

SENATE—Wednesday, May 8, 1991

(Legislative day of Thursday, April 25, 1991)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the Honorable RICHARD C. SHELBY, a Senator from the State of Alabama.

The PRESIDING OFFICER. Today's prayer will be offered by guest chaplain, Rabbi Alvin K. Berkun, Tree of Life Congregation, Pittsburgh, PA.

PRAYER

Rabbi Alvin K. Berkun, Tree of Life Congregation, Pittsburgh, PA, offered the following prayer:

Let us pray:

Heavenly Father, as we begin our day of deliberations in this, the Senate of the United States, we pause to acknowledge You and to pray for peace. According to the 2,000-year-old volume written by the ancient rabbis, the Ethics of the Fathers, the world rests on three things: on truth, on justice, and on peace. All three are connected and intertwined. The goal of the first two is to bring about the third, peace. To the Jewish sages of old, peace was God's very name. Peace—Shalom—is the ideal toward which we must all strive.

In Jewish tradition, the word "Shalom," has a much wider meaning than does its English equivalent, peace. In the Hebrew context, the word peace touches on the work that is done here. It refers to the welfare of all: It implies a sense of security, of contentment, of sound health. The prophet Isaiah taught that Shalom would then be opposed to the dissatisfaction and the unrest that evil can cause.

May we be inspired by one of the greatest of the Jewish sages, a contemporary of Jesus, Rabbi Hillel, who said: "Love peace and pursue peace."

May the inspiration of our Judao-Christian civilization inspire all of us as we work together to make of our Nation a beacon of hope, a symbol of freedom, and a harbinger of peace for all. During these days of concern for our President, we join in prayer to the Lord our God and God of our ancestors, that our President, George Bush, be blessed with good health and well-being and that he continue to be endowed with vigor of body, mind, and spirit as we all say, 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 8, 1991.

To the Senate:

Under the provisions of Rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD C. SHELBY, a Senator from the State of Alabama, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein.

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

THE PRAYER OF RABBI ALVIN K. BERKUN

Mr. SPECTER. Mr. President, I would like to take a moment to acknowledge the presence of Rabbi Alvin K. Berkun, who just delivered the Senate's prayer.

Rabbi Berkun is a Pennsylvanian. He has served as rabbi for the Tree of Life Congregation in Pittsburgh for the last 8 years. He is currently the Jewish chaplain for the Veterans' Administration in Pittsburgh, and was a U.S. Navy chaplain during the Vietnam era. He is married and has two daughters and one son. I am pleased to note his daughter, Elizabeth, has just completed an internship in my Washington, DC, office.

Rabbi Berkun is a very distinguished rabbi. Therefore, it is with a great deal of personal pleasure to have heard his opening prayer this morning. I welcome him to the Senate, thank him for his contribution to the body, and thank him for his contribution to the national Jewish community.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the

time between 12 o'clock noon and 12:45 p.m. shall be under the control of the Republican leader or his designee.

Mr. COCHRAN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi.

ORDER OF PROCEDURE

Mr. COCHRAN. Mr. President, I ask unanimous consent that I be designated as the person to control the time on this side of the aisle under the order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EDUCATION IN AMERICA

Mr. COCHRAN. Mr. President, this is an exciting time for education in America. Every newspaper in every town has had at least one front page article on education in the weeks following the unveiling of the President's historic strategy for improving the quality of education in our Nation's schools.

President Bush has asked all Americans to take part in "the crusade that counts most—the crusade to prepare our children and ourselves for the exciting future that looms ahead."

Last week I was able to spend some time in my State of Mississippi, meeting with education leaders to discuss this crusade, and I can tell the Senate they are ready to accept and meet the challenge. I feel confident that parents, teachers, and community leaders all across the country are also ready to get involved in this new emphasis on education and help implement the programs in America 2000.

In America we believe that education should give every individual the opportunity to rise to his ambition and achieve his goals. By doing a better job of educating children, we are preparing them for the future, empowering the people of this country, and ultimately empowering this country.

Even though our country has changed greatly since the days of the early settlers, community and family involvement that marked successful education in our Nation's infancy still work today; these timeless truths are reflected in America 2000. This plan will make schools more accountable, align our educational system for the future, help communities improve their schools, and make learning a bigger part of our lives.

The plan is far-reaching and ambitious, incorporating the best education concepts and ideas offered by experts

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

nationwide. President Bush's leadership and his tenacity in developing this plan truly establish this as the education Presidency.

More importantly, this plan will work, and it will make our education system what it ought to be—the best in the world.

President Bush promised to lead a nonpartisan, populist crusade to transform America's schools by the year 2000. Republican and Democratic Governors, who have the primary responsibility for education in their States, all across the country have enthusiastically given their support to these proposals and to these goals.

I am pleased that the Labor and Human Resources Committee is showing a willingness to consider the legislation being developed by the President and his Secretary of Education, Lamar Alexander, to implement the Federal initiatives included in the education strategy. I am hopeful that we will see bipartisan cooperation in bringing a bill to the floor in time to influence the appropriations process this year.

Our Federal responsibility is to promote a climate in America for opportunity, inventiveness and educational excellence. America 2000 provides the steps to reach these goals. I think we can make it happen. Our children and our country deserve no less.

Mr. President, may I inquire of the Chair how much time remains under the order previously entered?

The ACTING PRESIDENT pro tempore. The time between now and 12:45 is controlled by the Republican leader or his designee.

Mr. COCHRAN. Mr. President, I yield such time as he may consume to the Senator from Washington [Mr. GORTON].

Mr. BYRD. Mr. President, before the Senator yields, would he be able to yield me some time following the statement by the Senator from Washington?

Mr. COCHRAN. Mr. President, I am happy to accommodate the distinguished President pro tempore. We do have a list of speakers who have indicated an interest in speaking during this special order.

I hope that they will be able to keep the commitment that we have given to them to enjoy the benefit of speaking on the floor, but I do want to cooperate with the President pro tempore.

Mr. BYRD. Hearing the Senator speaking on excellence in education, I am a strong supporter of what he is saying. I want to get in a few words in that connection, hoping that I might call attention to the need for our schools to urge our young people to stop using the crutch expression, "you know." I think that it would be an indication, if we could do that and see an improvement throughout the country, that we are achieving some greater ex-

cellence in education than we are presently achieving.

So, at some point, I would like to say a few words on that subject.

Mr. COCHRAN. Certainly, we can accommodate that request; we will do everything we can to accommodate the request.

The ACTING PRESIDENT pro tempore. The Senator from Washington [Mr. GORTON] is recognized.

THE PRESIDENT'S AMERICA 2000 PROGRAM

Mr. GORTON. Mr. President, the last few weeks have offered more promise for the cause of reform in education than we have seen in decades. The President's America 2000 Program, coupled with widespread interest in reform in the Congress, give us an opportunity we must not miss. I am inspired by the national goals the President has set and the course he has suggested to meet those goals.

These proposals are based on a call on all to do their part in reforming our system of education. It encourages students to achieve, teachers to challenge, parents to be involved, businesses to be creative, and communities to support the necessary changes in our educational system.

The first two goals of the President's program are particularly noteworthy.

First, creating better and more accountable schools for our students today; and

Second, creating a new generation of American schools for tomorrow's students.

ACCOUNTABILITY

The United States leads the world in providing a focus on opportunity for each individual. The ability to seize opportunity is a natural consequence of education. For the United States to be competitive in the 21st century, it is crucial that our students have the opportunities that are the result of proficiency in the basics of education: English, math, science, history, and geography.

The President's plan to create voluntary national examinations to evaluate the proficiency of students at the 4th, 8th, and 12th grade levels is key to measuring our success, to providing accountability for today's students.

The proposal to provide \$200 million in education certificates to local school districts to experiment in parental choice is also central to accomplishing our overall goal of accountability. American citizens choose their spouses, careers, hometowns, churches, and community groups. It is only reasonable that they should also be enabled to choose schools of their liking for their children's future. It fits with the American way and the American dream.

CREATIVITY

The second major theme of the President's proposal is the creation of a new generation of American schools for tomorrow's students. The plan to involve business leaders in the creation of a series of research and development teams to help improve American education will draw on some of our best creative resources. Leadership at all levels will be encouraged, from Governors, business, principals, teachers, parents, and community leaders.

I also support the President's proposal that States provide for alternative means of certification for professionals who wish to teach in our schools. We have a shortage of teachers in a wide range of fields. Providing a means for attracting professionals in many areas, technical and otherwise, would expose our children to people with real world experience in those fields.

Mr. President, many school districts in Washington State have already accepted the challenge of providing a creative approach to the education of our children and youth.

Washougal School District in southwest Washington has begun a modified year-round school.

Bellevue's school district has a day care program and the Lake Washington district has an extended program for after school care.

Advanced technology is being incorporated into the school programs of Spokane and Moses Lake.

The Seattle, Snohomish, and Lake Washington school districts have taken up the challenge of causing business, industry, and State government to work together for more carefully focused educational programs.

Mr. President, it is through innovative approaches to education, combining the efforts of parents, educators, business and community leaders that we will cause a transformation of our children's lives and our Nation's future.

I commend the President for his efforts and Secretary Lamar Alexander for his leadership in working toward this most worthwhile goal. I look forward to joining together with them and dedicated Members of this Senate in the coming months to turn their plans into reality.

Mr. COCHRAN. Mr. President, I yield such time as he may consume to the distinguished Senator from South Carolina [Mr. THURMOND].

THE EDUCATION INITIATIVE OF PRESIDENT BUSH—AMERICA 2000

Mr. THURMOND. Mr. President, I am pleased to rise this morning to speak on behalf of the new education initiative, America 2000, unveiled last month by President Bush. His plan for reform of education in this country is exciting, innovative, and far-reaching. As

we have read and heard, the framework for this new strategy involves four broad themes:

First, creating better and more accountable schools for today's students;

Second, creating a New Generation of American Schools for tomorrow's students;

Third, transforming America into a Nation of Students; and

Fourth, making our communities places where learning will happen.

This is the framework. It is now up to Congress to work with the administration, superintendents, teachers, board members, others in the education community, and all Americans to fill in the structure. As a member of the Subcommittee on Education of the Labor and Human Resources Committee, and as a former teacher, coach, and county superintendent of education, I look forward to working with the administration and my colleagues on this very important initiative. As Secretary of Education Lamar Alexander alluded to in the past, this is like a train leaving the station—there is plenty of room on board for give and take, as we work to move this Nation forward.

The education we provide to our children and future generations of children is no doubt one of the most important gifts we can give to them. With four children in school, I am keenly aware of this fact.

Yet, education is not just for young people. It is a lifelong process. I am pleased that one of the themes in the America 2000 strategy advances this lifelong learning process. It would do so by strengthening adult literacy programs, creating business and community skills clinics, and enhancing job training opportunities.

Finally, the President has focused on communities as "places where learning will happen." He is calling on communities to adopt the six national education goals as their own. These goals include: First, all children will start school ready to learn; second, the high school graduation rate will increase to at least 90 percent; third, American students will leave grades 4, 8, and 12 having demonstrated competency in English, math, science, history, and geography; fourth, U.S. students will be the first in the world in science and math; fifth, every adult American will be literate and possess the skills necessary to compete in a global economy; and sixth, every school will be drug-free.

