specialties, particularly obstetrical care, and in certain geographic regions of the country;

(5) it has been clearly demonstrated that the civil justice system is a costly, inefficient, and inequitable mechanism for all parties in resolving claims against health care providers, professionals, producers and employers;

(6) a disproportionately large percentage of funds expended to compensate patients is distributed to a few individuals, while others are denied adequate compensation;

(7) an exorbitant amount of funds in health care liability actions go to the transaction costs of the judicial system rather than to compensate for health care injuries;

(8) there is optimism that alternative dispute resolution systems have the potential to significantly improve the adverse effects of the health care liability environment, however more data and analysis is necessary to fully understand the benefits of various alternative procedural devices; and

(9) there is optimism that State-based disciplinary bodies could improve overall health care quality rather than merely penalize a few bad actors.

(b) PURPOSE.—It is the purpose of this Act to—

(1) provide incentives through a Medicaid bonus program for States to develop alternative dispute resolution procedures to attain a more efficient, expeditious, and equitable resolution of health care disputes;

(2) enhance general knowledge concerning the benefits of different forms of alternative dispute resolution mechanisms;

(3) provide incentives through a Medicaid bonus program for States to improve the health care professional disciplinary and licensing bodies and to encourage the adoption of quality assurance reforms to reduce the incidence of health care injuries; and

(4) promote uniformity and curb excesses in the State-based health care liability systems through Federally mandated tort reforms.

#### SEC. 3. DEFINITIONS.

As used in this Act:

(1) AGENCY.—The term "Agency" means the Agency for Health Care Policy and Research.

(2) ALTERNATIVE DISPUTE RESOLUTION SYSTEM.—The term "alternative dispute resolution system" means a system that is enacted or adopted by a State to resolve health care liability claims as an alternative to a judicial proceeding in a Federal or State court;

(3) CLAIMANT.—The term "claimant" means any person who brings a civil action that is subject to the requirements of this Act, and any person on whose behalf such an action is brought, if such an action is brought through or on behalf of an estate. Such term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, such term includes the claimant's parent or guardian.

(4) CLEAR AND CONVINCING EVIDENCE.—The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(5) COMPENSATORY DAMAGES.—The term "compensatory damages" means all damages awarded to compensate a plaintiff, including economic and noneconomic damages.

(6) ECONOMIC DAMAGES.—The term "economic damages" means awards for losses suffered by the plaintiff to compensate for hospital and other medical expenses including rehabilitation costs, such as lost wages, lost employment, and other pecuniary losses;

(7) HEALTH CARE CLAIM.—The term "health care claim" means any claim relating to the provision (or failure to provide) health care services based on negligence or gross negligence, breach of express or implied warranty or contract, failure to discharge a duty to warn or instruct to obtain consent.

(8) HEALTH CARE EMPLOYER.—The term "health care employer" means any organization or institution that provides employee health benefits or systems of care, including employers, employee health benefit plans, multiple employer trusts, union trusts and managed care arrangements.

(9) HEALTH CARE LIABILITY ACTION.—The term "health care liability action" means any civil action or proceeding in any judicial tribunal brought pursuant to Federal or State law against a health care provider, health care professional, health care producer, or health care employer, alleging that injury was suffered by the claimant as a result of any act or omission by such provider, professional, producer, or employer, without regard to the theory of liability asserted in the action. Such term includes a claim, third-party claim, cross-claim, counterclaim or contribution claim.

(10) HEALTH CARE PROFESSIONAL.—The term "health care professional" means any individual who provides health care services in a State and who is required by State law or regulation to be licensed or certified by the State to provide such services in the State, including a physician, nurse, chiropractor, physical therapist, or physician assistant.

(11) HEALTH CARE PROVIDER.—The term "health care provider" means any organization or institution that is engaged in the delivery of health care services in a State that is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State.

(12) HEALTH CARE PRODUCER.—The term "health care producer" means any firm or

business enterprise that designs, manufactures, produces or sells a medical product that is the subject of a liability action.

(13) **INJURY.**—The term "injury" means any illness, disease, or other harm that is the subject of a health care liability claim.

(14) **NONECONOMIC DAMAGES.**—The term "noneconomic damages" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary losses.

(15) **PUNITIVE DAMAGES.**—The term "punitive damages" means damages awarded as a form of punishment.

(16) **SECRETARY.**—The term "Secretary" means the Secretary of Health and Human Services.

(17) **STATE.**—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

#### SEC. 4. EFFECT ON INTERSTATE COMMERCE.

Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability systems existing throughout the United States impact on interstate commerce by contributing to the high cost of health care and premiums for malpractice and products liability insurance purchased by health care providers and producers.

#### TITLE I—ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

##### SEC. 101. ESTABLISHMENT OF INCENTIVE PROGRAM.

(a) **IN GENERAL.**—The Secretary shall establish a program to make bonus or enhanced payments for a 2-year period pursuant to subsection (e) to eligible States that submit a State plan for the development or implementation of alternative dispute resolution systems in the State, under such terms as the Secretary may require.

(b) **ELIGIBILITY.**—To be eligible to receive enhanced payments under this section a State shall—

(1) prepare and submit to the Secretary an application at such time, in such form and containing such information as the Secretary may require including a description of the alternative dispute resolution system that the State intends to develop or implement that—

- (A) should support access to health care;
- (B) encourage improvements in the quality of care;
- (C) enhance the patient-provider relationship;
- (D) encourage innovation in health care delivery systems;
- (E) provide prompt resolution and fair compensation;
- (G) provide predictable outcomes; and
- (H) operate efficiently in terms of costs and processes; and

(2) provide assurances that the State will comply with all data gathering and analysis requirements promulgated by the Agency under section 102(c)(2).

(c) **APPROVAL OF APPLICATIONS.**—The Secretary shall review applications and assurances submitted under subsection (b) and shall award enhanced payments to States based on demonstrations made by such States that the alternative dispute resolution systems to be developed or implemented meet the qualification standards developed by the Agency under section 102.

(d) **DESIGNATION OF APPROVED STATES.**—A State that receives enhanced payments under this section shall be designated as an approved alternative dispute resolution

State by the Agency. Such approved States shall be eligible, upon application, for a 2-year extension of the applications and plans approved under this section and shall receive enhanced payments during such 2-year period.

(e) **ENHANCED PAYMENTS.**—

(1) **AMOUNT.**—A State that has an application approved by the Secretary under this section shall receive enhanced payments in accordance with section 1903(w) of the Social Security Act.

(2) **IN GENERAL.**—Except as provided in paragraph (3), the Secretary shall provide enhanced payments to not less than five and not more than 10 States in each fiscal year under this section.

(3) **EXCEPTION.**—Notwithstanding paragraph (2), the Secretary may provide enhanced payments to less than five States under this section in a fiscal year if the Secretary determines that there are an inadequate number of applications submitted that meet the eligibility and approval requirements of this section in such fiscal year.

##### SEC. 102. ESTABLISHMENT OF ADVISORY PANEL.

(a) **IN GENERAL.**—The Agency for Health Care Policy and Research shall make recommendations to the Secretary concerning the eligibility, approval and review requirements for alternative dispute resolution programs described in applications submitted under section 101.

(b) **PANEL OF ADVISORS.**—The Agency shall appoint 15 individuals to serve as a panel of advisors to assist in carrying out its activities under this section. Members of the panel shall include at least one representative, but in no event more than three such representatives, of each of the following—

- (1) patient advocacy groups;
- (2) groups representing State governments, such as the National Governors Association or National Conference of State Legislatures;
- (3) health care provider organizations;
- (4) professional groups, including organized medicine;
- (5) health care insurers;
- (6) health care employers;
- (7) medical product manufacturers; and
- (8) academic researchers from disciplines such as medicine, economics, law or health services, with expertise in alternative dispute resolution models.

(c) **DUTIES OF ADVISORY PANEL.**—The panel appointed under subsection (b) shall—

- (1) assist in the development of criteria for alternative dispute resolution systems that States must meet to be eligible to receive enhanced payments under section 101 and make information on such criteria available to the States to assist such States in preparing applications under section 101(b);
- (2) as part of the criteria developed under paragraph (1), require that States receiving enhanced payments under section 101 comply with data gathering and evaluation guidelines established by the panel;
- (3) provide advice and assistance to representatives from State governments concerning the establishment of alternative dispute resolution systems;
- (4) develop the qualification standards and provide advice and assistance to States applying to be quality improvement States under title III;
- (5) not later than 4 years after the approval of an application of a State under section 101(b), prepare and submit to the Secretary and the appropriate committees of Congress, a report and evaluation concerning the alternative dispute resolution systems imple-

mented by States receiving enhanced payments under this section, including information—

(A) on the effect of such systems on the cost of health care within the State;

(B) the impact of such systems on the access of individuals to health care within the State;

(C) the effect of such systems on the quality of health care provided within such State; and

(D) such other effects otherwise determined appropriate by the Secretary;

(6) not later than 4 years after the date of enactment of this Act, submit to the Secretary and to the appropriate committees of Congress a recommendation on the feasibility of a mandated alternative dispute resolution system; and

(7) not later than 4 years after the approval of the first quality improvement State plan under title III, prepare and submit to the Secretary and the appropriate Committees of Congress a report and evaluation concerning the reform of State health professions disciplinary boards or alternative quality assurance plans.

##### SEC. 103. DEMONSTRATION PROJECTS.

(a) **ESTABLISHMENT.**—The Secretary shall establish a program to award grants to private entities for the establishment of demonstration alternative dispute resolution programs in the private sector.

(b) **APPLICATION.**—To be eligible to receive a grant under this section an entity shall prepare and submit to the Secretary an application at such time, in such form and containing such information as the Secretary may require including a description of the alternative dispute resolution system that the entity intends to develop or implement.

(c) **CRITERIA.**—The Secretary shall consider applications received under subsection (b) and award grants based on criteria for such developed by the panel.

(d) **REQUIREMENTS.**—An alternative dispute resolution system that receives assistance under this section shall—

- (1) be a dispute resolution system agreed to by health care providers and purchasers or members;
- (2) be in compliance with applicable State laws; and
- (3) meet such other requirements as the panel determines to be appropriate.

(e) **DUTIES OF PANEL.**—The panel shall—

(1) provide assistance to entities receiving a grant under this section in designing and implementing alternative dispute resolution systems; and

(2) collect data on alternative dispute resolution systems implemented with assistance provided under this section and submit such data to the Agency, the Secretary and the appropriate Committees of Congress, together with a report concerning recommendations for improving such systems.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section, \$100,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.

##### SEC. 104. AMENDMENT TO SOCIAL SECURITY ACT.

Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end thereof the following new subsection:

"(w) Notwithstanding any other provision of this title, with respect to a State with an application approved under section 101(b) of the Health Care Injury Compensation and Quality Improvement Act, such State shall receive, in addition to the Federal medical assistance percentage determined for such State, not less than an additional .4 percent

for each calendar quarter in which such State qualifies for such additional percentage under section 101 of such Act."

## TITLE II—UNIFORM STANDARDS FOR HEALTH CARE LIABILITY CLAIMS

### SEC. 201. APPLICATION TO CIVIL ACTIONS.

This title shall apply to any health care liability action brought in any Federal or State court and any health care action resolved through an alternative dispute resolution system. This title shall not be construed to create or effect any cause of action or theory of liability recognized in any Federal or State proceeding.

### SEC. 202. EXPEDITED HEALTH CARE LIABILITY SETTLEMENTS.

(a) **RIGHT TO BRING ACTION.**—Any claimant may bring a civil action for damages against a person for harm caused during the provision of health care pursuant to applicable Federal or State law, except to the extent that such law is superseded by this title.

#### (b) SETTLEMENT OFFERS.

(1) **BY CLAIMANT.**—Any claimant may, in addition to any claim for relief made in accordance with Federal or State law as provided for in subsection (a), include in the complaint filed by such claimant an offer of settlement for a specific dollar amount.

(2) **BY DEFENDANT.**—Within 60 days after service of the complaint of a claimant of the type referred to in paragraph (1), or within the time permitted pursuant to Federal or State law for a responsive pleading, whichever is longer, the defendant may make an offer of settlement for a specific dollar amount, except that if such pleading includes a motion to dismiss in accordance with applicable Federal or State law, the defendant may tender such relief to the claimant within 10 days after the determination of the court regarding such motion.

#### (c) EXTENSION OF TIME.

(1) **AUTHORITY.**—In any case in which an offer of settlement is made pursuant to subsection (a) or (b), the court may, upon motion made prior to the expiration of the applicable period for response, enter an order extending such period.

(2) **CONTENTS OF EXTENSION ORDER.**—Any order extending the period for response under paragraph (1) shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than 60 days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(d) **REJECTION OF OFFER BY DEFENDANT OFFEREE.**—If the defendant, as offeree, does not accept the offer of settlement made by a claimant in accordance with subsection (b)(1) within the time permitted pursuant to Federal or State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within 30 days after the court's determination regarding such motion, and a verdict is entered in such action equal to or greater than the specific dollar amount of such offer of settlement, the court shall enter judgment against the defendant and shall include in such judgment an amount for the claimant's reasonable attorney's fees and costs. Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the verdict.

(e) **REJECTION OF OFFER BY CLAIMANT OFFEREE.**—If the claimant, as offeree, does

not accept the offer of settlement made by a defendant in accordance with subsection (b)(2) within 30 days after the date on which such offer is made and a verdict is entered in such action equal to or less than the specific dollar amount of such offer of settlement, the court shall reduce the amount of the verdict in such action by an amount equal to the reasonable attorney's fees and costs owed by the defendant to the defendant's attorney by reason of the verdict, except that the amount of such reduction shall not exceed that portion of the verdict which is allocable to noneconomic damages.

(f) **CALCULATION OF ATTORNEY'S FEES.**—For purposes of this section, attorney's fees shall be calculated on the basis of an hourly rate that should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications, experience and the complexity of the case.

### SEC. 203. DAMAGES.

(a) **PAYMENTS.**—With respect to a civil action or claim of the type referred to in section 201, no person may be required to pay more than \$100,000 in a single payment for future losses, but such person shall be permitted to make such payments on a periodic basis. The periods for such payments shall be determined by the court, based upon projections of such future losses.

(b) **LIMITATION ON NONECONOMIC DAMAGES.**—With respect to a civil action or claim of the type referred to in section 201, the total amount of damages that may be awarded to an individual and the family members of such individual for noneconomic damages may not exceed \$250,000, regardless of the number of health care professionals, health care providers, health care producers, health care employers against whom the claim is brought or the number of claims brought with respect to the injury.

(c) **MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.**

(1) **IN GENERAL.**—With respect to a civil action or claim of the type referred to in section 201, the total amount of damages received by an individual under such action or claim shall be reduced, in accordance with paragraph (2), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action or claim.

(2) **AMOUNT OF REDUCTION.**—The amount by which an award of damages to an individual for an injury shall be reduced under paragraph (1) shall be—

(A) the total amount of any payments (other than such award) that have been made or that will be made to such individual to compensate such individual for the injury that was the subject of the action or claim; minus

(B) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in subparagraph (A).

(d) **ATTORNEYS' FEES.**—With respect to a civil action or claim of the type referred to in section 201, attorneys' fees may not exceed—

(1) 25 percent of the first \$150,000 of any award or settlement under such action or claim; or

(2) 15 percent of any additional amounts in excess of \$150,000.

(e) **PUNITIVE DAMAGES.**

(1) **LIMITATION.**—With respect to a civil action or claim of the type referred to in section 201, punitive damages may not exceed an amount twice that of the award of compensatory damages.

(2) **SEPARATE PROCEEDING.**

(A) **CONSIDERATIONS.**—At the request of the defendant or defendants, the trier of law shall consider in a separate proceeding—

(i) whether punitive damages are to be awarded and the amount of the award; or

(ii) the amount of punitive damages following a determination of punitive liability.

(B) **EVIDENCE.**—If a separate proceeding is requested in accordance with subparagraph (A), evidence relevant only to the claim of punitive damages, as determined by applicable Federal or State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(3) **AMOUNT.**—In determining the amount of punitive damages in an action under this section, the trier of law shall consider all relevant evidence, including—

(A) the financial condition of the defendant;

(B) the severity of the harm caused by the conduct of the defendant;

(C) the duration of the conduct or any concealment of the conduct by the defendant;

(D) the profitability of the conduct to the defendant;

(E) the number of products sold by the defendant who is a manufacturer or product seller of the kind causing the harm complained of by the claimant;

(F) awards of punitive of exemplary damages to persons similarly situated to the claimant;

(G) prospective awards of compensatory damages to persons similarly situated to the claimant;

(H) any criminal penalties imposed on the defendant seller as a result of the conduct complained of by the claimant; and

(I) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

(4) **TRUST FUND.**—Each State shall establish a health care disciplinary trust fund consisting of such amounts as are transferred to the trust fund under paragraph (5).

(5) **TRANSFER OF AMOUNTS.**—Each State shall require that 50 percent of all awards of punitive damages resulting from all health care liability actions in that State be transferred to the trust fund established under paragraph (4) in the State.

(6) **OBLIGATIONS.**—A State shall obligate the sums available in the trust fund established in that State under paragraph (3) to provide additional resources to State health care professional disciplinary boards for the disciplining of health care professionals and to provide additional resources for alternative dispute resolution programs if the State is an approved alternative dispute resolution State or a quality improvement State under title III.

(7) **ATTORNEY'S FEES.**—Claimants pursuing punitive damage awards in health care liability actions are permitted to collect reasonable attorneys fees under such actions as provided for in this Act and at the discretion of the trial judge.

### SEC. 204. JOINT AND SEVERAL LIABILITY FOR NONECONOMIC DAMAGES.

(a) **IN GENERAL.**—With respect to a civil action or claim of the type referred to in section 201, the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b).

(b) **PROPORTION OF RESPONSIBILITY.**—For purposes of this section, the trier of fact

shall determine the proportion of responsibility of each party for the claimant's harm.

#### SEC. 205. UNIFORM STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no health care liability action may be initiated after the expiration of the 2-year period that begins on the date on which the alleged injury should reasonably have been discovered, but in no event later than 4 years after the date of the alleged occurrence of the injury.