In addition, communities would be encouraged to develop local strategies to meet the goals and produce report cards to measure results. As elected representatives, all of us know the value of active community involvement in bringing about change—change through the active participation of parents, teachers, school board members, and other citizens.

Mr. President, this broad-based reform strategy is bringing renewed vitality to education in this country. I look forward to working with the administration and my colleagues on this exciting plan for change—America 2000.

I commend our able President, George Bush, and the new Secretary of Education, Dr. Alexander, for their plans, and we should cooperate with them and do everything we can to promote education in this country.

I thank the able Senator.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. COCHRAN. I yield such time as he may consume to the distinguished Senator from Alaska [Mr. MURKOWSKI].

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair and my distinguished colleague from Mississippi.

Mr. President, certainly everyone in this body agrees that the issues that we deal with day to day are for the benefit of our children, our greatest human resource. Our hope is that they will continue the careful stewardship of this country, and that can only be realized if those children are well educated.

We all agree that changes must be made in our education system if we are to achieve that goal. The startling statistics that come across our desks make change and reality associated with that all too self-evident.

We have spent 33 percent more per pupil in 1991 than we did in 1981. However, scholastic aptitude test scores have dropped steadily from a mean score of 948 in 1970 to 900 last year.

It is estimated that 15 million new jobs will have been created between 1985 and the year 2000. These require solid skills, skill in mathematics, reading, and writing, but only 22 percent of the workers entering the job market today appear to have the necessary skills for those jobs.

The Department of Education numbers show that 2,455,000 students graduated from high school in 1989. The bad news is that 948,000 students dropped out during the same year.

The list goes on.

So what do we do? I think the President has offered us a dynamic and viable strategy and alternative. The President's proposal builds on four related themes: Creating better and more accountable schools, creating a new generation of American schools, transforming America into a Nation of Students, and making our communities places where learning can happen.

The President's strategy includes a comprehensive plan to meet the four goals: The plan will include establishing world-class standards to ensure competency in five core subjects—English, mathematics, science, history, and geography. It will create a system of voluntary examinations that will

monitor the progress of learning in the five core subjects and will be administered in the 4th, 8th, and 12th grades.

New Presidential academic awards will challenge students to develop better minds in the same way the Presidential fitness awards have urged students to build better bodies. Similar awards will reward outstanding teachers, not on tenure but on proficiency.

States and school districts will be encouraged to afford more flexibility to schools in exchange for better results, certainly a fair tradeoff. The President will make \$40 million in new grants available to award school districts that show significant gains in student achievement in the areas of mathematics and science, and it will include Federal education programs and funds to encourage and support the parental choice programs.

The most important message here however is that this is a national challenge. The President has called upon all Americans to help create better and more accountable schools. He has encouraged all elements of our communities—families, businesses, unions, workplaces, places of worship, neighborhood organizations, and other voluntary associations—to work together to help the Nation achieve education excellence.

This is the beauty of the strategy and the message that I enjoin my colleagues to take back to their constituents. It is time to reaffirm such enduring values as personal responsibility and individual action.

Parents should encourage children to study more, learn more, and strive to meet higher academic standards, and they should take an active role in structuring an education system that meets the needs of their children and their community and our Nation. The interest is there. Thirty percent of adults polled in a recent Department of Education study think public schools were worse in 1980 than in 1985; 69 percent of our adults would give U.S. public schools a grade of C or D or some an F; an incredible 92 percent of the adults polled believe local school quality would be improved by more parental involvement in what is taught and the way the schools are run.

The businesses in our communities should be encouraged to embrace our President's strategy. They have a great incentive—preparing future generations to be successful and providing for a competent work force. They should take, if you will, the inspiring message and apply it to preparation and maintenance of a competent work force. It can be a profitable and innovative system to keep pace with our international competitors and the rapidly changing technological age that we are in.

Mr. President, schools and local districts will be given, in this proposal, the flexibility and the incentive to be

creative. This is the increment in the policy chain that I think is most important. The administrators cannot tailor their schools to respond to input of the community if they themselves do not have the flexibility. Teachers cannot teach what they do not understand or believe in. The President's strategy builds on the intimate knowledge that these two groups have about their students. What do students face in their community upon graduation? What are the strengths in our school district? What are the limitations? Where do we need work? And how can we train to serve better? In concert with the business community and parents, administrators and teachers can fashion the system best suited for their students.

In conclusion, Mr. President, the concept is simple yet it has great potential. We are all responsible for the education of our children, so we must all be active participants in the process. I encourage my colleagues to do their part by encouraging their constituents to get involved in this process.

I certainly commend our President not only for his dynamic education strategy but for his choice of a Secretary of Education to implement America 2000, Lamar Alexander. Mr. Alexander is well respected among the Nation's Governors and educators and as a consequence, we look to him with the belief that the expectations which we want to see coming out of the educational system can become a reality. He is a seasoned policymaker, who will have no trouble meeting the high expectations we all hold for him. We wish him well and look forward to his success.

Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. COCHRAN. I yield such time as he may consume to the distinguished Senator from Minnesota [Mr. DURENBERGER].

Mr. DURENBERGER. Mr. President, all Americans who care about this country's future should applaud the leadership and initiative shown by President Bush and Education Secretary Alexander in launching America 2000. I urge my colleagues to join me today in making a personal commitment to helping both the President and Secretary turn their bold vision for American education into reality.

Historically, the Federal Government has focused on assuring equal access to educational opportunity for every American. But, with this initiative, we are now seeing a much broader commitment, a commitment to provide national leadership and stimulus to improve not just access but to improve the quality of education for all Americans as well.

One of the reasons for my optimism about this initiative stems from my own experience in observing and sup-

porting the education reform agenda that has emerged over the past several years in my own State of Minnesota and increasingly in a number of other States around the country. The experience in Minnesota shows that choice should not be a cause of anxiety or fear, nor should it be an issue that splits along partisan lines. In fact, choice in education in Minnesota was developed under a Democratic Governor and continues to find strong support from one of the most liberal State legislatures in America.

In the State of Minnesota, every student and parent now has a right to choose any public school in that State. More than 28,000 Minnesota students are now participating in a half dozen different interdistrict choice programs that Minnesota's public school districts offer.

While the number of students in these programs is growing, they still represent a relatively small percentage of Minnesota's school-age population. However, as we have seen in Minnesota the success of its public school choice programs is measured only partly by the number of students participating.

More important is the fact that dozens of school districts, in an effort to hold onto their students, have started or expanded new programs for students who might otherwise have left high school, who might have transferred to a different district, or who might have taken courses at a postsecondary institution. Dispelling the myth that students who choose not to change schools are left behind at a disadvantage in schools that have fewer resources and more students, parents, and educators who do not care as much about where they attend.

Minnesota's experience also helps dispel concerns that black, Hispanic, and other minority students will not benefit or may be hurt by the availability of choice. That is not true in practice. In its first 2 years, minority participation in Minnesota choice programs was at or above the percentage of minority students in the State's public schools. And in a recent national survey 72 percent of nonwhites favored school choice, compared to 60 percent of whites.

The President's plan should also be commended for incorporating the flexibility for logical next steps in educational reform by expanding the number of choices that parents and students have. In what is being called the most transforming of the four proposals, the President calls for a new generation of American schools.

My State of Minnesota is already moving forward in this area. Legislation now pending in the Minnesota Legislature creates new chartered or outcome-based public schools. This begins by redefining what constitutes a public school. Under Minnesota's proposed chartered schools legislation,

public schools would no longer be defined strictly by ownership and location—by being owned and run by the resident public school board that has an exclusive franchise to own and run all public schools within a limited geographic boundary.

Instead, these new public schools would be defined by criteria that reflect the most fundamental public interests in education. Under this proposed legislation dos and don'ts and musts and mandates are kept to an absolute minimum—while still deferring to the most fundamental tenants of American public education. The schools must be nonsectarian and must meet health and safety requirements, as well as human rights and anti-discrimination laws established by the State.

But, once up and running, these new public schools would have flexibility to design their programs to meet their individual needs. In short, each of these schools would be different. They would be designed by those who know the most—teachers—and those who have the greatest stake—parents, students, and others in the community. And, they would be held strictly accountable for meeting the outcomes set forth in a written multiyear contract between the school and its sponsor.

All of these Minnesota initiatives—establishing the right to choose schools, expanding the number and range of choices, and placing much more emphasis on outcomes—run parallel to the America 2000 Program outlined by President Bush and Secretary Alexander.

I just wanted to take the time today to share the success of the Minnesota program to help better define what we mean when we say choice, what we mean when we say choices, for those who still do not seem to understand this concept called choice; and to respond to the criticisms that America 2000 cannot work because, Mr. President, out in the heartland of America, people, Republicans and Democrats alike, out there in the heartland, are responding with enthusiasm to the very types of reforms the President is advocating. It is time we board the train.

I would also, Mr. President, compliment the Washington Post, in its efforts to get educational reform, on its latest contribution in an op-ed piece by Kathy Stearns that appeared in this morning's edition of the Post.

I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Post, May 8, 1991]

FAST-FORWARD LEARNING
(By Kathryn Stearns)

The Roman Empire conquered Hollibrook Elementary in Houston last month. Third-, fourth- and fifth-graders began wearing

togas, making viaducts, reading from Shakespeare's "Julius Caesar" and trying to calculate just how fast they would have to run in order to escape a steaming torrent of lava like the one that erupted from Mount Vesuvius one day in the year 79 A.D.

Pompeii is a long way from the places Hollibrook kids know, places where the eruptions tend to be political not geological, places like San Salvador and Managua. Hollibrook kids speak Spanish, and they get a free lunch. They walk into the classroom wearing invisible tags reading: "at risk." But at Hollibrook, the risk may be diminishing. Two years ago, fifth-graders were reading two years below grade level; now they are reading at grade level and their math scores are a year above.

Hollibrook has embarked, with the help of Stanford University, on an "accelerated schools" program geared for mixed-minority urban kids lacking in comforts and resources. The idea is to "reverse the pedagogy," as creator Henry Levin explains it. Remedial work is discarded for an enrichment program that borrows from the much vaunted "gifted and talented" programs. "Slowing down the kids isn't going to help," explains Levin.

And so at Hollibrook as at scores of other "accelerated" schools, teachers set forth not only the basics but also the embellishments by creating a language-rich environment where learning is said to take off. The children work in small mixed-age groups that engage in interdisciplinary inquiry. The parents are treated as crucial, the teachers as underutilized and the students as if they were "gifted."

The slogan, suggests Hollibrook principal Suzanne Still, is "Let my people go. . . ." So far, it seems to be working.

Hollibrook is a good contender for the New American Schools contest the administration hopes to wage. But how to get one of these schoolhouses that have imposed some pedagogic order out of chaos? It's anecdotal evidence such as this that both entices and frustrates beleaguered school board members, principals, parents and other would-be reformers. There is no factory issue.

But while everyone keeps insisting the model doesn't exist, there are some specifications common to the Levin accelerated schools and other initiatives Secretary of Education Lamar Alexander finds interesting enough to mention in his education strategy.

One specification is the common-sensical but often disregarded need for wiggle room—in short, flexibility. Teachers and students must be set free to pursue knowledge the way they find interesting, not the way the school board or the state finds interesting. The mixed-age, mixed-grade Roman Empire unit at Hollibrook is typical of what happens when people are "let go."

The Coalition of Essential Schools, founded by Ted Sizer of Brown University, also stresses the primacy of the classroom. Two of Sizer's imperatives for better schools are: "Give room to teachers and students to work and learn in their own, appropriate ways," and "Keep the structure simple and flexible." At the oldest "essential school," Central Park East Secondary in East Harlem, seventh- through 10th-graders concentrate on two "blocks"—humanities and math and science.

When the classroom transforms into a kind of gymnasium for the mind, some interesting things begin to happen. The 42-minute class period disappears, and so does the day that ends at 2 and the year that stops after 180

days. So do pen and pencil tests and report cards. "Performance portfolios," declamations, recitations and auditions have replaced multiple-choice tests. It's not that "drill-and-kill work sheet mess," as Hollibrook's principal puts it.

And once teachers and students are "let go," the shackles that restrained them have to be cut loose. This means granting waivers from collective bargaining agreements and curriculum mandates and other imposed policies that prescribe how many minutes and how many students a teacher can teach in a day. The principal of Central Park East has spent much of the past four years negotiating with Albany. The school couldn't pretend to conform to city and state regulations and still undergo meaningful reform, says the coordinator of New York's essential schools movement.

Similarly, a surprising number of schools across the country in receipt of multi-year state and corporate grants intend to use the money for just one purpose: to operate for more hours in the day or more days in the year and to pay their teachers accordingly. The legislation propping up Washington state's Schools for the 21st Century program is really just a waiver-granting mechanism.

Another specification is to make room for parents. James Comer, a Yale psychiatrist who jump-started New Haven's elementaries and whose developmental approach is followed in some Prince George's and District schools, probably led the way here. Comer schools employ "management teams" that include not just principals and teachers but parents as well. Other schools also demand parental participation that goes far beyond baking cookies for the PTA. The local parent-teacher councils in Chicago, shaken by court challenge, are perhaps the most dramatic example of parent empowerment. Likewise, Henry Levin insists an accelerated school cannot exist without willing and engaged parents. Hollibrook's principal sets out old textbooks in the school's "parents' center"—even though Texas law requires that they be burned—as a way of inviting parents to join their children's journey through school.

From these few specifications it's possible to construct a composite of what Secretary Alexander calls a "break-the-mold" school. Whether it's built on hollow trends or higher truths can't yet be determined. But many of the schools daring enough to experiment are having noted successes. For the people who seek innovation, the building blocks aren't impossible to get a hold of. What's missing is the instruction manual. And that has to be written by each community, over and over again.

Mr. DURENBERGER. I will just conclude, Mr. President, by saying this community in which we all work probably has the most prospects for real choice and real reform in education of any community in America, any community in the country. It is ideally suited for innovation, it is ideally suited for opportunity, and it is ideally suited for challenge, I suspect more so than any other capital in the world. The ability to focus on change by focusing on family, personal, and professional choice ought to be seized as soon as possible.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. COCHRAN. Mr. President, I yield myself such time as I may consume.

Mr. President, during the last weekend on May 3 and 4, I had the honor and privilege of serving as host for the Eighth Annual Policy Conference of the Southern Republican Exchange. This was a meeting that was held in my State of Mississippi in Jackson. During the conference, we had several speakers including the Secretary of Education, Lamar Alexander and others; Governors Carroll Campbell of South Carolina and Buddy Roemer of Louisiana spoke; Senator TRENT LOTT was on the program.

One of the best speeches on the subject of education, in my view, was given by Buddy Roemer. Lamar Alexander made a great speech, but I thought it was appropriate to bring the remarks made by Governor Roemer to the attention of the Senate because they give a perspective from the State government official that has responsibility in his State for administering education programs, and trying to improve and upgrade reform the education system to make it more responsive to the needs that we have in every State to improve competitiveness and excellence in our schools.

So I ask unanimous consent, Mr. President, that a copy of the excerpts that I have here from a speech to the Southern Republican Exchange of the Honorable Buddy Roemer, Governor of the State of Louisiana, be printed in the RECORD.

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

EXCERPTS FROM A SPEECH, BY GOV. BUDDY ROEMER, TO THE SOUTHERN REPUBLICAN EXCHANGE, JACKSON, MS, MAY 4, 1991

The issue for the Republican Party for this century ought to be education. Now, I will be blunt, as is my reputation. I'll try to be kind, but I will be blunt.

Now our armies are important and there are times of war when our armies are essential. But it's not our armies that make us great. The world has grown awfully small. When my granddaddy went to school, the competition was in the classroom. When my mother went to school, the competition was somewhere in the parish or in the town or in the state. When I went to school, the competition was somewhere between San Francisco and New York. My youngest son is ten; he goes to the public schools—fifth grade. And when Dakota goes to school the competition is somewhere between Frankfurt, Germany, and Tokyo. The world has grown smaller.

As we crowd into a smaller world, we have to grow larger personally. We have to be more tolerant, more understanding; and that requires education.

As competition increases, our workers have to become more skilled. We can't muscle our way into the twenty-first century—it won't happen. There will always be a Singapore—someplace where they'll make it for \$.40 an hour. We can't be the cheapest. We can't be the toughest. We can't be the strongest. We don't want to be. We don't want to pay our workers \$.40 an hour. We don't want our kids to be digging ditches.

Therefore, we have to be the smartest, the best trained. Education is the key to America.

A professor at Princeton said not long ago, when the Russians surrendered in the Cold War, "After 45 years' struggle, the Cold War is over. Japan won."

How did they win? Was it their army? They don't have one. Was it their television programs? Was it their oil and gas reserves? They don't have any.

They won in the first grade classroom. They won by lifting their children. They won by making the space between their ears fertile and open and focused.

The battle of the twenty-first century will be between Japan and the United States of America. Don't fool yourself. It will be a battle for about what this country is about—the ability to make choices. That's what's always been good about America; we have options.

A guy once told me—you've heard it before—he was from Alaska, and he said, "Remember Buddy, the scenery only changes for the lead dog."

Now America ought to be about the lead dog. That's who we are. And it's threatened. Look at the numbers—the top ten banks on Earth are all in Tokyo. Look at the numbers on trade. Look at the numbers on quality of products. Look at the numbers and then check your heart.

We're in a battle, and it is a good kind of battle; they're good competitors. I admire them greatly. It's the right kind of battle.

It's the one we ought to win. But we're not winning it now and we're no closer today than we were ten years ago, in my opinion.

It's time for some innovative approaches. We're trying them in our little state. And I'm so proud of President Bush and Lamar Alexander and others who are beginning to try them at the Washington scene. I set this up for the premise that unless we win this battle, my oldest son, who is a junior at Harvard, will be living in Osaka. Because that's the future is.

I don't want it to happen. We've got to win the battle for our children.

Now we can do it and it ought to be our issue in this room to ask every American to join us. We're going to have to do some things differently.

Number 1: We're going to have to stop saying yes to the education establishment. Now let me tell you, I went to public schools in Bossier City, Louisiana. I graduated from high school when I was 16. I went to Harvard, the youngest kid in my class, studied economics. Stayed at Harvard and got a Master's Degree in economics and finance from the Business School. I have a little bit of education, but I'm not near as smart now as I was then.

I want you to understand that education is a lot of things; but the truth is that our educators, as good as they are, cannot be left with a monopoly in education. They must have a place. We must respect them.

Understand the picture I'm drawing? There must be a dialogue of respect. They are valuable people and their contributions are enormous. But we cannot leave education at the educators. We cannot. Parents have to be involved. We, as a party, must show Americans that there are some choices.

Now in Louisiana, we try to put some meat on those bones. You've heard about Pat Taylor and what he's done in higher education. You've heard that a youngster, black, white, male, female, born on a farm somewhere in Louisiana with a lot of ability and a lot of courage but with no money can go to college,

can receive a degree—paid for by the citizens because we all know it's an investment in our future.

That's an innovative idea. It's one that will sweep this country. There are others. Teacher evaluation is one. I'm battling with the teacher unions in my state every day—I'm the no-goodest, lousiest . . . All we've done in Louisiana is give our teachers three consecutive years' pay raises—from 20 to 30 per cent. Spent half a billion dollars of extra tax money to pay our teachers. I love them. They are the key to our education system. But we ask in return that we find out who can teach. Is that a radical idea? Everybody's talking about the revolution in Louisiana. I don't consider that a revolution.

And we test our teachers in some unique ways, ways that you ought to know about. Subject matter—a math teacher ought to know math. Radical stuff, now we are pushing it.

Number 2: We find out how they value children. Should a teacher respect a child? Yes. We test that. We test and evaluate the way a teacher tells a child "no." We test and evaluate the way a teacher tells a child who gave the wrong answer, "You're wrong, but I love you anyway. There's a better answer." What a powerful test that is. We're finding that 26, 27, 28 per cent of our teachers are superior. They could teach anywhere on Earth. And we're giving them a 10 per cent pay raise again this year. We found that an additional 60 to 63 per cent of our teachers met our high standards. We gave a failure rate in the first year of somewhere between 8 and 9½ per cent. Doesn't sound like much. Statistically it's valid, within one standard deviation of a physics test. But that means that almost 10 per cent of our students are being taught by teachers who can't teach. We will spend the next year remediating our teachers, working with them to see if they have the skills to teach. Then we'll test them again. And, if they fail the second time, they will not be allowed to teach our children.

Now, Number 3: We've done teacher pay—classroom sizes. We believe in the grades K through 3, there should be no more than 14 students per teacher. When I took office three years ago, it was 29 to 1, today it is 20 to 1 and we're headed to 14. That's three tables here. Two and a half exactly. Can you imagine the power of a competent first grade teacher, well trained, walking into a class with only 14 students?

The fourth thing we are doing is grading our schools. Beginning last fall and extending for the next two years until we complete the cycle, we will grade every school in Louisiana and publicly release the scores, ABCD and F. So that the parents will know and can interact with their schools to change the scores. They'll know the grade and why they received the grade.

Finally, we will ask the legislature to approve choice for our parents. The power of choice is not to be ignored. When the G.I.s came home from World War II—I'm not that old, my daddy told me—they had the G.I. Bill. America said, "Thanks for defending America. And in return, we're going to let you go to college."

That bill was not restricted to a particular school or to public school. You could go to Notre Dame or to LSU. I mean, if you wanted to make a real bad choice, you don't have to go to LSU, but we let you make that decision.