(b) EXCEPTION FOR MINORS.—In the case of an alleged injury suffered by a minor who has not attained 4 years of age, no health care liability claim may be initiated after the expiration of the 2-year period that begins on the date on which the alleged injury should reasonably have been discovered, but in no event later than 4 years after the date of the alleged occurrence of the injury or the date on which the minor attains 8 years of age, whichever is later.

#### SEC. 206. PROVISION FOR SPECIAL OBSTETRIC CASES.

With respect to a civil action or claim of the type referred to in section 201, related to services provided during the delivery of a baby, a court shall only find in favor of the claimant if such malpractice on the part of the defendant health care professional is proven by clear and convincing evidence, except that such evidentiary standard shall only apply if a defendant did not previously provide prenatal care to the claimant for this pregnancy, was not part of a group practice that previously treated the claimant during the pregnancy resulting in this delivery, or was not providing coverage pursuant to an agreement with another health care professional for this delivery.

#### SEC. 207. MEDICAL PRODUCTS LIABILITY REFORM.

(a) DEFINITIONS.—As used in this section:

(1) DEVICE.—The term "device" has the meaning given the term in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(2) DRUG.—The term "drug" has the meaning given the term in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)).

(b) LIMITATION.—

(1) IN GENERAL.—Punitive damages otherwise permitted by applicable law shall not be awarded in an action under this Act against a manufacturer or product seller of a drug or device that caused the harm complained of by the claimant if—

(A) the drug was subject to approval under section 505 (21 U.S.C. 355) of the Federal Food Drug and Cosmetic Act;

(B) the device was subject to premarket approval under section 505 (21 U.S.C. 360e); or subject either to special controls under section 513 (21 U.S.C. 360c) or is filed as a 510k premarket notification submissions only is such special controls or notification submission are supported by substantial evidence of safety and effectiveness based on valid scientific clinical data, with respect to—

(i) the safety of the formulation or performance of the aspect of the drug or device that caused the harm; or

(ii) the adequacy of the packaging or labeling of the drug or device; and

(C) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) WITHHELD INFORMATION; MISREPRESENTATION; ILLEGAL PAYMENT.—The provisions of paragraph (1) shall not apply in any case in

which the court determines on the basis on clear and convincing evidence that the defendant—

(A) withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device that is required to be submitted under the Federal Food, Drug and Cosmetic Act of section 352 of the Public Health Service Act that is material and relevant to the harm suffered by the claimant; or

(B) made an illegal payment to an official of the Food and Drug Administration for the purpose of securing approval of the drug or device.

#### SEC. 208. PREEMPTION.

(a) IN GENERAL.—The provisions of this title supersede any State law only to the extent that such State law establishes higher payment limits, applies joint and several liability to all damages, permits the recovery of a greater amount of damages or the awarding of a greater amount of attorneys' fees, or establishes a longer period during which a health care liability claim may be initiated.

(b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground in inconvenient forum.

(c) APPLICATION.—Subsection (a) shall apply to health care liability claims initiated after the expiration of the 1-year period that begins on the date of enactment of this Act.

### TITLE III—HEALTH CARE INJURY PREVENTION

#### SEC. 301. ENHANCED PAYMENTS.

(a) IN GENERAL.—The Secretary shall establish a program to make enhanced Medicaid bonus payments pursuant to subsection (e) for a 2-year period to eligible States that submit a State plan for the development or implementation of a health care injury prevention program or an approved alternative, under such terms as the Secretary may require.

(b) ELIGIBILITY.—To be eligible to receive enhanced payments under this section a State shall—

(1) prepare and submit to the Secretary an application at such time, in such form and containing such information as the Secretary may require including a description of the health care injury prevention program that the State intends to develop or implement and assurances that the State will comply with the requirements of this title; and

(2) provide assurances that the State will comply with all data gathering requirements promulgated by the Agency under section 102(c)(2).

(c) STANDARDS.—The Agency shall establish qualification standards that applications submitted under subsection (b)(1) must meet to be eligible to receive enhanced payments under this section. The Secretary shall review applications submitted under

subsection (b)(1) and shall award enhanced payments to States based on demonstrations made by such States that the health care injury prevention programs to be implemented meet the standards developed by the Agency. The advisory panel shall provide assistance to the Agency in carrying out this subsection.

(d) DESIGNATION OF APPROVED STATES.—A State that receives enhanced payments under this section shall be designated as a quality improvement State by the Secretary. Such States shall be eligible, upon application, for a 2-year extension of the applications and plans approved under this section and shall receive enhanced payments during such 2-year period.

(e) ENHANCED PAYMENTS.—A State that has an application approved by the Secretary under this section shall receive enhanced Medicaid bonus payments in accordance with section 1903(x) of the Social Security Act.

#### SEC. 302. USE OF AMOUNTS.

(a) IN GENERAL.—

(1) PROVISION OF PAYMENTS.—Except as provided in paragraph (2), the Secretary shall provide enhanced payments to not less than 10 and not more than 20 States in each fiscal year under this section.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may provide enhanced payments to less than 10 States under this section in a fiscal year if the Secretary determines that there are an inadequate number of applications submitted that meet the eligibility and approval requirement of this section.

(3) USE.—Each State that receives enhanced payments under section 301 shall—

(1) establish a Statewide health care injury prevention program that complies with the requirements of this title; and

(2) cooperate with Federal research efforts with respect to patient outcomes, clinical effectiveness and clinical practice guidelines.

(b) PERFORMANCE OF STATE MEDICAL BOARDS.—

(1) PERFORMANCE CRITERIA.—The Secretary shall promulgate regulations that establish performance criteria that State health care practitioner disciplinary boards of States referred to in subsection (a) should meet in performing their oversight functions concerning the health care professionals that are subject to such boards. Such criteria shall apply to procedural matters such as expeditious review of cases, appropriate reports of findings, and preservation of confidentiality.

(2) ALLOCATION OF CERTAIN FUNDS.—As part of the program established under subsection (a), the State shall allocate the total amount of fees paid to the State in each year for the licensing or certification of each type of health care professionals, or an amount of State funds equal to such total amount, to the State agency or agencies responsible for the conduct of disciplinary actions with respect to such type of health care professionals.

(3) MEMBERSHIP OF STATE HEALTH CARE PRACTITIONER BOARDS.—As part of the program established under subsection (a), the State shall ensure that the general public is represented on State health care professional disciplinary boards. Not less than 25 percent of the membership of each such health care practitioner disciplinary board shall be appointed from among the general public. Such members shall be representative of as many different regions of the State as practicable.

(4) IMMUNITY.—As part of the program established under subsection (a), the State shall ensure that there shall be no monetary

liability on the part of, and no cause of action for damages shall arise against, any current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness, or any other individual serving or having served on a State health care professional disciplinary board, either as a part of the board's operation or as an individual, or under contract with the Board to provide such services as a result of any act, omission, proceeding, conduct or decision related to the duties of such individual undertaken or performed in good faith and within the scope of the function of the board.

(5) **INFORMATION AND DATA.**—A State referred to in subsection (a), acting through the appropriate State health authority, shall collect, analyze and provide the Agency with information and data concerning the staffing, revenue, disciplinary actions, expenditures, and case-loads of the State health care professional disciplinary boards, and concerning the use of continuing medical education programs in the State, in order to demonstrate to the Agency that such State boards meet the performance criteria established under paragraph (1).

(6) **REQUIREMENT OF CONTINUING EDUCATION.**—The performance criteria established under paragraph (1) shall provide that State health care professional disciplinary boards require a physician who is disciplined by such boards to complete a minimum number of continuing education courses for which he or she has been adjudged deficient if the Board determines such courses are appropriate and available. In areas in which the Board determines that the physician's knowledge is deficient, the Board may require enrollment in treatment programs for substance abuse problems.

(c) **ALTERNATIVE PROGRAMS.**—

(1) **IN LIEU OF PERFORMANCE CRITERIA.**—A State referred to in subsection (a) shall be considered to be in compliance with the performance criteria established under subsection (b)(1) if the Agency determines that the State has in effect a program that the Agency finds to be at least as effective in reducing the incidence of disciplinary violations as compliance of the State with the performance criteria established under subsection (b)(1).

(2) **REGULATIONS.**—Not later than 4 years after the date on which the first model quality improvement State is designated under section 301, the Secretary, based on the recommendations of the Agency, shall promulgate regulations establishing criteria under which the Secretary will evaluate the effectiveness of a State program of the type referred to in paragraph (1). Such regulations shall include—

(A) requirements that health care providers within the State implement risk management systems;

(B) requirements that quality assurance systems be established in the State, to be administered by the State or by professional medical societies or associations, that review the quality of care rendered by health care professionals in the State; and

(C) requirements that the State review and evaluate programs for the promulgation of professional guidelines in areas of medical practice in which the risk of negligence is greatest.

**SEC. 303. AMENDMENT TO SOCIAL SECURITY ACT.**

Section 1396b of the Social Security Act (42 U.S.C. 1396b) (as amended by section 104) is further amended by adding at the end thereof the following new subsection:

“(x) Notwithstanding any other provision of this title, with respect to a State with an

application approved under section 301(b) of the Health Care Injury Compensation and Quality Improvement Act, such State shall receive, in addition to the Federal medical assistance percentage determined for such State, an additional .1 percent for each calendar quarter in which such State qualifies for such additional percentage under section 301 of such Act.”

**TITLE IV—COMMUNITY HEALTH CENTERS**  
**SEC. 401. COMMUNITY AND MIGRANT HEALTH CENTERS RISK RETENTION GROUP.**

(a) **IN GENERAL.**—Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end thereof the following new section:

**“SEC. 330A. RISK RETENTION GROUP.**

“(a) **GRANT.**—The Secretary shall make a grant to an entity that represents recipients of assistance under section 329 and 330 to enable such entity to develop a business plan as described in subsection (b)(2) and establish a nationwide risk retention group as provided for in Liability Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.), and that meets the requirements of this section.

“(b) **BUSINESS PLAN AND FORMATION.**—

“(1) **DEVELOPMENT AND ESTABLISHMENT.**—

“(A) **IN GENERAL.**—Not later than September 30, 1992, the grantee shall develop a business plan as described in paragraph (2) and have established a risk retention group that meets the requirements of section 2(4) of the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901(2)(4)).

“(B) **ESTABLISHMENT.**—In establishing the risk retention group under subparagraph (A), the grantee shall take all steps, in accordance with this subsection, necessary to enable such group to be prepared to issue insurance policies under this section.

“(2) **BUSINESS PLAN.**—The grantee shall develop a plan for the operation of the risk retention group that shall include all actuarial reports and studies conducted with respect to the formation, capitalization, and operation of the group.

“(3) **STRUCTURE, RIGHTS, AND DUTIES OF THE RISK RETENTION GROUP.**—

“(A) **BOARD OF DIRECTORS.**—

“(1) **APPOINTMENT.**—The board of directors of the risk retention group shall consist of 12 members to be appointed by the recipient of the grant under subsection (a), and approved as provided in clause (ii).

“(ii) **APPROVAL.**—The initial members appointed under clause (i) shall be approved by the Secretary, and shall serve for a term as provided in clause (iii). All subsequent members shall be subject to the approval of the members of the risk retention group.

“(iii) **TERMS.**—The recipient of the grant under subsection (a) shall appoint the members of the board under clause (i) as follows:

“(I) Four members shall be appointed for an initial term of 1 year.

“(II) Four members shall be appointed for an initial term of 2 years.

“(III) Four members shall be appointed for an initial term of 3 years.

Members serving terms other than initial terms shall serve for 3 years. Members may serve successive terms.

“(iv) **EXECUTIVE DIRECTOR.**—The Executive Director of the board shall be elected by the members of the board, and shall serve at the pleasure of such members.

“(v) **VACANCIES.**—Vacancies on the board shall be filled through a vote of the remaining members of the board, subject to the approval of the members of the risk retention group.

“(B) **BYLAWS.**—The board shall develop the bylaws of the risk retention group that shall

be subject to the disapproval of the Secretary. Any changes that the board desires to make in such bylaws shall also be subject to the disapproval of the Secretary. The Secretary shall provide the board with 90 days notice of the Secretary's intent to disapprove a bylaw.

“(C) **ADMINISTRATION.**—The risk retention group may negotiate with other entities for the purposes of managing and administering the risk retention group, and for purposes of obtaining reinsurance.

“(D) **PROVISION OF INSURANCE.**—The risk retention group shall provide professional liability insurance, and other types of profitable insurance approved for issuance by the Secretary, to migrant and community health centers that receive assistance under sections 329 and 330 and that meet the requirements of subparagraph (E).

“(E) **PARTICIPANTS.**—

“(i) **IN GENERAL.**—Except as provided in clause (ii), all community and migrant health centers that receive assistance under section 329 and 330 shall become members in the risk retention group established under this section and shall purchase the professional liability insurance that is offered by such group for such centers and any health care staff or personnel employed by such centers or under contract with such centers. All professional staff members of such centers shall be eligible to obtain the insurance offered by such group.

“(ii) **EXCEPTIONS.**—

“(I) **GOOD CAUSE.**—The Secretary may, on a showing of good cause by the center, exempt such center from the requirements of clause (i).

“(II) **FAILURE TO MEET CONDITIONS.**—If the risk retention group determines that a center is not complying with the established underwriting standards, such group may decline to provide insurance to such center. The risk retention group shall provide a center with 60 days notice of a decision by the group not to provide insurance to such center.

“(III) **HEARING.**—Prior to the Secretary granting an exemption or severance as requested in an application submitted under subclause (I), the Secretary shall require that the applicant provide evidence concerning its application and shall afford the risk retention group an opportunity to address the allegations contained in such application. The Secretary may grant the center temporary relief under this subparagraph without a hearing in emergency situations.

“(F) **APPLICABILITY OF INSURANCE TO CLAIMS.**—Insurance provided by the risk retention group under this section shall apply to all claims filed against a covered community or migrant health center after the initiation of insurance coverage by the risk retention group, including acts that occur prior to coverage under this section that are not covered by other insurance.

“(c) **SUBMISSION OF BUSINESS PLAN TO OUTSIDE EXPERTS.**—After the development of the business plan and the establishment of the risk retention group as required under subsection (b), the risk retention group shall enter into a contract with individuals or entities who are insurance, financing, and business experts to require such individuals or entities to analyze and audit the group. Such individuals and entities shall provide the group with an evaluation of such plan and group.

“(d) **SUBMISSION OF PLAN AND EVALUATION.**—

“(1) **IN GENERAL.**—The risk retention group shall submit to the Secretary the business

plan required under subsection (b) and the evaluation completed under subsection (c) to the Secretary.

"(2) DETERMINATION BY SECRETARY.—Not later than September 30, 1992, the Secretary shall make a determination, based on the plan and evaluation submitted under paragraph (1), of whether the operation of the risk retention group result in an increase in the amount of funds available for use by community and migrant health centers and other entities that receive assistance under sections 329 and 330 in the 2 year period ending on September 30, 1994.

"(3) IMPLEMENTATION.—If the Secretary makes an affirmative determination under paragraph (1), the Secretary shall permit the implementation of the plan and the operation of the risk retention group as provided for in this section, and shall capitalize such group as provided for in subsection (e)(2).

"(e) FUNDING.—  
 "(1) CAPITALIZATION.—There are authorized to be appropriated to carry out this section, \$40,000,000 for each of the fiscal years 1992 and 1993. Amounts appropriated under this paragraph may only be made available if the Secretary makes an affirmative determination under subsection (d)(2).

"(2) REMAINING ASSETS.—All assets of the risk retention group that remain after the dissolution of such group shall become the property of the Secretary who shall use such assets to pay the remaining expenses of the group."

(b) CONFORMING AMENDMENTS.—  
 (1) Section 329(h)(1)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by striking "1991" and inserting "1993".

(2) Section 330(g)(2)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by inserting ", and such sums as may be necessary for fiscal year 1992" after "1991".

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary for the establishment and operation of the Council of Advisors.

**TITLE VI—CONSTRUCTION AND MISCELLANEOUS PROVISIONS**

**SEC. 601. CONSTRUCTION.**

Nothing in this Act shall be construed to—  
 (1) preempt State choice-of-law rules with respect to claims brought by a foreign nation of a citizen of a foreign nation;

(2) to affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(3) to prevent a State from enacting, adopting, or otherwise having in effect more comprehensive or additional health care liability reforms than those required under this Act.

**SEC. 602. SEVERABILITY.**

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

**SEC. 603. COMPLIANCE.**

Except as otherwise specifically provided, not later than 1 year after the date of enactment of this Act, a State shall enact, adopt, or otherwise comply with the provisions of this Act.

**SECTION-BY-SECTION ANALYSIS OF THE AMERICAN HEALTH QUALITY ACT OF 1991**

(Prepared by the Office of Senator Dave Durenberger)

**Purpose:** Improve health care quality; reduce spiraling health care costs; increase access to health care; and ensure fairness for patients.

**Means:** To provide economic incentives through Medicaid bonus funds to promote state alternative dispute resolution (ADR) systems. To assist states in the creation and evaluation of ADR with the expertise of the Agency for Health Care Policy and Research.

To provide comprehensive reform of state tort law that includes all relevant participants in the health care system—providers, professionals, product producers, and employers.

To promote uniformity and to curb excesses in the current state tort systems through federally mandated liability reforms.

To provide economic incentives through Medicaid bonus funds to encourage state-based programs for quality improvement through licensing and disciplinary reforms.

**TITLE I—ALTERNATIVE DISPUTE RESOLUTION SYSTEMS**

States may apply to become ADR States. Up to 10 States may qualify to receive a Medicaid bonus equal to .04% of their federal Medicaid funds each year for two years. The federal Agency for Health Care Policy and Research (AHCPR) will establish minimum criteria for applications consistent with the goals of this bill. After four years, AHCPR will report to Congress on the results of the state-based experiments.

Grant funds will be available for demonstration projects. Provider organizations may apply for grants to develop private ADR programs. There will be data gathering and reporting requirements for all applicants. The applications will receive the expert assistance of the advisory panel in the creation and development of their plans.