The taxpayers of America paid for men and women on the G.I. Bill to go to private colleges, if that's what they wanted to do, if that met their college needs. Did it threaten

public education in America? Did LSU close down? Did Michigan State disappear? No, they got better. They competed, and as a matter of fact, 71 per cent of all G.I.s went to state-run schools. Public schools as a matter of choice. We're not ready yet for choice in Louisiana. We don't have enough information to the parents, but we're close and we're going all the way.

Here's the way we do it. We'll begin with the F and D students and work up. We find that an A student will make an A no matter where you send her or him. But an F and D student might be helped by a change of venue, a change of scenery. An F student might be helped if he or she is the son or daughter of a single parent, a mother, and in our state now we're requiring AFDC recipients to be job-trained and take a job—that's called welfare reform. The son or the daughter of that single parent might be best helped if Mamma works at a plant and she has the optional choice of taking her children to a school close to the plant. She's a single parent and if something happens to John or to Buddy or to Mary or to Lawanda or to Cassandra, she could leave the workplace, go to the school next door and then go back to work.

That's what choice is all about. Choices about putting education into our lives and quit acting as if it's something artificial or to be left to teachers.

There's a lot we can do in education and my time is out. I can't touch on them all.

But, I came today to say I was proud to be a part of this Party. I look forward to working with you to build it. I think our issues in the next campaign ought to be law and order. It ought to be safe to walk in your own neighborhood. I know that's another revolutionary thought. It ought to be putting our children first; we ought to win this battle in education. It ought to be about competitiveness. Does America really want to compete? I think it does. And, it ought to be finally about inclusion. We need more people.

One story and I'll leave you alone. I went to the Harvard Business School. I've been trying to get over that for 25 years. I learned two things. I learned only two things there, but they were valuable. One was to buy low, sell high. I haven't gotten it right yet, but I know it's there. The other I learned from a businessman who came to the Business School; he was the richest guy in America.

Of course, we all wanted to be the richest in America so we invited him to see what the answer was. He came and talked about 40 minutes.

He didn't give the answer, so one of my classmates said, "What's the answer? How'd you get to be the richest? How'd you get to be so successful?"

He said, "Easy—two words. Right decisions."

My classmate raised his hand and said, "How do you make all these right decisions?"

He said, "Easy—one word. Experience."

So my classmate raised his hand again and said, "Well, how'd you get all this experience?"

He said, "It's easy—two words. Wrong decisions."

It's a great country. We've made some wrong decisions. But my guess is we'll use our experience to lift our children. Thank you.

Mr. COCHRAN. Mr. President, there are a number of other speakers who have indicated an interest in speaking before 12:45, but none are on the floor.

I am happy to yield to the distinguished President pro tempore and Chairman of the Appropriations Committee, if he would like to have some time at this point.

Mr. BYRD. I thank the distinguished Senator.

Mr. President, I ask unanimous consent that the time I consume not be taken out of the time under the control of the Senator from Mississippi.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I compliment those Senators who have spoken on the subject of excellence in education. This is a subject which should be in the minds and hearts of all Americans. There is simply no room for mediocrity in education or in anything else. The standards ought to be that we achieve the utmost, and not only the children in our schools, but also the adults in our country, ought to strive to learn for learning's sake. We would have a much better country.

THE INANE EXPRESSION "YOU KNOW"

Mr. BYRD. Along that line, I had indicated that I wanted to address a few remarks to that inane expression, "you know," that seems to creep into most of the conversations that we hear. Increasingly on television I hear even the television commentators using the expression. I gather that a good many people feel that they are being fluent in their speaking of English if they can just fill in the gaps with "you know," "you know," "you know," "you know." But to the careful listener, it stands out as a weakness. And I cannot understand why the teachers in the public schools do not emphasize to their students the need for avoiding too much dependence upon any particular word or expression. Perhaps some of the teachers do emphasize this.

I have talked about it with some of the members of my staff. I think it has helped. They were not aware that they were using the expression. And my suggestion is, "Why don't you sit down and put on a tape recorder a conversation, and then go back and listen to your conversation, and they would be amazed at the times that they used the expression." Because, as I have often said to my staff, you will not always be on my staff. You will perhaps get employment elsewhere, someday, and I would like for you to feel, as you will have left Robert C. Byrd's staff, that you are a better person. And I would like for your next employer to feel that, when he employs you, Robert C. Byrd has some standards in his office.

One of my concerns is that I will hear it so much that I, too, shall inadvertently begin using that empty, useless expression.

A few years ago, here on the Senate floor, I called attention to the galloping overuse in American speech of the inane phrase, "you know."

At that time, a few commentators wondered why a United States Senator would be concerned enough about a seemingly innocuous phrase to bring the subject up here on the Senate floor.

As I said at that time, and as I repeat now, I am concerned about our culture. Among other elements, our culture is defined by the quality of our language and the caliber of education in self-expression and communication being provided to children in our country.

Interestingly, I have discovered that I am not alone in my concern about the abuse of the phrase "you know."

In his best-selling book "Strictly Speaking," former NBC newsman, commentator, and language analyst, Edwin Newman has said: "The prevalence of Y'know is one of the most far-reaching and depressing developments of our time, disfiguring conversation wherever you go."

Newman goes on to recount that in Britain, a "National Society for the Suppression of Y'know, Y'know, Y'know in the Diction of Broadcasters" was organized in 1969. This group then compiled a list of the "you know" offenders in British broadcasting, interviewed the most egregious "you-knowers," and presented them the evidence over the interviewees' objections.

You guessed it! Newman reported that nothing changed.

In his book, "Dictionary of Problem Words and Expressions," educator and grammarian, Harry Shaw states, "(You know) usually appears in conversation with no more meaning or purpose than 'uh' or any other pause that is merely a time-waster."

I think there can be an art in the use of a pause. And I find nothing wrong with a pause. It does not have to be filled in with "you know."

Alcibiades was one of the most eloquent speakers of his time. Plutarch tells us, on the authority of the prince of orators, Demosthenes, that Alcibiades often hesitated in the midst of a speech, not hitting upon the word he wanted, and stopped until it occurred to him.

Alcibiades is not exactly a paragon of good living. He was not a model of good morals. But I think we can take it on Plutarch's word that he was an eloquent speaker; a fine looking young man, very influential, exceedingly intelligent.

So, Alcibiades would pause until the right word came to him. Then why do we not do that as well, instead of attempting to fill in the gaps with the senseless, meaningless, inane, empty expression "you know?"

Across every level of education and class in this society—indeed, internationally wherever English is spo-

ken—the prevalence of "you know" and its variants is a symptom of the widespread neglect of grammar, precision, clarity, and variety with which too many people are taught to master the English language.

Taken at a superficial level, "you know"—thrown again and again and again into a person's conversation—is an irritant.

But taken more analytically, "you know" betrays a mind whose thoughts are often so disorganized as to be unutterable—a mind in neutral gear coupled to a tongue stuck in overdrive.

A disillusioning experience is to watch a television interview, for example, in which a highly touted expert or a noted personality is featured, only to hear that individual punctuate his inarticulation, again and again, with a string of "you know, you know, you know, you know."

This inclination toward "you know" is a habit. That is what it becomes, a habit—a habit that sometimes results from a stunted vocabulary; not always. Increasingly in our society, as reading is neglected in favor of viewing television or listening to raucous music, young people are not learning the words that they need to know in order to share their thoughts with others. Growing into adulthood, too many of our youth find themselves crippled by an infantile vocabulary insufficient to match the mature experiences, complex procedures, adult emotions, and expanding information that confront them.

Perhaps I shall remain a voice crying in the wilderness. But as Americans, we do comprise the largest single concentration of people in the world for whom English is the primary language. At the same time, English is the world's most popular language, spoken by more people as their first or second language than any other on Earth. As native English speakers, we have a responsibility to maintain our tongue as a vigorous, vivid, exact tool of communication.

But, as I have implied, and stated explicitly earlier, contrary to that hope is the spread of "you know," and the spread of it internationally.

Like many of our colleagues, I never cease to be amazed at the English fluency that one can hear at many places in the world where American or British media interview nonnative English speakers on the streets of major world cities—Moscow, Paris, Berlin, New Delhi, Copenhagen, and so on. But again and again, one can pick up that irritating "you know" thrown in even by otherwise brilliantly fluent English speakers in foreign countries.

Not surprisingly, during recent televised interviews of Kuwaiti natives in their Iraqi-devastated homeland, English-speaking doctors, engineers, and local officials, not to mention semilliterate Kuwaitis, were heard seasoning

their sentences with that ubiquitous "you know" irritant.

This is not a concern which can or ought to be legislated, of course. My hope and purpose are that people who speak and love the English language, and above all those who teach the English language in the schools—and do not forget that we parents have a responsibility to teach the English language in our homes, to our children and grandchildren—will become sensitive to the unconscious pollution that "you know" and its variants are producing in civilized conversation and public discourse. If enough Americans, British, Canadians, Australians, New Zealanders, Jamaicans, Senators, teachers, TV commentators and anchormen, and other English-speaking peoples become concerned about this problem, perhaps then the pesky, pestiferous "you know" will be banished forever from serious speech around the world.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SIMPSON. Mr. President, let me just comment briefly on the remarks of the senior Senator from West Virginia. They were very adroit and very understandable. It is something the Senator cares a great deal about and not only talks of it but lives it, because I asked him once what he had done during a recess period, and he said, "I finished 'Plutarch's Lives' and the dictionary." And I had been off dallying about. I was guilt ridden.

So I learned much from the Senator from West Virginia. But what I learned is his love of literature and art and the language, the mother tongue, and he speaks it beautifully and with great care and attention. We should heed his words.

I yield 5 minutes to the Senator from Missouri.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. I thank our distinguished Senator from Wyoming.

I would only add that I, too, enjoyed the comments of our President pro tempore. His distinguished discussion and discourse on the English language is most informative and he leads, in that pack of knowledgeable individuals, journalists like Edwin Newman and William Safire, who are trying to rescue the English language from the depths to which it falls.

I was once advised by the Ambassador to Great Britain that the greatest barriers between our two countries was our common language. With leadership such as we heard today, perhaps we will be able to use the language as a means of communication rather than as a blunt weapon.

I think it is very helpful for all of us to heed the admonitions offered by the distinguished President pro tempore.

PARENTS AS TEACHERS PROGRAM

Mr. BOND. I was pleased, Mr. President, to hear the President last month speak of his vision for America 2000. The proposal on education contained a number of excellent ideas to revamp the educational system in this country.

I want to highlight just one particular area that the President noted in his speech because it is something that is very near and dear to my heart.

During his speech, the President introduced Michelle Moore, a single parent from St. Louis who participated in Missouri's Parents as Teachers Program. She said she wants to be sure her 16-month-old son Austin enters school ready to learn.

The President, our Nation's Governors and we in Congress have focused increased attention on the first few years of life, before school even starts, as crucial in the development of a child's language skills, social skills, and personality.

We also know that parental involvement in the education of their children is key to long-term gains for youngsters. Parents are their children's first and most influential teachers. What parents do to help their children learn is more important to academic success than how well off the family is, where it lives, or what other advantages that family may have or even disadvantages.