**TITLE II—UNIFORM PROVISIONS FOR HEALTH CARE LIABILITY CLAIMS**

The federal government will establish uniform liability provisions to be implemented by state courts. These federal rules include:

*Uniform rules for health care injuries*

Mandatory periodic payments of awards exceeding \$100,000 (replaces lump sum awards); a cap on non-economic damages of \$250,000 or if the state has a lower cap, the state cap will apply; mandatory offsets for damages paid by collateral sources; limitation on attorney contingency fees (25% of the first \$150,000/15% on amounts over \$150,000); joint and several liability for non-economic damages; expedited settlement provisions; uniform statute of limitations (2 years after injury reasonably should have been discovered, but no later than 4 years after date of occurrence, with special provisions for minors); punitive damages awards will be capped at twice amount of compensatory damages. A share of punitive damage awards will be placed in a special trust fund to assist states in the improvement of health care quality programs.

*Special rules for medical products*

Compliance with FDA approval processes are a defense to punitive damage claims for medical products, unless defendant withheld from or misrepresented information to the FDA.

*Special provisions for certain obstetrical cases*

Higher standard of proof required in cases where the physician delivering the baby has

not provided prenatal services prior to delivery.

**TITLE III—UNIFORM PROVISIONS FOR HEALTH CARE INJURY PREVENTION**

States may apply to be Quality Improvement States (QI States). Up to 20 States may qualify to receive a Medicaid bonus of [1%] of their share of federal Medicaid funds in each of the two years of the plan. To qualify for a QI bonus, the state must implement the following: creation of injury prevention programs and consumer representation on state health disciplinary boards. Alternative proposals for risk management and quality assurance programs may also qualify.

**TITLE IV—COMMUNITY HEALTH CENTERS**

Federal assistance for capitalization of a risk retention pool and contingent appropriation for reinsurance. After 5 years, the pool provides coverage from the hearings of the capitalized assets.

*Costs*

Up to \$100 million to fund Title I and Title III plus costs of administration.

\$40 million to capitalize risk retention pool.

Mr. DANFORTH. Mr. President, I am pleased to join my distinguished colleague from Minnesota in introducing this important piece of health care legislation. As usual, the Senator from Minnesota identifies a significant problem in the area of health care and offers a measured, and workable, solution.

It is high time that Congress comes to grips with the serious issue of medical malpractice. For too many years, spurious arguments by the unquestioning defenders of the trial bar have derailed needed malpractice reform. The first, and most heinous, misrepresentation is that the present malpractice system serves the interest of the health care consumer. The present system harms the consumer of health care in at least four different ways: It fails to compensate adequately many of those injured by health care negligence; it overcompensates those who do obtain recovery; it hurts access to health care; and it contributes significantly to the spiraling cost of health care.

Last year, Paul Weiler and a group of researchers at Harvard made what may be a startling finding to consumer advocates here in Washington. The present malpractice system does a terrible job of protecting the consumers of health care from health care negligence. According to Weiler's study of the New York State malpractice system, almost 16 times as many patients suffered an injury from negligence as received compensation from the tort system. In addition, the study found that many if not most of the suits brought were filed by patients who had not suffered from medical negligence. Therefore, the system is an ineffective deterrent to substandard care. It misses those practicing poorly while permitting suits against those practicing well.

In addition, the system overcompensates those who do recover. In 1980, the

average jury award was \$404,726. In 1986, the average had risen to \$1,478,028. These huge awards might not be so bad for society if the costs were not felt by all of us. But, unfortunately, unwarranted and overly generous jury awards contribute to rising liability insurance premiums, and rising premiums contribute to the growing problem of access to health care.

A few figures bear out the terrible impact of the malpractice crisis on access to health care, especially in underserved rural areas. In Missouri, 40 percent of family practitioners stopped delivering babies between 1984 and 1988. Given that two-thirds of obstetrical care in rural areas is provided by family practitioners, the people of my State are traveling far too far to find a doctor willing to deliver their babies. This inaccessibility has a corresponding effect on the availability of prenatal care in those areas.

The impact of the malpractice crisis is not only felt in rural areas. According to the American College of Obstetrics and Gynecology, 12.4 percent of obstetrician-gynecologists nationwide have given up obstetrics due to liability concerns. Twenty-seven percent of obstetricians have given up high risk care.

Physicians specializing in areas besides obstetrics have also responded to concerns about malpractice by limiting their services. Eighty-one percent of general surgeons have eliminated services, 90 percent of neurosurgeons and 59 percent of psychologists have also found it necessary to eliminate parts of their practice due to liability concerns.

In a country where 37 million people have no access to health insurance and where twice that many are underinsured, we should be vigilant in correcting unnecessary deterrents to the practice of medicine. A dysfunctional malpractice system only adds to the problem of access to health care.

How do the systemic problems in our malpractice system exacerbate the lack of access to health care in this country? Primarily, the higher costs of providing services force physicians out of business. The cost of professional liability insurance was the fastest growing component of physician costs in the 1980's. Whereas physician fees rose by 51.9 percent between 1983 and 1988, professional liability insurance rose by 174.1 percent. I received a letter from a State senator in Missouri who also happens to be a doctor, and he told me about his insurance premiums a couple of years ago. His insurance bill for the first 3 months of the year was \$10,687. This works out to be \$178.12 a day. For Missouri, that is steep. These rising costs are the constant reminder of physicians of their vulnerability to lawsuits.

Yet, rising liability insurance costs are not the only reason that physicians are leaving the practice of medicine.

There are plenty of more intangible reasons. For one, doctors don't enjoy the practice as much. Fear of lawsuits places an unnatural strain on the physician-patient relationship. Health professionals wonder if their next patient is going to serve them with a complaint if he or she is dissatisfied with an unavoidable outcome. There would be little cause for our concern if there were an overflow of qualified doctors serving the people of this Nation. Yet, that is far from the case. Most rural areas are in dire need of health professionals. The last thing we need is an ineffective malpractice system driving our doctors from the practice of medicine and driving up the cost of health care for the rest of us.

Our flawed method for adjudicating malpractice cases contributes significantly to the cost of our health care system. In 1984, the American Medical Association estimated the defensive medicine, unnecessary care performed simply to avoid the possibility of a lawsuit, costs this country \$12.1 billion. Seventy percent of physicians order more consultations than are needed. Fifty-four percent schedule more follow up visits, and 28 percent delegate fewer procedures to subordinates. Defensive medicine adds significantly to the already bloated costs of our health care system.

Mr. President, the bill before you takes a measured approach to solving the problems of medical malpractice. Most importantly, it encourages resolving them out of court. That is the most important feature of this piece of legislation. Not only does it offer financial incentives to States for the development of alternative dispute resolution systems. It also places incentives in the law for early settlement of claims that unfortunately have made it to the court system.

The Federal tort reforms in this bill are reasonable approaches to curbing the excesses present in an unrestricted tort system. The feature that I find most attractive is the earmarking of half of the punitive damages awarded in any case to a State disciplinary trust fund. State disciplinary boards provide a good mechanism for rooting out those health professionals practicing substandard medicine.

The bill will also provide needed relief to community health centers which are suffering under the burden of paying enormous amounts for malpractice insurance when few claims are brought against them.

Again, I commend my colleague from Minnesota on a thoughtful piece of legislation, and I am pleased to have participated in the effort to produce this piece of legislation, and I look forward to its passage.

By Mr. REID (for himself and Mr. BRYAN):

S. 1837. A bill to repeal a provision of Federal tort claim law relating to con-

tractor liability for injury or loss of property arising out of atomic weapons testing programs, and for other purposes; to the Committee on the Judiciary.

**RADIATION VICTIMS FAIR TREATMENT ACT**  
 • Mr. REID. Mr. President, I rise today to reintroduce the Radiation Victims Fair Treatment Act.

We all recognize that a grave injustice has been done to the many victims of radiation exposure, and that they have been effectively denied their day in court.

Between 1946 and 1962, approximately 235 atomic tests were conducted by the United States. Until 1985, those who incurred injuries as a result of exposure to radiation caused by these tests could file suit against contractors who participated in the testing program. The contractors were indemnified by the government for the cost of litigations, judgments, and settlements.

The 1985 Defense Authorization Act, however, included a provision, section 1631, which drastically altered the legal rights of these individuals by establishing the United States as the defendant in such suits and providing that these cases fall under the Federal Tort Claims Act [FTCA]. Limiting radiation victims, both civilian and veteran, to suits under FTCA deprives potential plaintiffs of a variety of previously held rights, including the fundamental right to a jury trial.

In addition, because the United States is provided with certain sovereign immunity defenses not available to contractors, judgments on behalf of veteran and civilian claimants against the government are effectively barred. This leaves the vast majority of those exposed to radiation in the atomic weapons testing program with no legal remedy.

In fact, this provision has resulted in the abrupt dismissal of approximately 50 lawsuits that had been filed by atomic veterans—and widows—against various nuclear weapons contractors, including the University of California, Los Alamos and Lawrence Livermore Laboratories, and AT&T. Section 1631 has adversely affected the rights of approximately 220 civilians, former employees—and their widows—at the Nevada Nuclear Test Site, who had filed suit against their former employer, Reynolds Electric & Engineering.

Last year, with 42 cosponsors, I managed to pass in the Senate a provision repealing section 1631. We did this as an amendment to the Defense authorization bill. But a curious thing took place as a result of the conference on that bill. Yes, section 1631 was repealed, but the very next section of the bill reenacted the same language.

This new section of law, section 3141 of the National Defense Authorization Act of fiscal year 1991, is as hideous as its predecessor.

My bill will repeal this new section, restoring to individuals the right to

seek redress in court for acts or omissions by atomic weapons contractors which, in many cases, have resulted in premature death or painful disability.

The Congress came a long way last year in passing the Radiation Exposure Compensation Act which provides compensation for downwinders, onsite participants and uranium miners. However, this does not address the fact that an individual in this country has a fundamental right to be heard in court.

It is unconscionable that we drag our heels on this any further. Some of the radiation victims with unheard claims have died, and many are dying.

This bill does not guarantee compensation, but, rather, reiterates a basic American right. I hope my colleagues will cosponsor this legislation, and I hope that the Senate will once again pass it.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 1837

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL RELATING TO CONTRACTOR LIABILITY FOR INJURY OR LOSS OF PROPERTY ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS.**

(a) REPEAL.—Section 3141 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1837; 42 U.S.C. 2212) is repealed.

(b) RELATIONSHIP TO STATUTES OF LIMITATIONS.—(1) The period beginning on October 19, 1984, and ending on the date of the enactment of this Act shall not be taken into account in computing the period provided in any Federal or State statute of limitations applicable to any civil action for an injury, loss of property, personal injury, or death described in section 1631(a)(1) of Public Law 98-525 (98 Stat. 2646) or section 3141(b)(1) of Public Law 101-510 (104 Stat. 1837; 42 U.S.C. 2212(b)(1)).

(2) In the case of any civil action referred to in paragraph (1) which was filed before October 19, 1984, and was subsequently dismissed pursuant to section 1631 of Public Law 98-525 or section 3141 of Public Law 101-510, the period beginning on the date of the initial filing of such action and ending on the date of the enactment of this Act shall not be taken into account in computing the period provided in any Federal or State statute of limitations applicable to such civil actions.

(3) If the period provided in any Federal or State statute of limitations applicable to a civil action referred to in paragraph (1) expires within the one-year period beginning on the date of the enactment of this Act, the action shall not be barred by such statute, but shall be forever barred if not commenced within one year after such date.♦

By Mr. PRYOR (for himself and Mr. MITCHELL):

S. 1838. A bill to amend title XVIII of the Social Security Act to provide for a limitation on use of claim sampling to deny claims or recover overpay-

ments under Medicare; to the Committee on Finance.

LIMITATIONS ON USE OF CLAIM SAMPLING IN DETERMINATIONS UNDER MEDICARE

Mr. PRYOR. Mr. President, a few weeks ago, the National Association for Home Care informed me about a problem in claims auditing that some Medicare home health care providers have encountered that could potentially cause a number of agencies to shut their doors. I am joined today by the majority leader in introducing legislation to alleviate this problem.

There are Medicare fiscal intermediaries who, when they audit a home health agency, look at only a sample of the agency's claims. The problem arises when the results of that very limited audit are then extrapolated and applied to all of the agency's claims. As a result, any errors in the sample are exponentially multiplied, often with serious consequences for the home health agency.

These so-called sampling techniques are not specifically authorized by current law. Rather, the law refers to individual coverage determinations, based on the principle that each patient under the Medicare home health benefit presents unique health care needs. HCFA, unfortunately, has chosen to ignore this principle through the use of its sampling audits. Consequently, some agencies have been driven out of business.

I have heard from a number of home health providers in my home State of Arkansas, who wrote to express their concern about this policy. A home health nurse in Little Rock told me that a sampling audit could devastate her agency. Ultimately, sampling audits affect Medicare beneficiaries' access to needed services—services to which they are entitled. Because Arkansas has one of the highest proportions of elderly citizens of all the 50 States, access to Medicare services is among one of my most important concerns. This bill would help to ensure that this is protected.

The legislation that Senator MITCHELL and I are introducing would bar HCFA from doing sampling audits except under strictly defined circumstances. I urge my colleagues to join us in support of this bill.

Mr. MITCHELL. Mr. President, I rise today to join my distinguished colleague Senator PRYOR, the chairman of the Senate Special Committee on Aging, in the introduction of legislation which would provide for a limitation on use of claim sampling to deny claims or recover overpayments under Medicare.

Using this technique, Medicare claims can be retroactively denied and repayment demanded without having been individually reviewed by the Medicare intermediary. The Health Care Financing Administration has used the practice of claims sampling to audit

Medicare payments to providers, including home health agencies.

Mr. Chairman, HFCA's claims sampling auditing technique is but the latest twist on an ongoing attempt to deny payment for Medicare benefits, in particular, home health benefits, to which Medicare beneficiaries are entitled under law.

As a member of the Senate Finance Subcommittee on Medicare and Long-Term Care and as the former chairman of the Health Subcommittee, I have long been concerned about attempts to unfairly deny reimbursement for the Medicare home health benefit.

In 1987, I joined with Senator BRADLEY to introduce the Medicare Home Health Services Improvement Act of 1987. Included in that legislation were a number of provisions intended to ensure that Medicare beneficiaries were not denied reimbursement for home health benefits to which they were entitled. At that time, the denial rate for home health benefits under Medicare had reached 30 percent in my home State of Maine—the highest rate of denials in the Nation.

HCFA's Medicare intermediaries have used sampling techniques to audit Medicare claims, including home health agency claims. Intermediaries audit a small percentage of the agency's claims in lieu of auditing all the claims. Because the results of the sampling audit are then applied to the agency as a whole, any errors in the audit are exponentially multiplied, which can cause serious cash flow problems for the home health agency.

Sampling has proven to have a high risk of error. A single claim denial can result in tens of thousands of dollars of payment disallowances. The appeals process is an inadequate protection against erroneous denials since it can take several years to resolve a single claim denial. In the meantime, a home health agency is expected to reimburse the Medicare carrier for those claims which have been denied. This could result in bankruptcy for these agencies.

Current law does not authorize the use of sampling techniques in claims coverage audits. Instead, the law continually references requirements for individual coverage determinations. In spite of this, HCFA continues to use sampling techniques that have ignored these requirements, leading to denials of legitimate claims and serious cash flow problems for Medicare providers.

At the foundation of the coverage determination process is the recognition that individualized decisions are necessary because each Medicare patient presents unique health care needs. Sampling is in direct conflict with that principle.

The legislation Senator PRYOR and I are introducing today is similar to legislation introduced in the House of Representatives by Representative RINALDO, ranking member of the House

Aging Committee. Our bill would prohibit the use of claim sampling to deny claims or recover overpayments under Medicare except in cases where fraud has been determined. In cases of proven Medicare fraud, claim sampling may be used for the purpose of assessing civil monetary penalties.

According to the Maine Home Care Alliance, while Maine home care agencies have not yet experienced the claims sampling audits, they anticipate that it may become a problem in Maine if it is allowed to continue in other regions of the country, as HCFA is using it as a way to deny payments and therefore reduce the costs of the Medicare home health benefit.

It is important that elderly and disabled Medicare beneficiaries receive the benefits to which they are entitled. In particular, the Medicare home health benefit can mean the difference between lack of care and good home care. It can delay or prevent expensive nursing home placement for many elderly persons. Clearly, the Health Care Financing Administration has a responsibility to assure that Medicare benefits are not unfairly denied.

The legislation Senator PRYOR and I are introducing today is intended to protect access to important health care benefits under the Medicare Program. I urge my colleagues to support this important effort.

By Mr. McCONNELL:

S. 1839. A bill to prevent the disclosure of confidential information in the Senate advice and consent process; to the Committee on the Judiciary.

PREVENTING THE DISCLOSURE OF CONFIDENTIAL INFORMATION IN THE SENATE ADVICE AND CONSENT PROCESS

• Mr. McCONNELL. Mr. President, millions of Americans viewed last weekend's hearings on the nomination of Clarence Thomas, and the events leading up to them, with a profound sense of disgust. These sentiments have been echoed by many Senators.

Aside from the bad impression, the repercussions from this latest episode where confidential documents were leaked may have serious negative effects on future nominations and investigations.

Whoever leaked the confidential FBI documents established a dangerous precedent in which anonymous character assassination can be an effective means of short circuiting the nomination process.

They sent a message to those whom the FBI seeks to interview in conducting background checks that any assurance of confidentiality is tenuous, at best. From now on, people know that they speak to FBI or Senate investigators at their own risk.

FBI agents cannot, with certainty, guarantee that someone's comments will not be leaked at some point by a Senator, staffer, or other official.

Mr. President, how can we expect people to provide the FBI with sensitive information knowing that they may turn up on the front page of every newspaper in the country, national public radio, or the evening news? We can't.

This effort to sabotage the nomination of Clarence Thomas damaged the integrity and esteem of the U.S. Senate. It seriously undercuts the credibility of the FBI.

We must not let this gross breach of ethics, Senate rules, and the public trust, go unpunished. We must take action to prevent such leaks in the future.

Of the two principal laws governing the disclosure of classified documents, Congress has exempted itself from one, the Privacy Act, and so watered down the unauthorized disclosure law that it is nearly useless.