With a limited Federal investment, we can help parents get their children's lives started in the right direction by exporting to other States the success of Missouri's Parents as Teachers Program.

I note what I read today that the Iowa Legislature just passed legislation to adopt a similar program. The Parents as Teachers Program is an all-in-one early intervention, parent education, and early childhood education program which addresses a variety of needs for young families.

The Parents as Teachers curriculum starts early in strengthening the foundations of later learning, language and intellectual development, curiosity and social skills. In addition, health screening is provided for participating preschool children to detect potential impairments early on.

An independent evaluation of the program in Missouri showed that children whose parents participated in the program consistently scored significantly higher on all measurable standards of intellectual achievement, auditory comprehension, verbal ability, and language ability than their peers who did not participate.

Parents participating in Parents as Teachers were shown in the same study to be no more knowledgeable about child-rearing practices and child development than comparison parents. Parents as Teachers' staff have been successful in my State in identifying and intervening at-risk situations and en-

couraging families to seek medical assistance or other specialized services. Many children receive no health screening between birth and the time they enter school, but through the early intervention and Parents as Teachers improved or corrected conditions often benefit the child before he reaches school.

The Parents as Teachers legislation is a great way for the Federal Government to work with the President and the Governors to meet the first of the very important educational goals, and that is that all children enter school ready to learn.

Briefly, our legislation would set up a \$20 million competitive grant program for States who wish to begin or expand Parents as Teachers Program similar to the Missouri mode. We believe by providing seed money for each of 5 years to expand proven effective programs is an appropriate role for the Federal Government.

I envision down the road the States would be able to muster the political support they need for this great program, to sustain it by themselves and provide for a diminishing Federal share because the benefits will result in substantial savings.

Mr. President, I have a personal interest in the ongoing success of the program. The program started before I even became Governor of Missouri in 1973 on a limited basis as a Federal pilot project. But when our child Samuel was born, in the beginning of my second term, my wife and I utilized the information of the program and found out how effective it was for us and for our son. I commended the Legislature of Missouri for 4 straight years of passed legislation, and finally on the last hour of the last night of the last legislative session it was passed, signed into law, and over 50,000 Missouri students and families have participated in it.

I want to see every family in America have the same opportunity, and I will at the appropriate time offer the measure as an amendment, if it is not otherwise before the body, because I believe we can assist parents to maximize the intellectual and social development of their children.

Many of my colleagues, including the distinguished occupant of the chair, have already cosponsored the legislation, and I invite other colleagues to do so as well.

I yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the time for morning business be extended 15 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. SIMPSON. I now yield to the Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from California.

AMERICA 2000

Mr. SEYMOUR. Mr. President, I rise today to commend President Bush and Secretary of Education Alexander for their efforts to set a new course for education in America's schools.

This new approach, America 2000, is a comprehensive master plan mobilizing all segments of society to constitute America as the world's leader in education.

However, the success or linchpin of America 2000 is predicated on a serious national commitment to education. Schools are not the only ones being asked to roll up their sleeves and get to work. Each community, its elected officials, industry, business, and of course, the parents must engage in this process and make education their top priority so that our children are in the best environment possible to foster educational excellence.

The most important participant in this strategy is the family. Students, be they young or old, need support in their endeavors. Their parents and guardians are the most important people in their lives—they are the role models whose examples and teachings lend so much to a child's development. If children see that education is important to their parents, then it becomes an important goal for them. Parents need to involve themselves in the day-to-day activities and accomplishments of their children. It is up to them to see that homework is done and that a young child's curiosity and yearning for the yet-unknown is not shunned.

One of the most critical ingredients to education's success is communication between parents and the teachers. That is why schools should be encouraged to develop and maximize strong parental involvement programs at all grade levels. Unless parents are aware and care, the education strategy will not work.

I am pleased to see the administration proposal places a special emphasis on skills for five core subjects; English, mathematics, science, history, and geography. The time has come for us to go back to the basics, and demand that graduation from an American school carries with it a guarantee of proficiency and knowledge. This is not to say that a national curriculum is warranted, because there are cultural and regional variances that need to be reflected in our educational system. Education is the means by which cultural mores are maintained. It is this diversity that goes to the very heart of our social fabric and makes the United States unique and strong.

And, in addition to the five core topics, we must insist upon mandatory

drug and substance abuse education in elementary and secondary schools. We are reminded daily that the scourge of drugs reaches into every aspect of our society; in order to attack it, we must prevent its proliferation to future generations, we must educate our children to go beyond "Just Say No."

In tandem with a return to basics it is necessary to ensure that the educational plan is working. As with any experiment or business venture, periodic evaluations can stimulate adjustment and ensure effective results. American achievement tests will not only challenge the students and teachers to meet the standards prescribed for them, but it will also challenge entire communities to see that its future work force is a capable one; one that will have the higher order skills to be productive contributing members of the community.

One aspect that cannot be overlooked—the teacher—the key element of the system, must be addressed. I join with President Bush in strongly encouraging communities to implement merit pay for teachers. Incentives should be given to those who excel in teaching. I believe that these new educational plans will empower the teachers to meet the challenges set before them. We must recognize the outstanding job that good teachers do and treat the profession as one that deserves our respect and support.

I am confident that prospective teachers will be excited by the many new opportunities the education strategy offers them. Qualified and exceptional people must be encouraged to enter this profession, and I support the development of alternative certification programs for teachers and principals. So that professionals in other areas, those who have been frustrated previously by certification requirements, will opt for a second career in teaching. In most instances, second career teachers bring with them an additional perspective and a wealth of knowledge which can only enhance the student's educational experience.

In my mind, one of the most progressive components of the education strategy is school choice. It is here that we can best involve students and parents in educational decisionmaking, and give them the opportunity to decide which educational plan is best suited for the child. In tandem with the other improvements in the system, there will emerge new and different types of schools. These schools will be based on different philosophies, and different approaches to learning, but all will share the result of well educated students who will be prepared to meet the global challenges of the 21st century.

Choice is critical to the success of the new American schools. But it is not enough, Mr. President, that we improve the educational system. We must work more diligently to address other

concerns that affect school performance. The schools themselves and the communities surrounding them must be made safer environments conducive to the learning process. America's schools must be free of drugs and violence. In conjunction with the President's crime package Congress must take a leadership role and promote safe schools, by encouraging States to adopt laws that will increase penalties for assaults that occur during school-related activities. Federal penalties on drug crimes, particularly those that involve minors must be stiffened.

Some have been quick to criticize America 2000, asserting that it lacks fully developed programs. I do not believe this to be true. The education strategy sets out a master plan, and it asks communities to adapt these guidelines and standards to be compatible with specific local needs. A program developed for Manhattan or San Francisco will, by all odds, be inconsistent with the needs of a school in the California Central Valley. Only a plan which offers flexibility will succeed.

The President has in this regard properly asked that the entire community become active participants in achieving the goal of educational excellence. All communities have been asked to adopt six goals set out by the President and the Nation's Governors.

By the year 2000:

First, all children in America will start school ready to learn.

Second, the high school graduation rate will increase to at least 90 percent.

Third, American students will leave grades 4, 8, and 12 having demonstrated competency in English, mathematics, science, history, and geography; students will learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Fourth, U.S. students will be first in the world in science and mathematics achievement.

Fifth, every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Sixth, every school in America will be free of drugs and violence, and will offer a disciplined environment that is conducive to learning.

This is but the beginning. Communities and their leaders must go far beyond this and we must help them. Community members must be education decisionmakers. Active participation is needed by all to implement those goals.

The private sector has a role as well: For example, another component of the strategy calls on the business community to fund the New American Schools Development Corporation whose mandate will be the awarding of contracts to experts in education who are willing

to develop innovative methods for teaching. I applaud this effort to break free of the conventional models of education we have been using all these years. It is time for newer and more pragmatic approaches to restructure the way America learns.

Businesses of all sizes must be willing to demonstrate that excellence in education will lead to a brighter employment future. Their commitment must reach beyond financial support and exhibit a time commitment that begins at home. The business community must be the catalyst to change, showing America what is needed to be a successful global competitor. Using entrepreneurial spirit and good old American business know-how, we encourage students and demonstrate to them that there is a practical application for the skills they are learning in school. This is just one approach to ensure local coordination and collaboration on our education goals.

Once again, I commend the President for his comprehensive approach to this complicated problem and know this commitment is shared by all Senators. It will take years of hard work on the part of all citizens, but the effort is well worth it. The cornerstone to all social and economic success is education.

Our children are our greatest asset. We must not fail them. We must preserve their future opportunities to succeed and that of our free society.

Mr. President, I stand before this body today to strongly support President Bush's recently announced and Secretary Alexander's recently announced program to ensure high quality education for all American youngsters.

I speak as one who has spent 8 years as a State senator in the State of California, serving 8 years on the State of California Senate Education Committee, one who has supported year in and year out through those 8 years a continuing increase of funding for education. I am not sorry I did that. I think it has been necessary.

In fact, we have moved California in its funding per child, Mr. President, from ranking near the bottom of all the States in our Nation, relative to dollars invested per child, to up in mid-range, and we have more to do.

I am also convinced, Mr. President, that just continuing to throw money at this issue and this problem will not resolve it. I look back over my shoulder and I ask what have California taxpayers received as a result of their continuing escalating financial commitment to the education of their youngsters?

I must say that they have not received a great deal. There has not been a tremendous improvement whatsoever in the SAT scores. There has not been an improvement in the dropout rate which, in California, runs somewhere

between 25 and 30 percent of our youngsters not receiving a high school diploma.

Therefore, what I am suggesting is, despite our sincere efforts, despite our commitments to funding, there has to be more. That is why I am here to support President Bush and Secretary Alexander in their efforts—in particularly three areas that I think are absolutely critical—to improve the quality of education: First, accountability.

There must be accountability at the local level. We have one school district, Richmond School District to be specific, in the State of California, where the local board of education has bankrupted that school district, been totally fiscally irresponsible, but yet that school district has gone to court and said we know we may have bankrupted this district, but we want you to require the State to bail us out.

If we are going to have accountability at the local level, then that school board must be held accountable not only for its fiscal practices but must be held accountable for the quality of education of the youngsters who are attending their schools.

Accountability, yes, requires some form of measurement. The President suggests that form of measurement be testing. I know there are those who say testing does not do it all. I agree. But as a father of six children, I will tell you what I do when one of my children brings home their report card. I measure their performance based upon what is contained in that report card. I think the taxpayer has the right to also measure the performance of their schools and their school districts relative to the performance of testing.

Second, the President has suggested parents ought to have a choice in schools. I support that notion. I think a parent who cares enough to go down to their local school and say I am dissatisfied with the quality of education or the curriculum you are offering my child and therefore I choose to remove my child and place them in another public school which I believe will better serve my child's needs, it does two good things. First, they say to the school that is losing the child, you better do a better job. Second, they say to the public school receiving the child, you must be doing something right. But, most importantly, it says to the parent, you are in control; you are in charge.