The legislative and the executive branch have been guilty of leaking classified documents in shortsighted efforts to further, or destroy, various nominees or causes. We should address this subversion of due process.

My bill will hold the executive and legislative branches to the same standard: Any unauthorized or unlawful disclosure of an FBI background investigation report to any unauthorized party can result in criminal penalties, including a prison term and a fine. The same penalties will apply to anyone who knowingly solicits or receives such information. It would also make the Privacy Act applicable to the Senate with regard to FBI background investigations relating to Presidential nominations for Federal office.

Many of my colleagues on both sides of the aisle expressed their fury at the leak which impugned the character of Clarence Thomas and forever changed the life of Anita Hill. There is bipartisan belief that selective leaking of classified documents throughout the Government has gotten out of hand.

Mr. President, let us work together to restore integrity to our system of confidential and classified information. In the process, we may restore some of the esteem of the U.S. Senate.●

By Mr. GLENN:

S.J. Res. 216. Joint resolution requiring a report under the Nuclear Non-Proliferation Act of 1978 on U.S. efforts to strengthen safeguards of the International Atomic Energy Agency; to the Committee on Foreign Relations.

INTERNATIONAL NUCLEAR SAFEGUARDS

• Mr. GLENN. Mr. President, I am pleased to join today with my colleague, Congressman PETE STARK, in introducing a joint resolution identifying specific improvements that are urgently needed in the implementation of international safeguards over nuclear facilities and materials around the world. PETE has been a leader in the House of Representatives in finding

new ways to prevent nuclear proliferation and I am delighted to team up with him in proposing new ways to strengthen the IAEA system. Our joint resolution identifies 21 reforms that need to be pursued by the United States and the IAEA to accomplish that goal.

The problem we are addressing today is not a new one. Sixteen years ago—in my first year in Congress—I stated on the floor of the Senate that the international safeguards implemented under the Nuclear Non-Proliferation Treaty were “\* \* \* inadequate to prevent diversion of nuclear materials for weapons purposes and to maintain physical security against terrorism.”

Since that time, I have worked hard both to improve those safeguards and to demonstrate American leadership in the world community by establishing strong sanctions against countries and companies that encourage the global spread of nuclear weapons.

In 1977, I authored an amendment to the Foreign Assistance Act which established severe penalties against international transfers of sensitive nuclear technology to countries that do not have safeguards over all their nuclear facilities. A year later, I was author of the Nuclear Non-Proliferation Act, which tightened U.S. Nuclear export policy and required that all of America's foreign nuclear customers must have full-scope IAEA safeguards.

While it is true that safeguards alone cannot guarantee that a country will not acquire a bomb, an improved system of safeguards backed by tough international sanctions can indeed help to reduce that risk. Unfortunately, governments are often slow to respond to new threats to their security and many proposed reforms have gone unheeded.

In 1981, for example—after the Israeli bombing of the Osirak nuclear reactor in 1981—I submitted a Senate resolution—Senate Resolution 179, which passed by a vote of 88-0—identifying a series of recommendations for strengthening the IAEA safeguards regime, which included: Expanding the scope of safeguards to undeclared nuclear facilities, increasing the frequency of IAEA inspections, eliminating the use of highly enriched uranium in research reactors, publishing IAEA inspection reports, and upgrading surveillance and containment measures of the IAEA. Unfortunately, the Reagan administration could just never bring itself to listen to congressional advice on nonproliferation issues. If these proposals were taken seriously, however, we may well have averted the crisis of confidence in international safeguards we are facing today thanks to Iraq.

So the joint resolution that PETE STARK and I are introducing today builds on a long history of congressional concerns about certain weaknesses in the IAEA safeguards system.

In our view, we just cannot afford to postpone the necessary reforms any longer, including those I identified a decade ago as essential for strengthening international safeguards.

The need for action is obvious. First, Saddam Hussein sent a wake up call to the international community this year about the vulnerabilities of international safeguards in a nation determined to acquire nuclear weapons. In this case, the violator was a nation that was an original signatory of the Nuclear Non-Proliferation Treaty [NPT] and that had formally agreed to IAEA safeguards over the full scope of its nuclear program. Saddam showed the world how it was possible—indeed, not even that difficult—to violate safeguards without timely detection by the IAEA.

Our intention, however, is not simply to criticize the IAEA but to strengthen it so that it can perform duties that must be performed to prevent future nuclear wars or terrorism. Although Saddam paid a heavy price for his actions, Iraq is surely not the only country in the world today with nuclear weapons aspirations. Challenge No. 1 is thus to address specific weaknesses in the system of international safeguards, and enhance the ability of the IAEA to detect violations—and to detect them in time for the international community to oppose the actual development and use of the bomb.

A second major challenge to international security arises from the growing commercial uses worldwide of bomb-usable nuclear materials. In the past, one of the most difficult technical barriers to acquiring the bomb was the extreme difficulty of acquiring sufficient amounts of nuclear materials to make bombs. Now, however, some nations are already producing ton quantities of these materials—in a world of imperfect safeguards, such activities will inevitably increase the risks both of nuclear terrorism and proliferation, as significant amounts of this material will increasingly appear on the black market.

Challenge No. 2 is thus to put the safeguards horse before the commercial cart—we need to do what we can to defer large-scale commercial uses of this dangerous material until safeguards are developed that can reliably protect against illicit uses. If such safeguards cannot be developed, we believe America should press for a global ban on such activities.

Challenge No. 3 is to marshal the political will both here and abroad to continue the search for new measures to halt nuclear proliferation. Our worst enemy of all is complacency. Before the bloody war in Iraq, I always used to hear people say, my eyes glaze over at the mere mention of the word, "proliferation." Now that the world's attention is focused on this issue, the time is ripe for action by the United

States and supporters in the world community to strengthen the laws and institutions that for 35 years have helped to reduce the risk of nuclear proliferation and, indeed, nuclear war.

Some might say that the proposals we offer today amount to just another case of American unilateralism. We prefer to think of them as just another example of American leadership. With partnership on Capitol Hill, cooperation between the Congress and the Executive, and collective international action—there are virtually no limits on the improvements that can be made in global efforts to halt the proliferation of all weapons of mass destruction. Let us get to work today on that new agenda.●

#### ADDITIONAL COSPONSORS

S. 551

At the request of Mr. BOND, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 551, a bill to encourage States to establish Parents as Teachers programs.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 891

At the request of Mr. MACK, the names of the Senator from Tennessee [Mr. GORE], the Senator from Indiana [Mr. LUGAR], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 891, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 1179

At the request of Mr. JOHNSTON, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 1179, a bill to stimulate the production of geologic-map information in the United States through the cooperation of Federal, State, and academic participants.

S. 1257

At the request of Mr. BOREN, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1261

At the request of Mr. DOLE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1441

At the request of Mr. COCHRAN, the name of the Senator from Illinois [Mr.

SIMON] was added as a cosponsor of S. 1441, a bill to provide disaster assistance to agricultural producers, and for other purposes.

S. 1533

At the request of Mr. BRYAN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1533, a bill to establish a statute of limitations for private rights of action arising from a violation of the Securities Exchange Act of 1934.

S. 1600

At the request of Mr. PRYOR, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1600, a bill to amend title 39, United States Code, to provide for public comment on small post office closings, and for other purposes.

S. 1646

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 1646, a bill to amend the Harmonized Tariff Schedule of the United States to clarify the classification of certain motor vehicles.

S. 1741

At the request of Mr. ROBB, the names of the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1741, a bill to provide for approval of a license for telephone communications between the United States and Vietnam.

S. 1776

At the request of Mr. KENNEDY, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 1776, a bill to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants.

S. 1813

At the request of Mr. DOLE, the names of the Senator from Indiana [Mr. LUGAR], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1813, a bill to amend the Higher Education Act of 1965 to improve access to post secondary education for students with disabilities.

#### SENATE JOINT RESOLUTION 61

At the request of Mr. FORD, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Missouri [Mr. BOND], the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Tennessee [Mr. GORE], the Senator from Oregon [Mr. HATFIELD], the Senator from Alabama [Mr. HEFLIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Ohio [Mr. METZENBAUM], the Senator from Georgia [Mr. NUNN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Arkansas [Mr. PRYOR], the Senator from California [Mr. SEYMOUR], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of Senate Joint Resolution 61, a joint

resolution to designate June 1, 1992, as "Kentucky Bicentennial Day."

## SENATE JOINT RESOLUTION 157

At the request of Mr. ROCKEFELLER, the names of the Senator from Washington [Mr. ADAMS], the Senator from Delaware [Mr. ROTH], the Senator from Nevada [Mr. REID], the Senator from South Dakota [Mr. PRESSLER], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Idaho [Mr. SYMMS], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 157, a joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week."

## SENATE JOINT RESOLUTION 160

At the request of Mr. KERRY, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Joint Resolution 160, a joint resolution designating the week beginning October 20, 1991, as "World Population Awareness Week."

## SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the names of the Senator from Tennessee [Mr. GORE], the Senator from Arizona [Mr. DECONCINI], the Senator from Indiana [Mr. COATS], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992, as "National Women in Agriculture Day."

## SENATE JOINT RESOLUTION 188

At the request of Mr. LAUTENBERG, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of Senate Joint Resolution 188, a joint resolution designating November 1991, as "National Red Ribbon Month."

## SENATE JOINT RESOLUTION 194

At the request of Mr. GRAMM, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Joint Resolution 194, a joint resolution to designate 1992 as the "Year of the Gulf of Mexico."

## SENATE JOINT RESOLUTION 206

At the request of Mr. RIEGLE, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Idaho [Mr. SYMMS], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Joint Resolution 206, a joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day."

## SENATE JOINT RESOLUTION 214

At the request of Mr. RIEGLE, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 214, a joint resolution to designate May 16, 1992, as "National Awareness Week for Life-Saving Techniques."

## SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the name of the Senator from Georgia [Mr.

NUNN] was added as a cosponsor of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

## SENATE CONCURRENT RESOLUTION 68

At the request of Mr. HATFIELD, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of Senate Concurrent Resolution 68, a concurrent resolution expressing the sense of the Congress relating to encouraging the use of paid leave by working parents for the purpose of attending parent-teacher conferences.

## SENATE CONCURRENT RESOLUTION 69

At the request of Mr. CRANSTON, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Concurrent Resolution 69, a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

## SENATE CONCURRENT RESOLUTION 70—RELATIVE TO PROTECTION OF THE AFRICAN ELEPHANT

Mr. SANFORD (for himself, Mr. KERRY, Mr. LEVIN, Mr. KENNEDY, Mr. BUMPERS, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. LEAHY, and Mr. WELLSTONE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

## S. CON. RES. 70

Whereas approximately 112 countries are parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (with appendices, done at Washington on March 3, 1973);

Whereas the parties of the Convention meet biennially to review the status of species in danger of extinction and to establish trade restrictions with respect to endangered species;

Whereas species that are determined to be in danger of extinction and affected by trade are listed on Appendix I of the Convention;

Whereas, a listing of a species on Appendix I of the Convention calls for an end to all international commercial trade of the listed species and products made with the listed species;

Whereas during the 1980's, a serious problem developed with respect to the poaching of African elephants for ivory, and such poaching led to a drastic decline in the elephant population in many range countries;

Whereas, in 1989, the parties to the Convention agreed to halt the international commercial trade of elephants and elephant products by listing the African elephant on Appendix I of the Convention until such time as reliable conservation and ivory control methods are established;

Whereas as a result of the international trade restrictions, poaching has declined, but it has not yet been eliminated;

Whereas there is hope that, as a result of the trade restrictions, the size of the African elephant population will recover;

Whereas it is not yet clear that the international network of illegal trade of ivory has been dismantled;

Whereas several African countries are seeking to reopen the trade of ivory;

Whereas, as of the date of this resolution, no appropriate reliable conservation and

ivory control methods have been proven to exist;

Whereas the period of time between the date of this resolution and the next conference of the parties of the Convention in March of 1992 is insufficient for the completion of adequate studies of any new proposals relating to the trade of ivory; and

Whereas without great advances in ivory trade control and widespread population recovery of African elephants across Africa, the reopening of the commercial trade of elephant ivory would jeopardize the African elephant, as there is a very substantial risk that an illegal ivory trade market could be reestablished: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of the Congress that the United States should continue to support the full protection of the African elephant through the unqualified listing of all populations of the African elephant on Appendix I of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (with appendices, done at Washington on March 3, 1973).

Mr. SANFORD. Mr. President, I rise today, the second anniversary of the agreement to end the international elephant ivory trade, to submit a concurrent resolution calling for the United States to maintain its support for the protection of the African elephant.

The American public and my colleagues in the Senate are likely all familiar with the drastic decline of the African elephant during the last two decades. In 1979, there were an estimated 1,300,000 elephants in Africa. Ten years later, only 600,000, less than half remained. Illegal ivory poaching was the cause of the majority of these deaths.

A system of "ivory trade controls" had been established, but, clearly, it was not working. Two thousand elephants were being killed each week, and the future of the African elephant was in doubt.

Government leaders, wildlife management experts, and many concerned citizens began a concerted effort to protect the African elephant. Here in America, in 1988, Congress passed the African Elephant Conservation Act, which bolstered the efforts of African countries to protect their elephant populations. In June 1989, President Bush banned ivory imports into the United States. These were steps in the right direction, but more had to be done.

Many people argued that a complete ban on international ivory trade was the best and only way to protect the African elephant. Two years ago today, on October 17, 1989, the delegates of the parties to the Convention on International Trade in Endangered Species of Flora and Fauna [CITES], during their biennial meeting, voted in favor of an international ban on elephant ivory trade by placing the African elephant on the CITES appendix I, which lists those species that are threatened with extinction by trade.

As a result of the CITES trade ban, poaching has declined, the price for

ivory has gone down, and there is hope that the African elephant population will recover.

Despite this encouraging news, however, we must not assume that the African elephant is no longer in danger. Although the ivory trade ban has been in effect for less than 2 years—barely enough time for an African elephant to be conceived and born—there is already a move afoot to reopen the ivory trade.

Several countries in southern Africa hope to convince the parties of CITES, at their next meeting in Japan in March 1992, to allow limited ivory trade from their countries. A few of these African nations are even working to establish a sort of ivory cartel.

Mr. President, due to the very substantial risk of reestablishing the illegal ivory trade market, I believe it would be a very serious mistake to reopen even limited ivory trade at this time.

The idea that limited ivory trade will not affect any increase in poaching is only theory. Our past experiences show us that the ivory trade—and poaching—stretch across national boundaries. Ivory smuggling was rampant before the current ban, and the reopening of limited trade would serve to rekindle the widespread poaching and smuggling problems.

We still do not have adequate methods for controlling the flow of ivory across national boundaries, and, therefore, we must not take the risk of reopening the trade and simply hoping for the best. Many countries in central and northern Africa are working hard to protect their elephants, and they do not want to put their elephants at risk by reopening the ivory trade. By allowing trade from a few of the southern African countries, or even just one, the market for ivory, and the poaching of elephants, will likely return to all African countries. The African elephant has not yet recovered from the many years of widespread poaching, and we must not put it in jeopardy again.

Mr. President, I am not arguing for banning ivory trade forevermore. Within a few years, we might have in place a real ivory trade control system. We might have adequate conservation measures for the elephant in all parts of Africa. The international network of illegal ivory trade might have been dismantled.

However, today, we do not have a proven system of ivory trade controls; conservation measures for the African elephant have improved, but they are still inadequate in many countries; and the poachers and illegal ivory traders are just hiding in the shadows, waiting for limited trade to begin anew.

Two years ago, when the original ban on ivory trade was debated, the United States, leadership was critical to achieving a vote in favor of the ban. As new efforts are made to open up limited trade, we must not let our support for the African elephant wane.

Our resolution calls on the United States to maintain its support for the protection of the African elephant by supporting the CITES appendix I listing of all populations of the African elephant. I strongly believe that this stance is necessary to protect the future of this great mammal.

Mr. President, I urge my colleagues to join me in supporting this important legislation.

#### SENATE CONCURRENT RESOLUTION 71—RELATIVE TO THE SITUATION IN HAITI

Mr. MACK submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

##### S. CON. RES. 71

Whereas the people of Haiti have long suffered under the arbitrary rule of dictatorship rather than the democratic rule of law;

Whereas in 1986, Haitians from all sectors of society showed great courage in joining together to oust President-for-Life Jean Claude Duvalier;

Whereas the people of Haiti have repeatedly manifested their aspirations for democracy and a constitutional government and for equitable economic development, as outlined in their Constitution ratified on March 19, 1978;

Whereas the 1987 presidential election was canceled due to widespread violence on the day of the election;

Whereas the Haitian people participated in a second internationally supervised election on December 16, 1990, and elected President Jean-Bertrand Aristide by almost 70 percent of the vote in an election that was recognized by international observations as free, fair, and open;

Whereas elements of the military on September 30, 1991, launched an armed attack against President Aristide and the people of Haiti;

Whereas President Aristide was forced to leave Haiti, and a military junta has seized power; and

Whereas since President Aristide's departure, military forces loyal to the junta have reportedly engaged in the widespread murder of Haitian citizens and armed intimidation of the Haitian legislature: Now, therefore, be it

*Resolved by the House of Representatives (the Senate Concurring), That the Congress—*

(1) strongly condemns the unconstitutional seizure of power by the military junta in Haiti, its abridgement of civil and political rights for Haitian citizens, and its blatant disregard for the Haitian Constitution and international law;

(2) supports the Bush Administration's refusal to recognize the coup led by mutinous soldiers, its suspension of economic assistance to Haiti until President Aristide's government has been restored, and its diplomatic efforts to restore the legitimately elected government of President Aristide;

(3) strongly supports the Organization of American States' efforts to negotiate an end to the military seizure of power and the murder and mayhem that has followed;

(4) calls upon the Attorney General—

(A) to suspend all deportation and exclusion proceedings for Haitians in the United States pending a resolution of the deep political and military crisis in Haiti, as called for

by the Inter-American Commission on Human Rights; and

(B) to designate Haiti under section 244A(b)(1) of the Immigration and Nationality Act (relating to temporary protected status);

(5) calls upon the United States Coast Guard to suspend the interdiction of Haitian boat people during this period in which basic human rights are being violated;

(6) calls upon the Secretary of State, in consultation with the Attorney General to review the policy of interdiction of Haitian boat people to ensure the policy's fairness to the Haitian people; and

(7) calls upon the Aristide government, upon its restoration, to respect and promote the human rights of all Haitian citizens.

• Mr. MACK. Mr. President, the recent violent military coup in Haiti has robbed Haitians of their freedom. Until democracy and basic human rights are restored in that country, we cannot, in good conscience, condone the deportation and interdiction of Haitians.

In light of this, I am introducing legislation which would: First, call upon the Attorney General to suspend deportation and exclusion proceedings for Haitians in the United States pending resolution of the crisis in Haiti; second, call upon the Attorney General to grant Haitians temporary protected status; third, call upon the Coast Guard to suspend the interdiction of Haitian boat people during this period in which basic human rights are being violated; and fourth, call for the Secretary of State, in consultation with the Attorney General, to ensure the policy's fairness to the Haitian people.

It is morally wrong to embrace a policy that forces Haitians back to their island to face certain retribution and persecution while the military remains in power. We cannot be accomplices to the crimes of the military by forcing Haitians to return to the island.

We must act now to protect against more people being killed at random on the streets by a brutal military dictatorship.

Haitians have been terrorized under dictatorship after dictatorship for generation after generation. It's time we give Haitians the same treatment as others who flee a well-founded fear of persecution. They deserve to live in freedom—not under a military junta which rules with raw force.●

#### SENATE RESOLUTION 199—CALLING FOR AN INVESTIGATION OF UNAUTHORIZED DISCLOSURE OF A CONFIDENTIAL SENATE COMMITTEE REPORT

Mr. BROWN (for himself and Mr. BOND) submitted the following resolution; which was referred to the Committee on Rules and Administration:

##### S. RES. 199

Whereas Article II, section 2 of the Constitution requires the President to nominate, with the advice and consent of the Senate, Justices of the Supreme Court;

Whereas in carrying out its constitutional responsibility to advise the President, the

Senate wishes to encourage appointment of the most competent individuals to serve as Supreme Court Justices;

Whereas the Senate of the United States wishes to advise the President to confirm or not confirm Presidential nominees to the Supreme Court based on their merits;

Whereas an unbiased evaluation by the Senate of a nominee's competence to serve on the Supreme Court requires the compilation of complete information about the qualifications of the nominee;

Whereas this may include personal or potentially sensitive information about the nominee;

Whereas it is appropriate that the confidentiality of certain information be maintained to preserve the integrity of the Senate confirmation process;

Whereas allegations have been made of the unauthorized disclosure of a confidential Senate committee report during the consideration of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court;

Whereas the unauthorized release of confidential information has potentially compromised the confirmation process; and

Whereas the unauthorized release of such confidential information is a violation of the Standing Rules of the Senate that provide that any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body, and if an officer, to dismissal from the service of the Senate, and to punishment for contempt: Now, therefore, be it

*Resolved*, That (a) the Majority Leader, with the concurrence of the Minority Leader, shall appoint a special counsel to investigate the unauthorized disclosure of a confidential Senate committee report during the consideration of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court, including a full investigation of all the facts and circumstances leading to and surrounding such disclosure. The special counsel shall consider whether any Member, officer, or employee of the Senate committed any of the activities prohibited in any rule of the Senate or of a committee, subcommittee, or office of the Senate, including paragraph 5 of rule XXIX of the Standing Rules of the Senate, or any other rules, regulations, or laws of the United States.

(b) The special counsel shall report the findings and conclusions of the investigation to the Senate not later than 30 days after the date of adoption of this resolution.

#### SENATE RESOLUTION 200—RELATIVE TO THE AGRICULTURE INDUSTRY IN THE STATE OF NEW YORK

Mr. D'AMATO (for himself and Mr. MOYNIHAN) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 200

Whereas October 17, 1991 is the 10th Annual Celebration of New York Agriculture known as the New York State Farm Harvest Celebration.

Whereas agriculture is New York State's largest industry with an annual farm value of almost \$3 billion.

Whereas New York's 38,500 farms provide employment for some 113,000 individuals and total in-state food employment reaches 425,000.

Whereas a viable and strong agricultural industry is not only beneficial to New York's farm and food industry, but to the economy of New York State, hundreds of local communities and to all consumers in and out of New York State.

Whereas New York State is a tremendous agricultural resource base with abundant rainfall, productive soils, sufficient growing season and proximity to the nation's largest markets.

Whereas New York State is a leader in the production of a variety of products such as dairy, cheese, apples, grapes, onions, potatoes, cabbage, sweet corn, nursery plants, tart cherries, beets and maple syrup for the United States.

Whereas New York farms are an important provider to the nation of a variety of agricultural goods such as cattle, eggs, green beans, lettuce, cauliflower, celery, poultry, grain, hay and others: Now, therefore, be it

*Resolved*, It is the sense of the Senate, that we honor the important contributions of New York's farmers and other men and women in the New York State agriculture industry.

• Mr. D'AMATO. Mr. President, I am pleased to join with Senator MOYNIHAN in submitting a sense of the Senate resolution honoring the contributions of the men and women in the number one industry of New York State, the agriculture industry.

To many people, New York is an urban State noted for its tall buildings, glitz and glitter. Few people outside my State realize that there is another New York, a land of dairy cows, apple orchards, and wineries. It is a land of farmers, nursery owners, cheese processors, and a variety of other agribusinesses.

When I arrived in Washington over 10 years ago I pledged to make people aware of this New York. I wanted to make the rest of the Nation understand the critical contribution that agriculture makes not only to the economic health of my State but to the farm output of the whole Nation.

That is why I began to hold the Annual New York State Farm Harvest Celebration here in our Nation's Capitol. Today that celebration is in its 10th year. Farm Day has become one of the most popular receptions on Capitol Hill. Members of Congress, the administration, and their staffs now know what we in New York have always known, that the Empire State is a farm state.

Mr. President, this sense of the Senate resolution is an acknowledgement by this body that New York Farm Day has accomplished its goal of making the Nation aware of New York's agriculture industry, as well as to celebrate the hard work of men and women in New York agriculture. •

#### AMENDMENTS SUBMITTED

#### FEDERAL FACILITIES COMPLIANCE ACT

#### BAUCUS AMENDMENT NO. 1263

Mr. BAUCUS proposed an amendment to the bill (S. 596) to provide that Federal facilities meet Federal and State environmental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements; as follows:

On page 2, strike subsection (a) on lines 7 through 23.

On page 2, line 24, strike "(b)".

On page 4, line 23, insert "(b)" before "Federal".

On page 5, line 14, strike "(b)" and insert in lieu thereof "(c)".

On page 6, line 9, strike "(a)."

On page 6, line 9, insert "of the Solid Waste Disposal Act" before "is amended".

On page 6, insert at the end the following new section:

"SEC. 5. (a) STORAGE OF MIXED WASTE.—Section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) is amended—

"(1) by striking "In" and inserting in its place the following:

"(1) Except as provided in paragraphs (2) or (3), in"; and

"(2) by inserting at the end the following new paragraphs:

"(2) Until December 31, 1993, where technologies do not exist or sufficient treatment capacity is not yet available for treatment of mixed waste generated at facilities owned or operated by a department, agency, or instrumentality of the United States, or by a person acting as an authorized agent of such department, agency, or instrumentals, such mixed waste shall be stored in compliance with all applicable regulations promulgated under this subtitle except those promulgated to implement paragraph (1). After December 31, 1993, the regulations promulgated to implement paragraph (1) shall apply to all mixed waste except as provided in paragraph (3).

"(3) If the Administrator determines that compliance for a particular type of mixed waste is not possible by December 31, 1993, the Administrator may grant a variance from the regulations promulgated to implement paragraph (1) to any department, agency, or instrumentality of the United States, in accordance with the following procedures.

"(A) Where sufficient treatment capacity is not yet available, the Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis, for a particular type of waste, grant an extension of the effective date contained in paragraph (2) for up to one year, if the applicant demonstrates that treatment capacity cannot reasonably be made available by the effective date in paragraph (2) due to circumstances beyond the control of the applicant. Such extension may be renewed by the Administrator for additional periods of up to one year. In no case, however, shall the December 31, 1993, deadline for compliance with paragraph (1) be extended beyond July 1, 1997.

"(B) Where technologies do not exist, the Administrator, after notice and opportunity for comment and after consultation with ap-

propriate State agencies in all affected States, may on a case-by-case basis, for a particular type of waste, grant an extension of the effective date contained in paragraph (2) for up to two years, if the applicant demonstrates that treatment technology cannot reasonably be developed by December 31, 1993 due to circumstances beyond the control of the applicant. Such extension may be renewed by the Administrator for additional periods of up to one year. In no case, however, shall the December 31, 1993, deadline for compliance with paragraph (1) be extended beyond July 1, 1997.

“(C) Any variance granted by the Administrator under this paragraph shall be considered a final agency action and shall be subject to judicial review.

“(b) TREATMENT OF MIXED WASTE.—Section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) is amended by adding at the end the following new paragraphs:

“(3) Not later than 90 days after the date of enactment of the Federal Facility Compliance Act of 1991, the Administrator, after notice and opportunity for comment, shall issue a list of mixed wastes for which the Administrator determines treatment technologies do not exist or sufficient treatment capacity is not yet available. The Administrator shall update this list annually.

“(4) Not later than December 31, 1992, the Administrator, after notice and opportunity for comment, shall amend, as necessary, regulations promulgated under this subsection specifying those levels or methods of treatment which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized and exposure to radioactivity during treatment is minimized.

SEC. 6. Nothing in this Act shall alter, modify or change in any manner any agreement or consent order regarding the management of mixed wastes in effect on the date of enactment of this Act and to which an agency of the Federal Government is a party.

SEC. 7. Any State may comment on any determination made by the Administrator pursuant to this Act with respect to the commingling of radioactive and hazardous waste.

On page 6, after line 9, insert the following:  
SEC. 8. MIXED WASTE.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6902) is amended by inserting the following new paragraph at the end of the section:

“(41) The term “mixed waste” means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).”

#### SURETY BONDS

SEC. 9. (a) SURETY CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any contract for hazardous substance response with any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

#### (b) SURETY BONDS.—

(1) APPLICABILITY OF THE MILLER ACT.—If under the Act of August 24, 1935 (49 Stat. 793 et seq., chapter 642, 40 U.S.C. 270a-270d), commonly referred to as the “Miller Act”, sur-

ety bonds are required for any direct Federal procurement of a contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, and are not waived pursuant to the Act of April 29, 1941 (55 Stat. 147 et seq., chapter 81, 40 U.S.C. 270e-270f), the surety bonds shall be issued in accordance with such Act of August 24, 1935.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than the obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If under applicable Federal law, surety bonds are required for any direct Federal procurement of a contract for hazardous substance response with a department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by the breach of the bonded contract.

(4) NONPREEMPTION.—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(c) APPLICABILITY.—This section shall not apply to bonds executed before October 1, 1991, or after December 31, 1992. This section also shall not apply to facilities that are included on the National Priorities List as described in section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605). For the purposes of this section, the terms “hazardous substance” and “response” shall have the same meaning as given such terms under paragraphs (14) and (25), respectively, of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

SEC. 10. (a) This section may be cited as the “Federal Recycling Incentive Act”.

(b) Subtitle F of the Solid Waste Disposal Act is amended by adding at the end thereof the following:

#### “FEDERAL GOVERNMENT REQUIREMENTS

“SEC. 6005. (a) FEDERAL AGENCIES.—Prior to the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency in consultation with the Administrator of General Services, by regulation, shall establish, and from time to time modify, a program pursuant to which each department, agency, and instrumental-

ity of the executive, legislative, and judicial branches of the Federal Government shall be required to separate materials to be collected for the purpose of recycling from solid waste generated by such department, agency, or instrumentality. Such material shall not be collected if the Administrator determines that inadequate markets exist for such materials. The program established pursuant to this section shall seek to incorporate existing Federal programs to separate materials from solid waste for the purpose of recycling but in no case shall interfere with existing programs.

“(b) PUBLICATION IN FEDERAL REGISTER.—Within 60 days following the establishment or modification of a program pursuant to subsection (a), the Administrator of the Environmental Protection Agency shall submit a copy of such program or modification to the Congress and publish a copy thereof in the Federal Register.

“(c) EFFECTIVE DATE.—180 days following such publication in the Federal Register, each department, agency, and instrumentality of the executive, legislative, and judicial branches shall take action as may be necessary to carry out the program established pursuant to subsection (a) as published in the Federal Register.

“(d) PROCEEDS FROM SALE.—Any moneys received by any such department, agency, or instrumentality from the sale of materials collected for the purpose of recycling shall be available for use by the department, agency or instrumentality of the Executive, Legislative and Judicial branches of the Federal Government for activities which promote recycling. Nothing in this Act shall be construed to prohibit any agency from directing funds received from the sale of materials collected for the purpose of recycling for morale welfare or recreational purposes.

“(e) REPORT.—Prior to the expiration of the 15-month period following the date on which such program takes effect, and annually thereafter, the Administrator of the Environmental Protection Agency shall report to the Congress with respect to the extent of compliance by each department, agency, and instrumentality of the executive, legislative, and judicial branches with the program established pursuant to this Act for the preceding 12-month period. Such report shall identify any such department, agency, and instrumentality which fails to comply, in whole or in part, with such program. A copy of the report shall be published in the Federal Register.

“(f) AUTHORIZATION.—For the purpose of enabling the Administrator of the Environmental Protection Agency to carry out this section, there are authorized to be appropriated such sums as may be necessary.

SEC. 11. The Chief Financial Officers, of affected agencies, pursuant to 31 U.S.C. 501 shall submit an annual report to Congress on the activities of the Federal government regarding the disposal of mixed waste, subject to the Solid Waste Disposal Act. The report shall include, to the extent practicable, an estimate of the time required to develop adequate storage, treatment or disposal capacity for each mixed waste listed under the Solid Waste Disposal Act, an estimate of the costs expected to be incurred by the Federal government for such storage, treatment or disposal, a detailed description of the compliance activities expected to be accomplished by the Federal government during the period covered by the budget submission, and an accounting of the fines and penalties collected pursuant to the Solid Waste Disposal Act.”

On page 2 line 6 strike line 6 and all that follows through line 14 page 3.

**SEC. 12. PUBLIC VESSELS.**

(a) Any solid of hazardous waste generated on a public vessel shall not be subject to storage, manifest, inspection, or record-keeping requirements under the Solid Waste Disposal Act, until such waste is removed from the public vessel on which it was generated. Nothing in this section shall affect, or in any way change the intention, implementation or applicability of 10 U.S.C. 7311, or the term "generator" as defined in 40 C.F.R. 260.10.

(b) for purposes of this section:

(1) the term "public vessel" means a vessel owned or bareboat chartered and operated by the United States or any other sovereign.

(2) waste transferred directly from one public vessel to another shall not be considered "removed from the public vessel on which it was generated" for as long as such waste remains on a public vessel.

**SEC. 13. FEDERAL WASTEWATER TREATMENT WORKS.**

(a) **APPLICABILITY.**—Subtitle F of the Solid Waste Disposal Act is amended by adding at the end thereof the following:

**"SEC. 6006. FEDERAL WASTEWATER TREATMENT WORKS.**

(a) **IN GENERAL.**—Except as provided in subsection (b), any wastewater treatment works owned by a department, agency, or instrumentality of the Federal Government shall be considered to be managing a solid waste, but not a hazardous waste, if:

(1) such wastewater treatment works receives and treats wastewater, the majority of which is domestic sewage;

(2) no solid waste in any unit that is part of the wastewater treatment works exhibits any hazardous waste characteristic as determined pursuant to test methods and criteria established by the Administrator under Subtitle C of this Act unless such waste is removed from the treatment works and is managed as a hazardous waste pursuant to subsection (b) and other applicable requirements of this Act;

(3) the wastewater treatment works has a permit issued pursuant to section 402 of the Federal Water Pollution Control Act and such permit includes conditions requiring that any individual wastewater received by the treatment works is pretreated (A) in accordance with national pretreatment standards promulgated by the Administrator pursuant to section 307(b) of such Act and applicable to each specific category of industrial wastewater received by the treatment works or (B) in the absence of national standards in accordance with local limits established pursuant to section 402(b)(8) of such Act, and (C) any solid waste rendered hazardous by any pretreated or non-compliant wastewater has been removed to the extent practicable;

(4) such treatment works complies with any other permit conditions as may be established by the Administrator or an authorized State pursuant to section 402 of the Federal Water Pollution Control Act.

(b) Notwithstanding subsection (a), the owner of a wastewater treatment works described in subsection (a) shall be required to—

(1) remove and manage as a hazardous waste any solid waste present in any unit of the treatment works that exhibits any hazardous waste characteristic as established by the Administrator under subtitle C of this Act; and

(2) take corrective action with respect to any release or threatened release of hazardous waste (including any solid waste present at the treatment works which exhibits any characteristic of a hazardous waste) or haz-

ardous waste constituents from the treatment works in accordance with corrective action requirements under subtitle C of this Act.

(c) Subsection (a) does not constitute a waiver of any requirement under subtitle C of this Act with respect to any unit that is part of a wastewater treatment works that pretreats industrial waste prior to discharge to a treatment works described in subsection (a).

(d) **Relationship to Federal Water Pollution Control Act.**—Nothing contained in this section shall be construed, interpreted, or applied to include a wastewater treatment works owned by a department, agency, or instrumentality of the Federal Government within the definition of an "eligible treatment works" or "publicly owned treatment works" for purposes of Title II or Title III of the Federal Water Pollution Control Act.

(e) **TABLE OF CONTENTS.**—The table of contents for such subtitle F, of the Solid Waste Disposal Act is amended by adding the following new item at the end:

"Sec. 6006. Federal wastewater treatment works."

**SEC. 14. MUNITIONS.**

**SEC. 6.** Munitions, Section 1006 of the Solid Waste Disposal Act is amended by adding the following new subsection:

(d) **MUNITIONS.**—The Secretary of the Defense shall have the responsibility for carrying out any requirement of subtitle C of this Act with respect to regulations promulgated relating to the safe development, handling, use, transportation, and disposal of military munitions. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection.