That is the third element I support in President Bush's program, parental involvement. We cannot expect teachers to be solely responsible for the education of their children. Parents—even though we may be a one-parent household—must be involved, must know what is going on at the school, must know the courses and how their children are performing in school, and therefore to the degree we get them involved I suggest we will see a dramatic

improvement in the quality of education of our youngsters.

Mr. President, I thank the Chair. That concludes my remarks. I yield the floor.

The PRESIDING OFFICER (Mr. GORE). The acting Republican leader, Mr. SIMPSON, is recognized.

Mr. SIMPSON. Mr. President, I thank our colleague from California. It is nice to have him as our newest Member.

Mr. President, I yield to myself 3 minutes and then yield the remainder of the time in extended morning business to the Senator from Delaware.

IMPROVEMENT OF THE EDUCATIONAL SYSTEM

Mr. SIMPSON. Mr. President, I, too, speak on the subject of the President's most recent proposals on reform and improvements in the American educational system.

In some ways, the problem of education reform is much like the old adage about the weather, everyone talks about it but nobody does anything about it.

Education is not exactly like that since so many things have been tried by past Congresses and Presidential administrations. But the adage does apply when it seems everyone agrees "something" has to be done.

There are deep flaws in our educational system, but effective prescriptions for dealing with them seem so very few. This proposal, which comes to us from the White House bearing the imprint of our remarkable new Secretary of Education, Lamar Alexander—I do not hesitate to put great strength and credence in what he is going to do. I am very high on this man. He is the most impressive person I have met in many years of public life. I knew that years ago when I met him through our former colleague, Howard Baker—will "do something about it" in defiance of that old adage.

What he will do is to seize upon the problems, which there is virtual unanimity in diagnosing, and suggest appropriate applications of resources, Federal and non-Federal, to correcting them.

We all know what those problems are. They have been outlined very well this morning. It is our purpose in this education bill to deal with them not just with money. We do that with everything, and we do it ineptly. If you want to believe it in the best way, then look at the health care system where we are spending \$660 billion per year and have some serious, serious defects.

Fortunately, the U.S. Government is involved in only about 7 or 8 percent of the entire education budget, which is paid for by the taxpayers from the Federal Treasury. They pay for it through the counties and the cities and the

school districts where 93 percent of the funding comes.

So I do want to commend Lamar Alexander. I look upon him as a great leader in this area. He will, indeed, not just make us believe George Bush is the "education President," which he has every credential to attain, but he will help him attain it and in the course he will be the "education Secretary" we will all know did something about it.

What are those problems? You hear them time and again. Children do not enter school today ready to learn; their home lives do not foster an emphasis on learning. Many of the communities in which they live are wracked by drugs and violence. Schools are not held accountable for the success of their students. Everyone says that teaching is a noble profession, yet teachers are underpaid, unrewarded, and are asked to act as social workers as much as instructors. While our post-graduate education is the envy of the world, we are not educating our students adequately at the primary and secondary level.

The President's plan looks each of these problems right square in the face and addresses them sensibly.

The plan does this because it recognizes the appropriate role for the Federal Government to play. Where there is a consensus about what the problems are, we have in the past argued among ourselves as to what the Federal Government can do, and how it should do it.

This has been the case, in my view, because so many of the standard Washington approaches to problem solving, simply do not work for education; that is money. It has taken a long time to recognize that, but our frustrations and failures in this area have now made it abundantly clear.

The stock solution to any societal problem here is to hurl Federal resources at it. That's what the Federal Government is—the collective resources resulting from the contributions of millions of taxpayers. Those resources can be put to effective use for a myriad of purposes. But in education, less than 10 percent of our national spending comes from the Federal Government. It would take a complete redistribution of education funding sources for Federal dollars to make anything but a peripheral difference.

The standard solutions also do not work because education problem-solving cannot be done in isolation. There is no single line item you can increase to alleviate the difficulties. The greatest school with the greatest teachers is not going to produce good students if those students must dodge drug peddlers on the way to school, if they fear violence during the time they are in school, or if their parents are wholly indifferent to their educational needs. Federal spending on education is wast-

ed unless we improve these other areas, too.

One of the things the Federal Government can effectively do is to act as a coordinator—to improve communication between the different States and localities regarding education reform, and to establish a bottom line of quality which school districts should and can reach. The administration would have us do that. The Federal Government can contribute to educational quality by rewarding excellence and attacking failure. The administration's plan will do that, too. And the Federal Government can use its resources to attack those socioeconomic problems which make education reform such an uphill struggle. The administration's plan pays careful attention to that problem as well.

First, the administration would have us set standards, which our schools are to reach by the year 2000. We have forgotten too much about that—standards, accountability. Report cards for school districts, schools, States, and for the entire Nation. Children would be required to demonstrate proficiency in the five core subjects—and perhaps others—of English, history, geography, mathematics, and science.

While minimum standards must be set, excellence will be the ideal, and this plan would reward it. Presidential citations for educational excellence, honors for outstanding teachers in the five core course subjects, merit schools program to reward schools that move toward the goals, Governors' academies for school leaders.

Second, a new generation of American schools would be created using the most advanced knowledge available to us in the area of education. Our Governors would designate America 2000 communities in which would be established new American schools—these would be schools which would put in practice the knowledge gained by educational research and development teams. Some of the innovations would no doubt fail, but others would certainly pay off—get too grades—and we will all be better off for the chance to put new ideas into practice, and to abandon old prejudices about how things have to work.

Third, the plan would eliminate a great hypocrisy. We currently tell children that education is important, of great value to them. But too many of us give the lie to that in our own lives. The administration's plan would therefore create a national conference on education for adult Americans. The plan would also establish job-related skill standards and skill certificates. Let our children see that education and skill is valued in the adult world as well, and let them see their parents and relatives demonstrating the values which they wish to see adopted by children.

Perhaps most importantly, the administration's plan would seek to improve the environments in which school-age children live—by targeting programs which benefit at-risk children—such as Head Start, Even Start, and nutrition programs—and by also coordinating the efforts of those parts of the Federal Government whose functions directly impact education in this way. The Department of Labor and the HHS Department have both made clear that they will be contributing to this process.

I know it will be frustrating for some here that education cannot be reformed from above. We cannot control the process, and indeed we will not even provide the lion's share of the resources. That is the nature of the beast—the glory will largely go to others, innovators on the State and local level; but then—they are those who must do the hard tough—and sometimes unrewarding work in the trenches to make it possible for our children to learn. We must listen to what they are telling us—Governor Sullivan, the Democratic Governor of Wyoming, says that the new plan will fit hand in glove with Wyoming aims for improving its educational system. We need to listen to those voices, and we need to see that this plan is effected as promptly as is possible.

Mr. President, I yield the remainder of my time to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

EDUCATION

Mr. GRASSLEY. Mr. President, I, along with the rest of Congress and most of America, listened with great interest to the President's address on education. I share his excitement and commitment to putting education first on the Nation's agenda.

As Congress takes up the President's proposal, or other education bills, we must emphasize a partnership structure.

The Federal Government certainly does have a very important role in that partnership. That role has been and should remain, however, limited. True education reform and true education excellence can occur only at the State and local levels.

But the most important reform effort must take place in the children's own homes.

We, as national policymakers and opinion leaders, cannot and should not lure the public into believing that the Federal Government can, or will, provide all the answers, or all the money, for our education concerns.

I wholeheartedly agree with the President's statement that what happens in the Federal Government is not half as important as what happens in each school and in each home.

Congress must protect the time-honored authority of parents and locally elected school officials to put reform in place.

Students in education systems, such as in my home State of Iowa, excel because they care, their parents care, and their communities care about them and about their education.

I know that the task ahead is as complex, as it is crucial. It will require creative and courageous exploration of new approaches for delivering education. It will require bold vision for the future.

To recite from an ancient Chinese proverb:

If you plan for a year, plant rice.

If you plan for 10 years, plant trees.

If you plan for 100 years, educate your children.

Our children must be educated for their future—not our pasts.

Their's will be a world which my generation cannot even imagine.

Our children need and deserve the best. So we have to make sure that we provide the best—without being hamstrung by old traditions—just because "it's always been done that way."

So, I especially applaud the President's plan to create a catalyst for invention and innovation.

Our country is known for its creativity.

And putting that creativity to work for education will provide new answers to the difficult questions and challenges facing our school systems.

Although new innovations are key to successful education reform, we cannot forget to provide sufficient resources to the good Federal programs we already have.

Tried and proven programs, such as Head Start, chapter 1, and school nutrition, cannot be left in the dust in the race to establish new programs.

The future house of education will not stand on window dressing if its walls and foundation are not solid.

That is why I supported the home front initiative in the Senate's 1992 fiscal year budget resolution. I urge my colleagues to retain that commitment to those existing programs which have proven themselves over and over again.

Mr. President, I applaud this renewed commitment to the future of our children. The responsibilities of Congress cannot end with adopting Federal legislation.

We must provide the leadership and the motivation to inspire families and communities to invest in their children's education. And we must do this—not only as the collective body of Congress—but also as individuals.

AMERICA'S PEANUT PROGRAM

Mr. ROTH. Mr. President, when I was a young boy growing up like any other young boy in America, I never imagined that one day I would be standing

on the floor of the U.S. Senate speaking about peanut butter. Then again, in those idyllic days when my favorite lunch consisted of a peanut butter sandwich and glass of cold milk, I never imagined that I would see a time when such a staple product in a child's life would be threatened in America.

But due to unfair and archaic laws that benefit a few at the expense of many, that time has come. Our Nation's supply of peanuts and peanut products is threatened. Prices are skyrocketing out of reach for many hard-working Americans and dependent children. The time has come to lay aside special interests and do what is right to correct the gross inequities in America's Peanut Program.

Today each of us received a peanut butter sandwich for lunch, compliments of the nonprofit and nonpartisan Consumer Alert Advocate Fund. I advise you take a good long look at it before eating, because if recent trends are allowed to continue, it may be the last peanut butter sandwich you see for a long time. A poor domestic harvest and protectionist laws that forbid peanut imports have caused the price of peanuts to rise so high and so fast that already the Department of Agriculture has dropped peanut butter from the School Lunch Program and the Low-Income Food Supplement Program.

The irony of this should not be lost on any of us, by virtue of its own actions, the Federal Government has priced itself out of the market for a food item critical to its own programs.

The lack of peanuts for our U.S. processors is so great that 6 weeks ago the International Trade Commission recommended that at least 300 million pounds of peanuts be permitted to be imported. Unfortunately, certain special interest groups have persuaded some of our colleagues to place their protected status above the welfare of our children and families, especially limited-income families that rely on peanut products as a fundamental source of protein.

This is not right. Nothing can justify neglecting the needs of our children to protect what amounts to nothing more than peanut barons who control the land, quotas, and import regulations that restrict the availability of peanuts in America. It is ridiculous for Americans to be paying prices 50 percent above world levels. Consumers pay as much as \$150 million to \$369 million more for peanuts as a result of these restrictions.

Likewise, these restrictions are inconsistent and even hypocritical to our insistence that other nations open their borders to our exports. How can we encourage the Japanese to import our rice, if we are so intransigent in restricting the import of foreign peanuts? The answer is clear; the laws must eventually be changed.