**SEC. 15. AMENDMENT TO THE FEDERAL FACILITY COMPLIANCE ACT OF 1991.**

In carrying out the provisions of Sec. 2 (a)(b), the administrator of the Environmental Protection Agency may utilize the Mine Waste Treatment capabilities operated by the Environmental Protection Agency and the Department of Energy at DOE's Pittsburgh Energy Technology Center's Component Development and Integration Test Facility. The treatment and assessment technologies will be supplemented and upgraded as required.

**SEC. 16. ESTABLISHMENT OF SMALL TOWN ENVIRONMENTAL PLANNING PROGRAM.**

(a) **ESTABLISHMENT.**—The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities.

(b) **SMALL TOWN ENVIRONMENTAL PLANNING TASK FORCE.**—(1) The Administrator shall establish a Small Town Environmental Planning Task Force shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups.

(2) The Task Force shall—

(A) identify areas of environmental and public health regulations developed pursuant to Federal environmental laws which pose significant problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) **IDENTIFICATION OF ENVIRONMENTAL REQUIREMENTS.**—(1) Not later than 6 months after the date of the enactment of this title, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including, but not limited to, any of the following:

(1) Newspapers and other periodicals;

(2) Other news media;

(3) Trade, municipal, and other associations that the Administrator determines to be appropriate; and

(4) Direct mail.

**SEC. 17. SMALL TOWN OMBUDSMAN.**

The Administrator shall establish and staff an Office of the Small Town Ombudsman. This Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts are also authorized to assist larger communities provided assistance is provided, on a priority basis, to small town.

**SEC. 18. MULTI-MEDIA PERMITS.**

(a) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of (1) environmental benefits and liabilities of a multi-media permitting program; (2) the potential of using such a program to co-ordinate a small town's environmental and public health activities; and (3) the legal barriers, if any, to the establishment of such a program.

(b) Within three years of enactment, the Administrator shall report Congress on the results of the evaluation performed in accordance with subsection (a). Included in this report shall be a description of the activities conducted pursuant to this Act.

**SEC. 19. DEFINITIONS.**

For the purposes of this Act, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

**SEC. 20. APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be needed to implement this title.

In an appropriate place in S. 596 insert the following:

**SEC. 21. SHORT TITLE.**

This Act may be cited as the "Metropolitan Washington Waste Management Study Act".

**SEC. 22. PURPOSES.**

The purposes of this Act are—

(1) to require an environmental impact statement prior to the expansion of the I-95 Sanitary Landfill, at Lorton, Virginia; and

**SEC. 23. FINDINGS.**

The Congress finds that—

(1) the I-95 Sanitary Landfill, in Lorton, Virginia, is located on Federal land, and the ultimate responsibility for maintaining environmental integrity at the I-95 Sanitary Landfill is on the Federal Government, as well as the signatories to the July 1981 Memorandum of Understanding, as amended;

(2) operators of the I-95 Sanitary Landfill, in Lorton, Virginia, may seek to expand the landfill by 148 acres in the so-called "Site C";

(3) there are concerns that the I-95 Landfill may be discharging leachate into the surface waters of Mills Branch, a tributary of the Potomac River;

(4) the Potomac River empties into the Chesapeake Bay, recognized by the President of the United States, Congress, the Governors of Virginia, Delaware, Pennsylvania, and Maryland as one of the Middle Atlantic region's environmental priorities;

(5) possible sources of pollution affecting the environmental integrity of the Chesapeake Bay must be fully investigated, and eliminated if possible;

(6) operators of the I-95 Sanitary Landfill established an enterprise fund with the tipping fees charged for the dumping of waste on this Federal land;

(7) the Washington metropolitan area's local governments, while aggressively pursuing integrated solid waste management, including recycling, are facing a serious problem with regard to landfill space;

(8) much of the waste generated by Federal facilities in the Washington metropolitan area is disposed of at the I-95 Sanitary Landfill and other municipal landfills in the same area;

(9) few Federal facilities in the Washington metropolitan area have waste management plans, and the plans that do exist are not coordinated with the local governments in which the facilities are situated; and

(10) Federal facilities in the Washington metropolitan area have no cohesive waste management and recycling program.

**SEC. 24. ENVIRONMENTAL IMPACT STATEMENT.**

(a) ENVIRONMENTAL IMPACT STATEMENT.—Except as provided in subsection (b)(1), in order to assure environmental integrity in and around properties owned by the Government of the United States, no expansion of the I-95 Sanitary Landfill shall be permitted or otherwise authorized unless—

(1) an environmental impact statement, pursuant to the National Environmental Policy Act, regarding any such proposed expansion has been completed and approved by the Administrator; and

(2) the costs incurred in conducting and completing such environmental impact statement are paid from the landfill's so-called enterprise fund established pursuant to the July 1981 I-95 Sanitary Landfill Memorandum of Understanding entered into by the jurisdictions utilizing such landfill, or some other payment formula based on past and projected percentage of the jurisdictional usage of the landfill.

(b) CONDITIONS.—(1) Notwithstanding the provisions of subsection (a), such landfill may be expanded for the purpose of the planned ash monofill which can be used solely for the disposal of incinerator ash from the parties of the July 1981 Memorandum of Understanding.

(2) After December 31, 1995, the I-95 Sanitary Landfill, including any expansions

thereof, shall not be available to receive or dispose of municipal or industrial waste of any kind other than incinerator ash.

(3) After December 31, 1999, the I-95 Sanitary Landfill, including any expansions thereof, shall not be available to receive or dispose of any incinerator ash.

(4) Notwithstanding any other provision of this Act, the parties of the July 1981 Memorandum of Understanding, together with the Federal Government, shall continue to be responsible for maintaining environmental stability at the I-95 Sanitary Landfill, including any expansion, in accordance with applicable laws of the United States, and the Commonwealth of Virginia (including any political subdivision thereof which is a party to the July 1981 Memorandum of Understanding).

**SEC. 25. DEFINITIONS.**

For purposes of this Act, the term—

(1) "expansion" includes any development or use, after May 31, 1991, of any lands, other than those lands which were used as a landfill on or prior to May 31, 1991, in accordance with the July 1981 I-95 Sanitary Landfill Memorandum of Understanding, owned by the Government of the United States in and around Lorton, Virginia, for the purpose of, or use as, a sanitary landfill. The term also includes variances or exemptions from any elevation requirements relating to landfill operations established by the laws of the Commonwealth of Virginia, or any subdivision thereof, in connection with any such lands used on or prior to May 31, 1991;

(2) "lands owned by the Government of the United States" includes any lands owned by the United States, and any such lands with respect to which the Government of the District of Columbia has beneficial ownership; and

**AUTHORITY FOR COMMITTEES TO MEET**

**SUBCOMMITTEE ON SECURITIES**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Thursday, October 17, 1991, at 9:30 a.m. to conduct a hearing on shareholder rights and trends in corporate governance.

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

**SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Thursday, October 17, 1991, at 9:30 a.m. to conduct a hearing on the urgent Lead Paint Hazard Prevention Act.

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

**SELECT COMMITTEE ON INDIAN AFFAIRS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on October 17, 1991, beginning at 2 p.m., in 485 Russell Senate Office Building, on S. 1687, the Indian

Tribal Government Waste Management Act of 1991.

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

**SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., October 17, 1991, to receive testimony on S. 1225, a bill to designate certain lands in California as wilderness, and for other purposes.

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

**COMMITTEE ON THE JUDICIARY**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, October 17, 1991, at 2:30 p.m., to hold a hearing by the Subcommittee on the Courts and Administrative Practices.

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

**SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, October 17, at 2:30 p.m. to hold a hearing on slave labor in China.

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

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, October 17, 1991, to hold a hearing on Efforts to Combat Fraud and Abuse in The Insurance Industry: Part 4.

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

**COMMITTEE ON FOREIGN RELATIONS**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 17, 1991, at 10 a.m. to hold a hearing on the discovery of Iraq's weapons of mass destruction and possible initiatives for the future.

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

**COMMITTEE ON ARMED SERVICES**

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, October 17, 1991, at 10:15 a.m., in closed session, to receive a briefing on the U.S. Navy's decision on the reopened investigation on the U.S.S. Iowa explosion.

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

#### ADDITIONAL STATEMENTS

##### NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL

• Mr. LIEBERMAN. Mr. President, while the attention of most of the Nation was focused on the Supreme Court confirmation vote on Tuesday, another historic event occurred here in the Nation's Capital: the dedication of the National Law Enforcement Officers Memorial.

Hundreds of survivors of law enforcement officers killed in the line of duty, joined by police officers from jurisdictions all across the country and other supporters of the memorial, gathered to participate in this solemn occasion. Many people came from Connecticut, including a contingent of officers from West Haven, Milford, and Shelton, whom I had the pleasure of meeting personally.

I congratulate Craig W. Floyd, chairman of the memorial fund, and his staff, upon the successful completion of this huge endeavor. The memorial was authorized by Congress in 1984 and constructed entirely with funds donated by more than 700,000 Americans, some 250 U.S. corporations and businesses, and hundreds of thousands of our Nation's law enforcement officers. As Craig Floyd and others pointed out during the dedication ceremonies, this memorial is truly "the gift of a grateful Nation."

This memorial has a special meaning to a member of my own staff, Sharon Hickey, whose brother, Metropolitan Police Officer Martin I. Donovan, was killed in the line of duty here in Washington, DC, on July 9, 1964, while walking his beat alone near Thomas Circle. Like many of his colleagues, he was young—just 28 years old. It is fitting that Officer Donovan will be remembered in this place of honor, in the city of his birth, near the streets where he walked as a police officer, and where he gave his last full measure of devotion.

In the memorial's beautiful park-like setting, the names of more than 12,500 men and women who have lost their lives protecting our freedom and security are engraved on the walls. It is a special place, where one can reflect on the great sacrifice made by these heroes, their families, and the thousands of officers who are injured each year as they patrol their beats. We must look at the blank spaces on the walls, think about the dangers facing police officers every day, and vow to do all we can to support the people who enforce the law by fighting crime every day and night in this land. In this way I hope that many lives will be saved and that the graceful, solemn walls of the National Law Enforcement Officers Memorial will never be completely filled.●

##### DEDICATION OF THE NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL

• Mr. COATS. Mr. President, law is the superstructure of any enduring society, a framework resting on the firm foundation of sound moral principle. Honoring those who uphold our laws, often at the risk and sometimes at the expense of their own lives, is a worthy act for any society that places value on human dignity.

That is why the dedication of the National Law Enforcement Officers Memorial on October 15 is appropriate and significant. It will list the names of 12,561 officers slain in the line of duty, and will have space on which to list the names of those who fall in the future.

Of those names currently on the Memorial, 235 of them belong to law officers from Indiana. From Albert W. McCorkle, a member of the Shelby County Sheriff's Department who fell in the line of duty in 1880, to Thomas Deniston of the Department of Natural Resources, who fell in 1990, Indiana has a proud tradition of men and women who have paid with their lives so their fellow Hoosiers could enjoy a safer society.

Most recently, one of Indiana's sons fell in defending an innocent life. William May, Jr., was born and raised in Indiana. A direct descendant of settlers who founded the city of Hammond, he was a graduate of Wabash College and had served for 3 years with the police force in Atlanta, GA. On August 19, Officer May responded to an emergency in which he saved the life of a woman who had been shot, only then to be slain by the suspect himself. When confronted by such sacrifice, words of praise seem much too inadequate to express the depth of gratitude our Nation owes to men and women such as Officer May.

A memorial represents the homage of a people, but is by no means a final tribute. Honoring the memory of those slain so that their neighbors can live safely and freely is best demonstrated as each day men and women seek to practice the principles of justice under law that comprise the fabric of a civilized society.

It is in the spirit that today I am privileged to express my deep esteem for those Hoosiers who have given the final sacrifice for their fellow citizens. Their families deserve our honor for having to bear the pain such sacrifices bring. Although we cannot restore their loved ones to them, we can assure them that the memory of their husbands and sons, wives and daughters will endure after even the most imposing monument has crumbled into dust. It is embodied in the legacy of security and liberty these sacrifices have afforded.●

##### EFFORTS OF PHYSICIANS TO STOP DOMESTIC VIOLENCE SHOULD BE LAUDED

• Mr. DIXON. Mr. President, yesterday in Chicago, the American Medical Association, Surgeon General Antonia Novello, and others met at Cook County Hospital to declare a new initiative against family violence—violence against women, against children, against the elderly. The AMA has launched a program to provide physicians assistance in recognizing the signs of domestic violence, and to intervene.

Although family violence is a societal problem, the physicians of this country have recognized that the societal problem has become a medical problem that we can no longer ignore.

Mr. President, listen to these facts revealed by the Surgeon General yesterday: More than 2 million cases of child abuse and neglect are reported each year—that is just the reported cases. That is 700,000 children.

One-third of women killed in this country are murdered by their spouse or boyfriend.

Six out of ten couples have experienced violence at some time during their marriage.

Half of all adult women have been victims of domestic violence.

Research by Dr. Carole Warshaw of Cook County Hospital indicates that as many as 35 percent of women who visit hospital emergency rooms are there for symptoms of abuse.

I congratulate the AMA and the Surgeon General for speaking out on this silent epidemic which is costing our Nation billions of dollars each year—but more importantly—exacting a priceless human toll on the lives of women, children, and seniors whose lives are forever scarred by abuse.

The physicians of this country are stepping in to do their part, but society as a whole must face and address this problem before we create generation after generation of traumatized citizens. The cycle of abuse must be broken before it breaks us.●

##### THE 100TH ANNIVERSARY FOR GENERAL HOSPITAL CENTER, PASSAIC, NJ

• Mr. LAUTENBERG. Mr. President, I rise today to join with the citizens of Passaic, NJ, in congratulating The General Hospital Center of Passaic on the occasion of that institution's 100th anniversary.

Founded in 1891, the hospital has grown from a tiny, two-cot dispensary dedicated to the treatment of accident victims, to become today a 300-bed hospital offering a broad range of programs and treatments. To give an indication of its growth, in the sixth year of its existence, the facility served 198 patients, a number which ballooned to over 1,200 in the following year. By

1990, the General was serving over 31,000 patients annually.

The hospital was officially incorporated as The General Hospital in 1892, and it provided the basic health care services most pressing to the community it served. At that time, treatment for accidents and injuries made up the bulk of the services rendered to patients at the facility.

As the health care needs of the community grew, so too did the hospital. This institution, which eventually came to be known as Passaic General, grew into a comprehensive community hospital offering a broad range of health care programs including extensive cardiac care facilities. The facility is one of only 11 designated tertiary care cardiac centers in the State of New Jersey and the first transesophageal echocardiogram was performed here.

In 1985, Passaic General was officially renamed The General Hospital Center at Passaic—which it has been known as ever since.

For over 100 years, Mr. President, the citizens of the Passaic area have been well-served by the hospital's dedicated doctors, nurses, administrators, and volunteers. Their compassion and desire to be of service to the community has been appreciated by former patients for many years.

Take the case of Deenise J. ReCasino of Clifton, NJ, as outlined in a recent letter to the president of the General, Daniel L. Marcantuono. ReCasino, a former patient at the hospital, wrote of her gratitude to the doctors who saved her life and that of her mother.

In 1956, after a difficult birth, Ms. ReCasino was born 3 months premature and weighing only 2 pounds 13 ounces. At that time, a baby born so early and so tiny was given nearly no chance for a normal life, much less survival. Due in large part to the care she received at the hospital, Ms. ReCasino went home 5 months after being born and survived to become a healthy adult and have a child of her own. She writes, "If not for the dedication and professionalism of the doctors and staff, my mother and I probably would not be alive today." It is dedication such as this that has earned the hospital a reputation for providing New Jerseyans with quality health care.

The General has reached out to the community in other ways, as well. To touch on few examples, the hospital provides lessons in safety to area school children and provides groups and individuals within the region with basic first aid guidelines.

Mr. President, to the over 400 physicians and 1,400 employees of The General Hospital Center of Passaic, I extend my heartfelt congratulations as they commemorate their centennial year. For their commitment to improving the quality of life for all the people of New Jersey, they have our lasting

gratitude. I encourage them in their ongoing efforts to provide the community with quality health care. •

#### EUROPEAN AIRBUS SUBSIDIES

• Mr. ADAMS. Mr. President, over the last 20 years Airbus, the European aircraft manufacturer, has received government subsidies in excess of \$20 billion. These subsidies have allowed Airbus to develop, manufacture and sell aircraft without having to worry about profitability. By engaging in these practices Airbus is depriving the United States of aerospace jobs, market share, and the revenues needed to invest in new aircraft production. These trade practices by the four Airbus governments are in direct violation of the General Agreement on Tariffs and Trade [GATT]. I support the administration's efforts to pursue the matter in GATT and am pleased that our Government has also indicated its intention to protect U.S. rights through domestic trade laws, as well, should the negotiations with the EC prove unsuccessful. A preliminary decision on the German exchange rate subsidy is due out this fall, although the case of overall subsidization is still in the early stages. The health of the U.S. aerospace industry affects us all. I urge my colleagues to read the excellent article by George Will that follows.

The article follows:

#### FREE TRADE, OR TRADE WAR?

(By George F. Will)

RENTON, WASH.—Americans who look skyward, or around airports here and abroad, see many products from this Seattle suburb, home of Boeing's commercial aircraft division. But Boeing's competitive position is under sustained attack by substantial—and illegal—subsidies given by governments to Airbus, Boeing's European competitor.

So the Bush administration faces a high-stakes test of American willingness, and ability, to insist effectively on equitable trading practices from the "mixed" economies of our major trading partners. If the test is flunked, many Americans may conclude that free trade is an intolerably expensive fiction, particularly when rivals practice surreptitious socialism.

The stakes are enormous. Commercial aircraft are 77 percent of Boeing's sales. In 1990, when America's merchandise trade deficit was \$100 billion, the commercial aircraft sector showed a \$16 billion surplus. For the fifth time in 12 years Boeing was America's leading exporter.