It is a very complex system the peanut growers have devised, one that is based in archaic, feudalistic laws that restrict new farmers from growing peanuts for domestic use and limit the amounts of peanuts that are allowed to enter our borders.

Quota licenses are distributed on the basis of who was growing peanuts 50 years ago. It is commonplace for a person to own a quota solely because he inherited it from a family member who grew it 50 years ago. In fact, an owner may be a city dweller, who never sets foot in a peanut farm, but leases it out. Half the people who own quotas do this.

While, inevitably, the best way to remedy this problem—the best way to restore equity to the peanut program and safeguard our children—will be through fair and responsible legislation, at present there is not enough time for the long, drawn-out process such legislation would require. Consequently, I am encouraging my colleagues—as well as Americans everywhere—to join me in asking the President to accept the recommendation of the International Trade Commission and allow for the immediate importation of 300 million pounds of peanuts.

Mr. President, I ask unanimous consent that three editorials be printed in the RECORD. These editorials include the Washington Post, the New York Times, and the Richmond Times-Dispatch, all of which urge the President, as do I, to act swiftly.

I also ask unanimous consent, Mr. President, that a release by the Consumer Alert Advocate Fund likewise be printed in the RECORD.

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

[From the New York Times, Apr. 21, 1991]

LUNCH WITHOUT PEANUT BUTTER

Peanut prices have doubled in the U.S. since summer, driving up the price of peanut butter, candy and baked products. That has forced the Agriculture Department to drop peanut butter—an excellent cholesterol-free source of protein—from the school lunch program.

Most observers blame a production squeeze caused by severe drought and plant disease in the Southeast for the high prices. But nature is not the chief villain in this story; Congress is. Laws dating from the 1930's virtually ban imports of raw peanuts and prohibit farmers from expanding U.S. sales. The absurd system forces American shoppers to pay prices 50 percent above world levels: it's become cheaper for some companies to import processed peanut butter rather than manufacture it from home-grown peanuts.

The archaic regulations enrich 45,000 "farmers" who inherited or bought production licenses, most of which were issued during the Depression. Half of the current owners aren't poor farmers eking out subsistence from unforgiving land. They are absentee landlords renting their licenses for exorbitant fees.

This is a problem with a simple solution. The President could suspend the import ban, as the U.S. International Trade Commission

recently recommended, allowing U.S. food processors to buy peanuts at low international prices. That would help millions of U.S. consumers. It would also help poor peanut growers in third world countries like Senegal and Ghana to earn a decent living. And it would let the Agriculture Department restore peanut butter to the lunch tables of schoolchildren.

[From the Washington Post, Apr. 25, 1991]
NUTS TO WHOM?

The peanut program contains no additives, artificial coloring or flavoring. It is 100 percent pure protectionism. Only a limited number of farmers whose grandfathers did it before them are permitted to produce for the U.S. market, and imports are virtually banned. The government props up prices by calibrating supply.

Last year a drought in the major southeastern producing states caused the system to go awry. There were plenty of peanuts in the world, but here a shortage drove up prices to such an extent that a group of peanut butter manufacturers and other processors petitioned the government for relief. A month ago the International Trade Commission, a government agency, recommended to the president over the growers' objections that he let in some foreign peanuts to satisfy demand. The president has yet to be heard from.

The symbolism of his decision will be more important than the substance. The current crop year is already two-thirds over. The proposed imports will scarcely have time to make a difference before the new crop will arrive and prices likely return to normal anyway. Meanwhile the government has suspended purchases of peanut butter in favor of cheese for the school lunch program, but the peanut butter and jelly sandwich probably remains about as much a staple of the American juvenile (and not so juvenile) diet as ever.

It is not so much that relief should be granted this year as that the entire program should be scrapped, along with a lot of other costly and anti-competitive practices not just in U.S. agriculture but worldwide. That is the stated goal of the Bush administration in the currently on-again world agricultural trade talks. It would presumably be a feature of the free trade agreement that the administration envisions with Mexico as well.

If the president doesn't follow the ITC's recommendation on peanuts, he risks looking as if he is practicing one thing on trade while preaching another. In fact that is what he would be doing. But if he does follow the recommendation, aides fear that he will incur the opposite risk of giving opponents of the two trade agreements an instant example to point to; this is what will happen if you denude your industry too.

From the tiny peanut a mighty precedent thus grows, if the president doesn't let more peanuts in, he'd better have a pretty good reason. There's more at stake than the temporary price of peanut butter.

[From the Richmond Times-Dispatch, Apr. 23, 1991]

FREE THE PEANUTS

Peanut butter lovers may have noticed a sharp increase in the price of the nutritious spread in recent months, about 22 percent in the first quarter of 1991 alone. But neither grocers nor packers are to blame. A government-created peanut shortage is what lies behind high prices.

The federal government closely regulates who grows peanuts for sale as food in the

United States, and it almost completely bans the import of food peanuts. In order to grow food peanuts a farmer must have a federal license, and such licenses are hard to come by since they are distributed on the basis of who was growing peanuts half-a-century ago. As for imported peanuts, assault-rifle smugglers might have better luck. It is in fact easier to import a handgun than it is to import peanuts.

This Soviet-style regulation is intended to keep supplies short and prices high, and in that endeavor it is an overwhelming success. Peanut license holders get inflated prices for their crops and regulators are kept busy, but the lowly consumer just has to dig deeper in his wallet—about one-third deeper than his European counterpart. Considering the heavily regulated and subsidized nature of European farming, that takes some doing.

The federal International Trade Commission recently took a look at all of this and recommended that the ban on imported peanuts be lifted. The Bush administration is expected to make a quick decision.

We hope that the decision will not be left to the Department of Agriculture, which long ago was taken prisoner by farm interests. The department continues to insist on quotas and other programs that drive up food prices while at the same time handing out food stamps to the poor who suffer the most from its programs.

The time has come to abandon Soviet-style peanut regulation. Peanut butter is a staple in millions of households, and in many of them its protein substitutes for meat. But thanks to the ban on imported peanuts and domestic peanut quotas, a pound of peanut butter costs more than a pound of ground beef, and a pound of shell peanuts costs more than a pound of chicken.

Some peanut farmers would protest that they cannot make money at market prices, but even if true that would only indicate that at least some of them ought to be growing other crops. Peanut growers outside the United States manage to make a living at market prices, and we believe American farmers could, too. As long as people are willing to buy peanut butter, there is money to be made in peanuts.

CONSUMERS GIVE PEANUT BUTTER SANDWICHES TO EVERY MEMBER OF CONGRESS TO PROTEST SKYROCKETING PEANUT BUTTER PRICES

This morning, Consumer Alert Advocate, a national consumer organization, distributed peanut butter and jelly sandwiches to all members of the U.S. Senate and the U.S. House of Representatives to call attention to high peanut butter prices and the peanut import decision currently pending at the White House.

Senator William Roth of Delaware and Representative Richard Arney of Texas issued floor statements asking that the Administration allow in peanut imports to alleviate the shortage and bring down peanut butter prices.

Prices of raw peanuts doubled beginning last Fall as a result of a drought-caused domestic peanut shortage—from roughly .60 per pound to 1.25 per pound. This cost is being passed on to the consumer. Consumers are frustrated as they notice the price of peanut butter continually increasing—in some cases more than a dollar per jar in just a few short months.

Senator Roth told the Senators to take a good long look at the peanut butter and jelly sandwiches like the ones they received from Consumer Alert Advocate "because it may

be the last peanut butter sandwich you see for a long time."

The cost of peanut butter is so high that the U.S. Department of Agriculture has actually stopped purchasing it for the school lunch program as well as for its food programs for low income families. Prices will continue to soar unless more peanuts can be imported to make up for the domestic shortage.

The shortage could be alleviated by imports, but U.S. Government policy actually restricts the supply of peanuts through limits on both the domestic supply and on imports. The current government quota only allows peanut imports of 1.7 million pounds—less than one-percent of current usage.

Consumer Alert Advocate has joined several other consumer groups in urging the Administration to lift the current restrictive peanut import quota. A majority of the International Trade Commission (ITC) has already recommended that the President lift the current import quota.

Mr. ROTH. Mr. President, I reserve the remainder of my time.

TENNESSEE AND JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

Mr. GORE. Mr. President, I am honored to recognize 14 high school students from across my home State of Tennessee who have written outstanding essays for the 1991 "Tennessee and Japan: Working Together Toward a New Century" Essay Contest sponsored by the Tennessean newspaper, Toshiba International Foundation, and Tennessee-Japan Friends in Commerce.

More than 2,000 Tennessee high school students submitted essays exploring the relationship forged between Tennessee and Japan. The contest helps students learn more about Japan's culture and economy. Students explore the ties between Tennessee and Japan by conducting research, touring Japanese plants in Tennessee, and talking with State government officials and officials from the Japan Center of Tennessee.

The business partnership between Tennessee and Japan has had a positive impact on my home State, resulting in educational and cultural programs such as this contest between the citizens of my State and the citizens of Japan.

These students are the future of Tennessee and of our country. It is with great pleasure that I recognize and commend these 14 winners of this essay contest: Gill Geldreich of Franklin High School in Franklin, Emily Flowers of Henry County High School in Paris, Kelly Powell of Page High School in Franklin, Sandra White of Martin Luther King Magnet High School in Nashville, Christine Harris of East Robertson High School in Cross Plains, Carla Strassle of White House High School in Tyree Springs, Jeremy Latimer of Henry County High School in Paris, Greg Proffitt of Hermitage Springs School in Red Boiling Springs,

Leigh Ann Curt of LaVergne High School in LaVergne, Jason Couch of McGavock High School in Nashville, Billy Copenhagen of Brentwood Senior High School in Brentwood, Billy Strasser of Montgomery Bell Academy in Nashville, Jason Holleman of John Overton High School in Nashville, and Lane Mullins of Lebanon High School in Lebanon. Congratulations to each of these talented young students. I wish them all the best.

I am pleased to submit the winning essays into the CONGRESSIONAL RECORD.

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

FIRST PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Gill Geldreich, 10th grade, Franklin High School, Franklin, TN)

William Perry, a farm boy of thirty-four years from Portland, Tennessee, works at the Yamakawa Manufacturing Corporation, which manufactures parts for the Nissan Motor facility in Smyrna. William, nicknamed Junior, trained in Japan under Takehiko Mochizuki, nicknamed Mo, who is now a close friend and fellow employee here in Tennessee. This friendship is one of many that serve as examples of a new era of Japan-Tennessee business, political, and social relations. These new relations are based on exchanges of new ideas, old traditions, and ways of life.

Japanese executives come into the United States searching for wise investment opportunities and eager workers. They find them both in Tennessee. Tennesseans are willing to cooperate with, learn from, and share our good ways of life with others. Because these two factors exist, Japan and Tennessee will both symbiotically benefit from a close business and cultural relationship toward the Twenty-first century and beyond.