Today 81 percent of the commercial jets ever made—9,100—are in service. Between now and 2005, about 9,000 more will be delivered, 30 percent because of retirements, 70 percent because of air traffic growth. More than 2,000 airplanes are more than 20 years old. The market from now until 2005, averaging 600 planes worth \$41 billion every year, will be \$615 billion.

The worldwide crisis of airport congestion requires a shift to larger planes. Boeing's 777, to be delivered in 1995, will seat 325 to 440, depending on whether it has three-class seating or all-economy configuration. An option will be fold-up wing tips to accommodate narrow gate slots. Next there probably will

be "super jumbos" seating 650, superseding the 747 that has been Boeing's most profitable product.

Every time Boeing develops a new aircraft, it invests a sum exceeding more than half the company's net worth. Boeing must finance this from profits and by borrowing against future profits.

Two of the three significant commercial aircraft manufacturers are American—Boeing and McDonnell Douglas. Their historical market shares, 1947-1990, were 56 percent and 21 percent. But Airbus, their European competitor, has 30 percent of today's market and a goal of 40 percent by the middle of the decade. Note that Airbus's goal is expressed in terms of market share, not profits.

Airbus is a consortium of four companies—French, German, British and Spanish—constantly receiving substantial cash infusions from their governments. Airbus understandably prefers to measure its performance in terms of cash flow and market shares. This obscures the extent to which Airbus is a jobs program, a technology development project, a weapon in an aggressive war targeting an American industry, and even a prestige project for several nations. What Airbus is not is a competitive private enterprise comparable to Boeing.

Airbus is now in its third decade of subsidies estimated (bookkeeping is obscure and often secret) to total upward of \$26 billion. The head of Airbus's U.S. operations exaggerated when he said, "If Airbus has to give away airplanes, we will," but subsidies enable Airbus to ease customers' financing and even to produce aircraft for inventory—"whittails" with no customer's insignia. Northwest and America West got cheap loans from Airbus, loans not even restricted to use in purchasing aircraft, but usable as operating funds or for acquiring other airlines.

Strict free traders may say: Fine, if European governments, either supported by or deceiving their taxpayers, want to sell aircraft below market prices, we should snatch the windfall and switch to manufacturing other things. But there are three arguments, each sufficient, against such passivity in the face of subsidies and political practices contrary to GATT (General Agreement on Tariffs and Trade) rules.

First, international agreements should not be violated. Second, the United States has a national security interest in the health of the complex social organism that Boeing has become, an organization of talent that if dispersed would be largely lost. Third, even in a world without weapons, the commercial aircraft industry would be a crucial component of America's economic vitality.

Airbus's arrogant aggression assumes that GATT enforcement mechanisms are toothless and GATT strictures, if any, can be stonewalled. Also, Airbus knows that U.S. retaliation may be inhibited by the fact that Boeing needs its European community customers.

Airbus's contemptuous illegalities already have cost America more than \$80 billion in lost markets and jobs. Surely means can be found to shrink the subsidies.

Free trade is not *solitaire*, a game at which one can play alone. And the alternative is a trade war. The Airbus dispute is a suitable occasion for America to say what Americans said about some overbearing Europeans 216 years ago: If they mean to have war, let it begin here. •

JAMES J. KILPATRICK:  
CHARLESTONIAN BY CHOICE

• Mr. HOLLINGS. Mr. President, James J. Kilpatrick, the syndicated

columnist, purchased his house on Charleston's South Battery precisely 3 days before Hurricane Hugo made its memorable visit. He was undaunted by the welcome, and has settled in as one of the city's favorite adopted sons. He is a Charlestonian by choice, and we are glad to have him. In fact, we are doubly blessed with Kilpatricks, inasmuch as his son, Christopher, is a Navy chief quartermaster in Charleston.

Mr. President, on October 5, the Post and Courier newspaper in Charleston ran an excellent profile of James Kilpatrick in its style section. I know that many Senators count Jack among their good friends, and would enjoy the article. I ask that it be reprinted in the RECORD.

The article follows:

**JAMES KILPATRICK: JOURNALIST KEEPS ART OF WRITING ALIVE**  
(By Bill Thompson)

James J. Kilpatrick, mellowed?

The very idea seems preposterous.

"I never weary of the combat. But I am of diminishing combativeness."

What happened?

"As a young editor, steam was always coming out of my ears, no question about it. But I've mellowed. Why? Age, wisdom. At 29 or 30, everything appeared more black and white. You'd take sides quicker. It was right or it was wrong; there wasn't much middle ground. Then you begin to grow older and you see most things are half-tone gray. Generally, there is something to be said on either side of the issue."

Can this be the tough-minded columnist who skewered liberals like so many limp shrimp, pilloried the pompous, raged against permissiveness and suffered fools not at all? Well, yes, as it happens.

But, while Kilpatrick at 71 may not be the right reverend of rancor to which we had grown accustomed, he remains no less outraged by injustice, cruelty, muddleheadedness or bureaucratic malfaisance.

The Scowl, verbal or visual, still can be summoned. The Glower, judiciously worn, remains a part of his repertoire. And the acidity he once brought to the popular "Point, Counterpoint" segment on CBS' "60 Minutes" still percolates beneath the surface.

Oh, he's modified his attitudes a bit, has cultivated more flexibility. But consider: Even in the furnace, a sword is brought to its fine edge by tempering.

Signs of mellowing could be seen as early as the mid 80s (triple-bypass heart surgery in 1983 having little to do with it, he says). Yet it is a mistake to suppose that Kilpatrick is nearing his anecdotal age or that he has strayed from the Jeffersonian path.

"Once you're identified with either side of the spectrum, publicly labeled, certified and have tenure, it is automatically assumed that you are a die-hard, rock-ribbed conservative or a flaming liberal. It seems to be taken for granted that you are at one extreme or the other."

However, much that is traditionally conservative—fiscal prudence, for example—can be misinterpreted as liberal in 1991 when the subject is, say, military expenditures.

Kilpatrick is on record as opposing NASA's proposed Space Station Freedom ("A terrible waste of money and a bad thing for the space program as a whole") and the Navy's Seawolf submarine on the basis of relative cost-benefit ("How do you justify \$2 billion for a sub-

marine when its necessity is by no means certain?"). He can confound friends in the Pentagon as easily as the politically correct on campus.

"I've always believed I possess an independent mind. I have tried to be a relatively responsible conservative over the years. But I delight in stirring up my conservative fans, throwing them a curve or slider."

"I came out in favor of research on fetal tissue. And I came out in favor of this proposed survey of teen-age sex habits. That stirred some people up. They couldn't understand how in the world I could have taken those positions. But my conviction is that if we're going to take action at the federal level at all let's act out of knowledge and not out of ignorance."

While he sees much that is gray, clear-cut issues nonetheless exist for the native Oklahoman and the fire ducts can fire up on a moment's notice if need be.

On this day, the sparks are reserved for his computer, which has had the temerity to defy its master's wishes. A capricious box of circuitry, clearly it does not realize with whom it deals; the most widely read syndicated columnist in the land and one of the English language's most ardent practitioners.

Annoyances aside, Kilpatrick brims with good humor.

His office, a converted pool house in back of the family home at 75 South Battery, reflects something of the accommodation Kilpatrick has made with plurality: the glistening appurtenances of modern journalism—computer, printer, files, FAX machine—co-existing with the traditional—massive antique desk, fireplace, austere bookcases, a framed final edition of the Washington Star, an Impressionist nude by Melchers.

The personal touch derives from a cache of favored photographs festooning the walls; the patrolling of Happy, a Shetland sheepdog who plays unobtrusive sentinel; and landscape painting by Kilpatrick's wife of 49 years, Marie, depicting a scene from their former home in the Blue Ridge Mountains.

Charleston is a decided change of venue for Kilpatrick, whose son Christopher, a Navy chief quartermaster, also lives here. A resident of Virginia for almost 50 years, Kilpatrick moved to Richmond in 1941 to accept a job as a rewrite man with the Richmond News-Leader, directly out of the University of Missouri's School of Journalism. By age 30, he was its editor.

**REPUTATION SECURED**

His reputation as a volatile Southern conservative was secured not only by caustic editorials, but by the first of his three books, the incendiary "The Sovereign States" (1957). Vehement in tone, it articulated both a distaste for federal meddling and horror at the tyranny of the U.S. Supreme Court with regard to integration. From that point on, his reputation as a right-wing dogmatist was secured.

"These labels stick with you, no matter how inaccurate. This image some people seem to have of me as a rigid, dogmatic ideologue who hasn't had a new idea in 50 years simply isn't the case."

Kilpatrick departed the News-Leader in 1966, two years after inaugurating his nationally syndicated column, "A Conservative View," in order to invest his full energies as a commentator on politics and language.

He moved to Alexandria, beginning a long-standing association with the best and brightest, as well as the dimmer lights—of the Nation's Capital and beyond. Newsday nabbed him for its editorial page and later he

signed on with the Washington Star syndicate. When the Star folded in 1982, Kilpatrick cantered into the Universal Press stable.

There have been numerous national political conventions, frequent forays abroad and interviews with "platoons of presidents, prime ministers, ambassadors, con artists, senators, diplomats and medical quacks." And, of course, the consistently provocative column.

Owning the perspective of a half-century of journalism, Kilpatrick knows something of how things work in reality, not fable.

"I wouldn't be in any other business. I've learned all kinds of lessons out of newspapering. The way government really works, as distinguished from the way it is thought to work. Over the years you learn something about the nature of power, political power: How you get it, how you exercise it, how you lose it and under the Constitution, how you restrain it. Power is what it is all about in the public arena. And you learn something out of the newspaper experience about the evil nature of man and the goodness that is there also."

In the mid-80's, the Kilpatricks departed Washington, moving to White Walnut Hill, near Scrabble, Va. After a decade and a half savoring the country life, they chose to set up housekeeping in Charleston. The Kilpatricks purchased their South Battery home on Monday, Sept. 18, 1989—three days before Hurricane Hugo had the bad taste to visit its wrath upon the Lowcountry.

**LOVE OF LANGUAGE CONTINUES**

Though buffeted by the winds which beset all writers, his love affair with language and the writing life never has waned. But little comes easy. As the later sportswriter Red Smith was wont to say, "There's nothing to writing. You just sit down behind a typewriter and open up a vein."

Kilpatrick chuckles, agrees. "It comes hard. After I've done all the reading and research that needs to be done on a column, it will take me two hours to get those 750 words into this infernal machine. Then, if I have it, I'll spend another hour rewriting the damn thing. I'm so seldom satisfied with what I write. I labor over it. My goal is to produce one first-rate sentence a month."

The license plate on Kilpatrick's steel blue Mercedes, appropriately enough, bears the legend "OP ED." His columns appear in 510 newspapers, down slightly from the 550 of five years ago. But he is far and away the most widely read in the field, a fact which might engender delusions of grandeur in another.

"I hope I don't fall victim to hubris. I keep in mind that part of it is sheer economics; my copy is the cheapest they can buy. A small paper pays \$5 a week for four columns of 750-800 words each. Not all the columns may be good ones. But I work at it. Don't ever let anyone tell you writing is easy. It's hard work, at least for me. I let the reader-ship or the market determine whether or not I'm out of date."

Meantime, he's broken ground on a second edition of "The Writer's Art," which is scheduled for publication late next year or the spring of 1993.

In excellent health, Kilpatrick will indulge in a few toddies before dinner. But he's quit smoking—again. And he remembers the last puff: "Two in the afternoon, June 20, 1990."

A defender of good grammar, but by no means pedantic, Kilpatrick says he has offended some of the purist grammarians "with some of my cavalier views." Here is a

fellow who appreciates the music of language, yet can exhort young writers, not without a wink, to: "Be murky clearly."

His own views are decidedly straightforward.

One Print vs. Electronic Media: "those of us in print journalism have at least a little more time. We have a greater capacity for the nuance, for exploring of a particular side, for the qualifying quote that makes all the difference sometimes. We have a great advantage in print, if we survive—and we will."

On Literature in Academia: "I see no reason why some works from other cultures and traditions can't be studied alongside the great works of Western Civilization. In fact, there are some in the canon of the great works of Western Civilization that I think would felicitously be dropped—some of those novels we all had to slug through in school."

On Myth-Making and History: "I'm concerned that in certain institutions of higher learning some of the key people are inventing 'comfortable myths' of history to help the self-esteem of minority groups—in the name of cultural pluralism and diversity. There is something to be said on both sides of this controversy. I expect that blacks probably have been the losers in most of the history written by the white Anglo-Saxon Protestant. But not as much as is now proclaimed."

"I believe that it would be desirable and honest to take a very critical look at aspects of our history that have been neglected in terms of women and minorities. At the same time you can go so far in that direction that you wind up with made-up revisionist history and comfortable myths. In some cases, there is no basis for it; it's all fabricated. And that damages the whole cause of history and certainly doesn't help minorities."

On Desert Storm: "We learned a lot about our new weapons systems, at relatively little loss of American lives and at relatively little expenditure of taxpayer money. You hate to say that this is one of the things we got out of Desert Storm. I don't know that we got much else out of it. Out of evil, good. But to say let's go kill 100,000 Iraqis just find out if a weapon works, you can't justify that morally."

"I was hoping that we would have contributed more toward stability in the Middle East, but this doesn't seem to be the case. And I haven't seen a great rush of the region's nations to our side, politically. But I'm still satisfied we did the right thing. We could not permit Saddam Hussein to get away with the rape of Kuwait. It would have invited similar adventures."

On Patriotism: "There was a good deal of instant or puffed-up patriotism during Desert Storm, but at bottom I believe it was sincere. And I'm not sure there was, or is, more than usual. Even if this is the case, then there is plenty of debunking going on. With every wind that blows, somebody is knocking our country one way or another: We are called the most violent nation on earth, we've got the worst drug problems, our rates of illegitimacy are terrible, Bush has neglected education and health care, the Congress is going to the bow-wows, the roads are crumbling, the infrastructure is blown to pieces. We don't lack for critics. And there is plenty to criticize which, like it or not, is the nature of news. However, I don't think we in the media do enough to talk about the good things."

"The good kind of patriotism can be manifested in all sorts of ways other than waving the flag. It's love of country and that can be shown just by a person trying to be a good citizen in a lot of little ways."

On Abortion: "I'm basically a freedom of choice person. I don't like the idea of access to abortion being easy, but the liberty clause of the Fourteenth Amendment and the Ninth Amendment provides the Constitutional foundation to say that one has the right to this. As a conservative, I object to the intrusion of the state in areas of our personal responsibility. A foundation of conservative thought is to keep government off our backs and out of our lives. I can not imagine a greater violation of conservative philosophy than the current 'conservative' position on abortion, which allows the state to intervene in this most intimate, difficult decision in a woman's life."

"I will defend the right of anti-abortionists to march in the streets, but when they start blocking entrances to these clinics and harassing these sad women going through such a traumatic experience and physically abusing the nurses and medical personnel, that's something else. Zealotry has an ugly face."

On Ronald Reagan: "He was always very kind to me and I have great affection for him. A fine person a wonderful guy. He was always an actor. He played the role of president and I don't mean that in any perjorative or critical sense at all. The notion that he was just some amiable dunce is one that should be put aside. He has a very capacious knowledge of government."

On USA Today: "I think the editors of USA Today have provided us with something to think about. I'll stick up for it. Obviously there are shortcomings, but it has pioneered in some areas and is widely emulated. On the other hand, it's never going to replace *The New York Times*."

On "Saturday Night Live": "I thought Dan Aykroyd's and Jane Curtin's stabs at Shana Alexander and me were funny. Shana enjoyed the send-ups of 'Point, Counterpoint' so much she taped them all. When she'd have a party at her home on Long Island, she put them in the tape player and entertained everyone."

On Exuberant Young Talents: "I sometimes wonder how much talent is there. In my book 'The Writer's Art' I recall Truman Capote's quote on Jack Kerouac's 'On the Road': 'That's not writing, that's typing.' Kerouac was an exuberant young talent, but who reads him now? The writers who have managed to last and were equal to the task bring some sense of discipline to it."

"Picasso, remember, did not proceed to break the rules until he had mastered them."

#### THE NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL

● Mr. HOLLINGS. Mr. President, the Nation is at peace internationally, but a deadly, daily war continues within our own borders—the war against crime. The foot soldiers in this war are America's law enforcement officers, men and women who put their lives on the line, and who serve our country with no less valor and dedication than our soldiers who fight on foreign battlefields. Each year, hundreds of these law enforcement officers are wounded, disabled, or killed in the line of duty. It is a terrible toll—a risk which these men and women voluntarily expose themselves to as the price of ensuring our domestic tranquility.

It is entirely fitting that this city of Washington, with its many monuments

to national heroes, yesterday dedicated a striking new memorial to our Nation's fallen police officers. The National Law Enforcement Memorial, located on Judiciary Square, includes the engraved names of 12,561 law enforcement officers killed in the line of duty.

Mr. President, the State of South Carolina is well represented on this monument of heroes. In this century alone, 161 South Carolina law enforcement officers have been killed in the line of duty. From my time as Lieutenant Governor, I have vivid memories of the tragic slaying of Highway Patrolman Harry Boyd Ray in 1958. More recently, in 1990, St. Stevens police officer Joshua Milligan was stabbed to death while attempting to arrest a suspect. And, in August of this year, police officer William J. Werner of Seneca was struck and killed by a suspect's car while he was manning a roadblock.

Mr. President, the National Law Enforcement Memorial is a proud and heroic monument—a fitting recognition of the courage and sacrifice of America's fallen law enforcement officers. It is a national memorial that is long overdue.●

#### NATIONAL RED RIBBON CAMPAIGN, STATE OF OREGON

● Mr. PACKWOOD. Mr. President, it is my pleasure to serve as honorary chairman of the National Red Ribbon Campaign for the State of Oregon. I only wish I were able to be at home to participate in the many activities planned for the 1991 Red Ribbon Week.

The 1991 theme, "Neighbors—Drug Free and Proud," embodies the essence of the force that will make this a drug-free society. Neighbor helping neighbor, friend helping friend, family helping family, community helping community. This is a battle that must be waged in the homes, in the streets, in the schools and in the workplace.

Mr. President, I commend the Oregon Federation of Parents for Drug Free Youth and Dr. Peter Kohler for their unending dedication and work to make Red Ribbon Week a success. It may be some time before we are truly a drug-free society, but due to the efforts of everyone involved, today we are one step closer. I sincerely believe that the solution to our Nation's drug problem will be achieved through the devotion and commitment embodied in National Red Ribbon Week.

To the Oregon Federation of Parents for Drug Free Youth, Dr. Kohler, and all courageous, involved, citizens, best wishes—and may we all be drug free and proud.●

#### MICHIGAN AVIATION HALL OF FAME

● Mr. LEVIN. Mr. President, Michigan has played a key role in the history of

the aviation industry. Henry Ford and the Wright Brothers began the first aero club back in 1909 in Detroit. America's first commercial air service was launched in 1935, with flights from Detroit to Chicago. Michiganders have helped develop what has become an indispensable mode of transportation and national defense in the 20th century.

On Saturday, October 26, 1991, aviation enthusiasts will gather in Lansing to honor five pioneers in the field: Bill Boeing, founder of Boeing Airplane Co.; Robert Fuhrman, an aerospace engineer; Ann Pellegrino, a pilot; Michael Erard, a military pilot; and Alfred Verville, an airplane designer. They join such distinguished previous honorees as Talbert "Ted" Abrams, James A. McDivitt, Jack Lousma, Gen. Earl O'Loughlin, and Henry Ford.

The sponsoring organization—the Michigan Aviation Hall of Fame—is largely responsible for the long overdue recognition of the major place that Michigan holds in U.S. aviation history.

Thanks to the tireless efforts of its President, Herb Swan of Gaylord, MI, the hall of fame has been gathering and storing data and artifacts relating to Michigan's role in flight history.

And thanks to Herb Swan and an ever-expanding group of backers, the hall of fame will soon break ground for its long-awaited museum in Lansing. In addition to the actual exhibits, the museum will include a library, video theater, workshop and study area, conference room, and gift shop. Displays will include memorabilia from the armed services, space exploration, and airports; special exhibits will focus on current events and on women in aviation.

Herb and his friends have pushed and cajoled and, yes, pleaded their case: the collection and preservation of objects and artifacts relating to the proud history of Michigan aviation. The new museum undoubtedly will become a center for education and research; those who have backed its creation should take pride in their successful efforts to promote a sense of appreciation for the origins and growth of the industry and Michigan's contributions to aviation in America.

Mr. President, I salute Herb Swan, the hall of fame's board of directors, and all those who have supported their endeavors. I look forward to the continued growth and success of the Michigan Aviation Hall of Fame. •

#### ST. MARY ACADEMY—BAY VIEW, 1990-91 BLUE RIBBON SCHOOL

• Mr. PELL. Mr. President, as chairman of the Senate Subcommittee on Education, Arts, and Humanities, it is an honor and a privilege to offer my congratulations to St. Mary Academy—Bay View on being named a 1990-91 Blue Ribbon School.

This is indeed a very significant award. Only those schools which meet the most rigorous standards of achievement and excellence are named Blue Ribbon Schools. In fact, less than one-half of 1 percent of all our Nation's schools receive the Blue Ribbon Schools Award. It is the highest honor bestowed by the Department of Education and was created to recognize outstanding public and private elementary and secondary schools across the United States that are unusually effective in meeting national education goals.

While much is learned at the St. Mary Academy—Bay View, certainly, much can be learned from them.

At Bay View, Sister Maureen McElroy has fostered an environment where students are encouraged to realize their potential both inside and outside of the classroom. Students take part in community service activities with faculty guidance. Local business leaders participate in a career awareness program that introduces students to the demands of the work world. St. Mary Academy—Bay View sends 94 percent of its students on to higher education, an impressive record for all our schools to reach.

Mr. President, the importance of a well-trained mind can never be overstated, no matter how often we speak of education, no matter how much we do to improve our schools.

I remind the students of St. Mary Academy—Bay View and my colleagues here in the Senate of the eloquent words of Joseph Addison:

Education is a companion which no misfortune can depress, no crime can destroy, no enemy can alienate, no despotism can enslave, at home a friend, abroad an introduction, in solitude solace, and in society an ornament. It chastens vice and guides virtue.

St. Mary Academy—Bay View exemplifies the high standard of educational excellence upon which our Nation so critically depends. I congratulate all the people of the St. Mary Academy—Bay View community for the shining contribution they have made to our national wealth. They have brought honor and distinction to their community and to our State. I have said many, many times that our real wealth as a nation is measured by the sum total of the education and character of our people. I urge them to continue to work hard to maintain the fine standard they have set and, once again, express my heartfelt congratulations for a recognition well earned. •

#### REFERRAL OF SENATE RESOLUTION 198

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of Senate Resolution 198, and it be referred to the Committee on Foreign Relations.

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

#### POWER OF INDIAN TRIBES TO EXERCISE CRIMINAL JURISDICTION OVER INDIANS—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 972 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 972) to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

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

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. GORTON. Mr. President, I will speak briefly about why I decided to allow the permanent extension of the Duro overturn to pass in spite of strong reservations regarding what I believe are inadequate civil rights protections for Native Americans on this country's Indian reservations.

My colleagues in the Senate are probably not aware of the long bipartisan battle which I waged with several other Senators against making permanent the Duro versus Reina Supreme Court decision overturn. As a group, we are concerned that a series of Supreme Court decisions have had the effect of creating a class of Americans who do not possess full constitutional protections in every corner of this country. We believed that the only leverage we had in this battle was the Duro legislation, and we were right.

I do not want to go too far into the complexities of the issue and the different twists and turns of negotiations with members of the Senate Select Committee on Indian Affairs. Suffice to say, however, because of my work and the work of the other Senators, we have an agreement to fully examine the issue of tribal sovereignty, tribal courts, and Federal review of Indian civil rights claims from the chairman of the select committee, Senator INOUE.

Mr. President, I know that Senator INOUE will hold these hearings to honestly examine this issue. In my view, these hearings will prove enlightening to my colleagues in the House and the Senate. I foresee a new understanding and sensitivity to the problems caused

by the lack of adequate constitutional protection for all Indians on reservations as a result of these hearings.

Mr. President, I would be remiss if I did not mention the critical advice that I received on this issue from my friend and distinguished colleague, Senator JOHN McCAIN. I credit Senator McCAIN with providing me crucial insight into the necessity of preventing a criminal misdemeanor jurisdictional void from being recreated on reservations throughout this country. It was primarily Senator McCAIN's advice and counsel, as well as his willingness to stick by a commitment, which persuaded me to agree to the permanent overturn.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

#### PUBLICATION OF PROCEDURAL RULES OF THE SENATE SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. MITCHELL. Mr. President, in conjunction with the report of Senate Resolution 185, and on behalf of the distinguished Senator from Massachusetts [Mr. KERRY] and the distinguished Senator from New Hampshire [Mr. SMITH] I would like to propound a unanimous-consent request relating to the publication of the procedural rules of the Senate Select Committee on POW/MIA Affairs in the CONGRESSIONAL RECORD.

Although the Senate established the select committee on August 2, 1991, the Senate acted upon the resolution to fund the committee's operations and to delineate further the committee's powers. I, therefore, ask unanimous consent that notwithstanding Senate rule XXVI the Select Committee on POW/MIA Affairs be provided a period of 15 calendar days from the date of the Senate's agreement to this resolution within which to publish its rules of procedure in the CONGRESSIONAL RECORD.

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

Mr. FORD. Mr. President, on Wednesday, the Senate agreed to Senate Resolution 185, as amended, which provides for expenses and supplemental authority of the Select Committee on POW/MIA Affairs. The select committee ordered favorably reported on September 25, 1991, Senate Resolution 185, an original resolution requesting \$2,615,887 in operating expenses. The Committee on Rules and Administration at its markup on October 3, 1991, reported favorably an amendment in the nature of

a substitute to Senate Resolution 185, reducing the funding to \$1.9 million for the authorized life of the select committee which will end January 2, 1993. This amendment has been agreed to by both Senate leaders, as well as the chairman and vice chairman of the select committee, and keeps the authorization amount in line with funding for other committees.

Mr. President, Senate Resolution 185, as amended also provides separate authorized amounts for each funding period consistent with other committees of the Senate. In the same manner, unused surplus carryover funds are authorized through September 1992.

This substitute resolution also provides that the majority and minority leaders will be ex-officio members of the select committee. In view of the nature of its mission and the sensitivity of much of the information it will deal with, the amendment includes provisions to conform the committee's operations, and specifically its handling of classified information, in accordance with Senate Resolution 400, both of these provisions are consistent with the Select Committee on Intelligence.

Any foreign travel by select committee members and staff shall be deemed to be on behalf of the Senate and will require leadership authorization consistent with section 4(2)(A) of Senate Resolution 179, agreed to May 25, 1977.

Finally, Mr. President, the select committee will be authorized to use staff from other committees and to pay for travel expenses of such staff, but will not be permitted to reimburse the salaries of such borrowed staff.

#### COMMENDING THE PEOPLE OF MONGOLIA ON THEIR FIRST MULTIPARTY ELECTIONS

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Concurrent Resolution 21.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the resolution from the Senate (S. Con. Res. 21) entitled "Concurrent resolution commending the people of Mongolia on their first multiparty elections", do pass with the following amendment:

page 1, in the penultimate clause of the preamble, after "reform", insert "and the Executive Branch has responded by providing development and food assistance for fiscal year 1991 and has proposed similar assistance for fiscal year 1992".

Mr. MITCHELL. Mr. President, I move the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the Senate's action in concurring with the House amendment.

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

The motion to lay on the table was agreed to.

#### THE CIVIL RIGHTS ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 236, S. 1745, the Civil Rights Act of 1991.

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

#### CLOTURE MOTION

Mr. MITCHELL. Mr. President, I now move to proceed to Calendar No. 236, S. 1745, and I send to the desk a cloture motion.

The PRESIDING OFFICER. The clerk will report the motion.

The 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, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 1745, a bill to amend the Civil Rights Act of 1964:

Paul Simon, Paul Wellstone, Joe Biden, Bob Graham, Claiborne Pell, Wendell Ford, Paul Sarbanes, Richard H. Bryan, Christopher Dodd, Bill Bradley, Joseph Lieberman, Edward M. Kennedy, Don Riegle, Al Gore, Terry Sanford, John D. Rockefeller IV.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the cloture vote on the motion I have just filed occur at a time to be determined by the majority leader after consultation with the Republican leader, and that the mandatory live quorum be waived.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

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

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

#### FEDERAL FACILITIES COMPLIANCE ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 596 be laid aside to reoccur at 2:15 p.m. on Tuesday, October 22; and I further ask unanimous consent that, when the Senate resumes consideration of S. 596, the only amendments that remain in order

be the following: managers agreement on technical amendments; a Wirth amendment re: energy efficiency; and relevant second-degree amendments to the Wirth amendment; and amendments dealing with the subject of the unauthorized release of confidential Senate documents.

Mr. DOLE. Mr. President, reserving the right to object, I will not object for the time being. That would be any unrestricted number of second-degree amendments though we hope we could restrain that on Tuesday; is that correct?

Mr. MITCHELL. That is correct.

Our private discussions have centered on—in the event we cannot reach agreement, which I believe we can—that Senator SEYMOUR would offer his amendment to the bill which would then be pending. I would then offer a second-degree amendment which would be broader in scope, and we would then decide on those and then proceed to disposition of the bill.

That is not required under this. But we have agreed that we cannot clear that now with our respective colleagues, and we will attempt to do that between now and Tuesday when this matter occurs.

The PRESIDING OFFICER. The Chair in his role as a Senator from Colorado would like to reserve the right to object and request that the distinguished majority leader include in his unanimous-consent request a description of the Wirth amendment, a printing of the Wirth amendment in the RECORD at this point, and I will not object.

Mr. MITCHELL. I so modify my request.

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

(Purpose: To direct the Architect of the Capitol to pursue recycling of materials and cost-effective energy efficiency)

On page 6 after line 12, insert the following new sections:

**SEC. 5. ENERGY MANAGEMENT REQUIREMENTS FOR CONGRESSIONAL BUILDINGS.**

(a) IN GENERAL.—The Architect of the Capitol shall undertake a program of analysis and retrofit of the Capitol Buildings, the Senate Office Buildings, the House Office Buildings, and the Capitol Grounds as described in subsection (b).

(b) PROGRAM.—

(1) LIGHTING.—Not later than 18 months after the date of enactment of this Act, the Architect of the Capitol shall, to the maximum extent practicable, replace in each building described in subsection (a) all inefficient office and general use area fluorescent lighting systems with systems that incorporate the best available design and technology and that have payback periods of 10 years or less. The Architect shall also, wherever practicable in office and general use areas, replace incandescent lighting with efficient fluorescent lighting.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Architect shall submit to the Speaker of the House of Representatives and the President

Pro Tempore of the Senate a report evaluating potential energy conservation measures in each building described in subsection (a) in the areas of heating, ventilation, air conditioning equipment, insulation, windows, domestic hot water, food service equipment, and automatic control equipment. The report shall detail the projected installation cost, energy and cost savings, and payback period of each energy conservation measure.

(3) IMPLEMENTATION PLAN.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Architect shall issue an implementation plan for the installation of all energy conservation measures identified in paragraph (2) with payback periods of less than 10 years.

(B) INSTALLATION.—The plan shall provide for the installation of the measures described in subparagraph (A) not later than 6 years after the date of enactment of this Act.

• Mr. WIRTH. Mr. President, my efforts concerning the conservation of energy in Senate buildings began more than 4 years ago, when I was chairing an energy efficiency hearing of the Energy Committee. One of our witnesses pointed out that the lights in the hearing room were extremely inefficient and, like most of the Senate buildings, could be made much more efficient, set an example, and save money for the taxpayer.

I asked the witness if he would help, and before long we assembled a task force of lighting experts to examine the Senate system and make recommendations. For much of the next 2 years we attempted to persuade the relevant authorities that the Senate had a problem, that it would be fixed, and how. After a good deal of work, and more persuasion, we finally were able to convince the building authorities of what could be done, and about 6 months later, energy efficient lighting was installed in my office and that of Congresswoman Schneider of Rhode Island. It has been in place for a year and is working fine.

These fixtures use 30 percent less energy than before. If installed in the Russell Building alone, we could save a minimum of \$65,000 per year; across the Capitol complex, more than half a million dollars—savings for doing what we ought to do anyway.

There are a number of very simple measures by which we can save energy in lighting. We could replace many of the electronic starters—ballasts—that are part of every fluorescent light fixture. The vast majority of the fluorescent lights in the Capitol buildings use inexpensive, but inefficient, ballasts. Longer lasting solid-state starters use far less electricity and are far more cost-efficient.

We could use more efficient light bulbs. The energy-efficient fluorescent light bulbs in my own offices produce as much light from three bulbs as standard bulbs do with four.

We can, in many instances, replace incandescent lights in lamps and for

area lighting with fluorescent lights, which use far less energy.

And I have no doubt that more modern thermostat control systems for our heating and cooling could save us an enormous amount of energy, and money, and that there are many similar opportunities for us to increase the efficiency of all the ways we use energy in the Congress.

My amendment requires the Architect of the Capitol:

First, to update all lighting fixtures within the congressional complex with highly efficient, modern lighting units.

Second, to study and report back to Congress within 6 months on other energy conservation measures with a payback period of less than 10 years. These measures include improvements in heating, ventilation, air conditioning, insulation, and windows. The amendment also requires the Architect to provide an implementation plan and to make these improvements within 6 years.

Third, to devise and implement a comprehensive recycling plan for all areas under control of the Architect of the Capitol including white paper, cans, glass, and newsprint.

My amendment calls for efficiency throughout Congress—and more. Why not be much more careful about our heating and air conditioning, with a significant demand-side management program? We ask the country to do this—where are we?

Mr. President, the Congress has to take many steps to get back in step with the American people, with what we ask of the people, and with what they expect of us. This is a small step, but an important one. I was pleased that the Senate earlier accepted strong recycling language. Now let us get on to energy.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none. It is so ordered.

**ORDERS FOR FRIDAY, OCTOBER 18 AND TUESDAY, OCTOBER 22, 1991**

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Friday, October 18; that on Friday, the Senate convene for a pro forma session only; that when the pro forma session closes, the Senate stand in recess until 10:30 a.m. on Tuesday, October 22; that on Tuesday, October 22, following the prayer, the Journal of the proceedings be deemed approved to date; and following the time for the two leaders, there be a period for morning business not to extend beyond 12:30 p.m. with Senators permitted to speak therein for up to 10 minutes each; that the Senate stand in recess from 12:30 to 2:15 in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. Mr. MITCHELL. 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. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in

recess as previously ordered until 10 a.m. on Friday, October 18.

There being no objection, the Senate, at 9:47 p.m., recessed until Friday, October 18, 1991, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 17, 1991:

FEDERAL RESERVE SYSTEM

ALAN GREENSPAN, OF NEW YORK, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF 4 YEARS, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

FORD BARNEY FORD, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF 6 YEARS EXPIRING AUGUST 30, 1996 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

U.S. POSTAL SERVICE

THE FOLLOWING NAMED PERSONS TO BE GOVERNORS OF THE U.S. POSTAL SERVICE:

TIRSO DEL JUNCO, OF CALIFORNIA, FOR THE TERM EXPIRING DECEMBER 8, 1999. VICE IRA D. HALL, JR., TERM EXPIRED.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

PIETWA ROBER HAROLD AMES, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING OCTOBER 18, 1996. VICE HERMAN AGOYO, TERM EXPIRED.

CONFIRMATION

Executive Nomination Confirmed by the Senate October 17, 1991:

DEPARTMENT OF ENERGY

THE FOLLOWING-NAMED PERSONS TO BE MEMBERS OF THE FEDERAL ENERGY REGULATORY COMMISSION: ELIZABETH ANNE MOLER, OF VIRGINIA, FOR THE TERM EXPIRING JUNE 30, 1994. (REAPPOINTMENT)

BRANKO TERZIC, OF WISCONSIN, FOR THE TERM EXPIRING JUNE 30, 1995. (REAPPOINTMENT)

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.