Japanese businessmen are constantly searching for new, potentially successful business opportunities in Tennessee. Ninety-five Japanese corporations have established centers of manufacture and/or distribution here, and the number is growing at a steady rate. It initially began in 1977, when the executives at Toshiba decided to locate a television factory in Lebanon, Tennessee, employing 650 people. They liked the climate, the topography, and the people. It felt like home. It also made good business sense. Seventy-six percent of the U.S. population located within 500 miles, excellent interstate transportation, and an industrious work force were supporting factors. Toshiba loved Tennessee, and other Japanese companies soon followed. In 1980, Nissan Motor Mfg. established an over \$800 million operation in Smyrna, the largest single foreign investment ever by a Japanese company.

Also, Japanese businessmen are looking toward expanding current investments. When quality reports showed that the Nissan plant was producing trucks with quality equal to that of Japanese plants, cars began to be manufactured there in Smyrna. Bridgestone Tire, after its acquisition of Firestone, decided to locate its central headquarters in Nashville and expand a former Firestone plant in LaVergne to make a new line of passenger-car tires. The operation may someday employ more people than does Nissan. The Japanese are known for holding onto a good thing when they find it, and they seem to have found something in Tennessee.

Tennesseans are among the most ready and willing to work in the nation. Overall, Tennessee has an excellent worker attitude. That factor is a very major element of Japanese investment here. Also, Japanese employers demand that their employees be loyal and trustworthy. Before any new employee is hired, applications are studied under close scrutiny, and applicants may be interviewed several times. Education is an extremely important consideration. Most importantly, Japanese demand that all their relationships, business and personal, possess *amae*. *Amae* is complete trust and confidence. Without *amae*, relationships are worthless so say the Japanese. Say many Tennesseans the same. This is one major reason why Tennessee and Japan have joined forces smoothly to form a team, a team that can make products of which both Americans and Japanese can be proud.

Believe it or not, Tennessee and Japan have very much in common. Besides climate and topography, Tennesseans and Japanese have something that we both hold dear to our hearts: Tradition. However, rather than inflicting our traditions and culture upon each other, we show more of an interest in sharing them, and we both show a desire to learn of each others ways of life. A prime example involves the town of Maryville, Tennessee. The town of Maryville was in the process of preparing a proposal trying to convince Nippondenso, a Toyota affiliate, to locate a starter-and-generator plant there in Maryville. The proposal was running smoothly, except for one major problem: What should they serve the Japanese executive when the proposal is presented? Kumiko Franklin, the Japanese wife of a Maryville College English professor, suggested this: Serve Jack Daniel's whisky, fried catfish, hush puppies, and cold beer. Maryville town executives tried the suggestion, and later that same year, Nippondenso broke ground in Maryville for a \$200 million operation employing 550 people. That's what it's all about.

Japanese love almost everything about Tennessee. Country music is extremely popular in Japan, and Southern cooking is cherished by the Japanese who find it. Tennesseans enjoy Japanese food as well, and Japanese history, civilization, and culture are studied very much. This is another main reason why Tennessee and Japan have bonded so well together in friendship.

Friendship, whatever the type or subjects, should be both beneficial and rewarding to both partners, not just one. Tennessee and Japan both possess a will to work together with one another for both benefit and reward. In the future the friendship, if *amae* is present, can only become more beneficial and more rewarding to both partners.

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SECOND PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Emily Flowers)

Kokusaika, a Japanese word meaning internationalization, is our future. In other words, internationalization is our ultimate goal: not the destruction of individual cultures reconstructed into one culture, but the

interreacting of all nations and the education of all peoples about the customs and ways of others.

Tennessee and Japan are working together to produce this "kokusaika" by introducing the ways of the East in the West. Now Tennesseans do not have to travel to the other side of the world to learn about Japan and its people: the discovery can be made in their own communities, with the aid of Japanese companies who bring their industry to create economic opportunity and their culture to create understanding.

Economics is essential to human existence: when our economy fails, we fail. Japan is enjoying great economic success, and many of its companies are looking to expand by seeking new consumers. They have the products Americans want; however, Americans cannot continuously purchase Japanese products when the money returns solely to Japan; therefore, Japan brings its factories here. Americans obtain employment and buy the favored products. The money remains circulating in the United States, and everyone is happy. Tennessee needs Japan, and Japan needs Tennessee. As we become "interdependent", we become internationalized, drawing nearer our goal.

Understanding between nations is the most important factor in the development of humanity and the construction of world peace. There are ways to accomplish this seemingly impossible feat, and Tennessee-Japan: Working Together is one of them, as it slowly narrows the gap between the two civilizations. When a Japanese company moves into Tennessee, they bring along their families, customs, language, religion, and food. They bring them to share with Tennesseans who, in return, share theirs. It's an exchange of lifestyles, and it is a benefit to everyone involved.

Many residents of the United States still hold resentment for the Japanese because of their part in World War II, and the reverse is probably also true. But both countries have changed since that time, and now there is no reason for these hostile feelings. A Japanese company in a Tennessee community creates a connection between the people of the two nations. As the employers and employees work together, they discover their differences and their similarities: lifting the prejudices as the truths are revealed. Thus, by "intermingling" we are internationalizing.

Breaking down the barriers and building the foundations of friendship—that is Tennessee-Japan: Working Together, working for a future which depends on internationalization. Presently there are 95 Japanese companies in Tennessee, and that number is continuously growing because this alliance works. Its economic success produces "interdependence" which causes "intermingling" which creates "internationalization—proof that the goal of kokusaika can be achieved.

What we must now do is expand this cooperative alliance, not only in Tennessee, but throughout the world. As Merlin pointed out to the young Arthur: when seen from above, the Earth has no boundaries. It is one solid mass: a big, beautiful ball of possibilities. But those possibilities diminish one by one with each boundary drawn. In this last decade of the twentieth century, with international relations becoming increasingly complicated, and events with world-wide effects occurring daily, it is apparent that our future lies with kokusaika. As long as we work together, our tomorrows will never end.

THIRD PLACE—TENNESSEE—JAPAN: WORKING
TOGETHER TOWARD A NEW CENTURY

(By Kelly Powell, 11th grade, Page High
School, Franklin, TN)

On a pleasant day in Japan, a seed is planted. After many years of nourishment and growth, it matures into a healthy, young mulberry tree. It is one of the many mulberry trees which grow on about 400,000 acres of land inside Japan. Its leaves are fed to the silkworms. In turn, these silkworms produce silk threads and spin them into the form of a cocoon. The cocoons are then taken to the silk factories where the threads are unwound. Thus, the silk results in being used in the fabric which produces a beautiful and complete new garment of clothing.

This process seems to parallel the cycle of relations between Tennessee and Japan. Many seeds have recently been planted here in Tennessee in the form of Japanese-based businesses and factories, as well as by Japanese exchange students. Through this interaction, we learn from each other and then apply this knowledge to everyday circumstances in order to better both Tennessee and Japan alike. Thus, both countries have benefited from this profitable relationship.

Through the recent years, many Japanese-owned businesses have settled in the Tennessee area. They have grown and developed into highly successful firms employing many Tennesseans. They have not only helped improve economic conditions by creating new jobs, but they have also contributed to local school systems and other deserving projects. This interacting between the two cultures seems to weave a "cocoon" interlocking both Japan and Tennessee. This serves as the fuel for the people of Tennessee. Tennesseans, along with the Japanese, feed off of Tennessee's resources in order to produce highly valuable products, similar to the process of making silk.

The Japanese exchange students, in much the same way, have helped students here in Tennessee. Students share stories with each other to relate the two cultures of the countries. This enriches the minds and imaginations of all those involved. These images then blossom into beautiful cocoons of hopes and dreams for the future.

These efforts will continue to be beneficial to both countries. As we approach a new century, more Japanese businesses will continue to find homes in Tennessee. In return, more jobs will be created, and economy will be strengthened. Thus, creating a better environment for all those involved.

The relationship between Tennessee and Japan is an excellent example of a peaceful tie between two foreign countries. This should be noted by other countries around the world. It seems ironic that peace and war can exist at the same time. Tennessee is involved in a war in the Persian Gulf, and at the same time, we are strengthening our peaceful relations with our friends in Japan.

With both Tennessee and Japan working together, much progress can be made in the future also. Our relationships can be observed by other countries and perhaps set an example for peaceful relations. More countries should interact with each other in this way. Thus, Japan and Tennessee would not be the only beneficiaries. The whole world would gain a sense of unity, love, and most importantly, peace in the new century.

FOURTH PLACE—TENNESSEE—JAPAN: WORKING
TOGETHER TOWARD A NEW CENTURY

(By Sandra White)

The relationship that has arisen between the Land of the Rising Sun and the Volunteer State is based upon similarities, and upon the doctrine of economic freedom and democracy, with the resulting system incorporating characteristics of both Japan and Tennessee. This bond has led to the enhancement of both areas and will continue to do so in the future.

In Japan there is a flowering cherry that resembles the Tennesseean dogwood, so the Japanese feel at home in the rural setting that characterizes Tennessee. The weather and geography remind them of home, not to mention the very aura of Southern hospitality in the air that seems to welcome them. Perhaps the Japanese contemplated this when considering Tennessee for a partnership, or perhaps they felt that the lack of unions and relatively few jobs would provide fertile ground for the Japanese seeds of management.

Economic freedom is dependent on many things. A choice of jobs is one of these characteristics. In order for one to have his/her choice of jobs, whether the job is professional, technical, or otherwise, the least restrictive environment must be offered. The least restrictive environment includes an availability of jobs, training for those jobs, and an employer that trusts and values employees.

Japanese involvement in Tennessee has created over 15,000 jobs in professional and technical fields. The promise of these jobs has led to training in the skills needed to fill the positions. Japanese management, so very different from most management systems in America, is founded upon mutual trust and loyalty between workers and management.

Economic freedom relies upon the fact that participants are consumers, that they are willing and able to purchase goods and services. The availability of money through work completed and services rendered is very important in the American system. The entire concept of freely disposable income is tied into self-esteem.

The opening of Japanese businesses in Tennessee has created jobs, and higher consumption. Also, the movement of Japanese companies has opened the door for more manufacturing and technical companies to move into Tennessee.

Economic freedom is dependent upon the availability of products. The process of choosing is tied into the theory of democracy, that without a choice, that without being able to make the decision one's self, there is no freedom.

Japanese involvement in Tennessee has given that choice to the people. The availability of employees, consumers, and the prospect of a brighter future has led many companies to open a market in, or even to move to Tennessee.

Economic freedom is dependent upon the prospect of advancement, of upward mobility in the workplace. Until recently, advancement in the workplace has meant only one thing, higher pay, and while more money is appropriate, there are other things equally important.

Japanese business has taught Tennesseans that a job can be enjoyed, that the only reward is not money, and that the friendships that grow are a reward too. They have taught Tennesseans that if the product is the best that can be produced, that pride is carried into everyday life.

Since Japan has become involved in America, the long-lived concept of "keiretsu", buying only Japanese, is no longer dominant. Instead, a doctrine of buying only the best, no matter the source, has overtaken this nationalist policy. Because of this removal of the final restraint against full participation, Japan was free to join in a partnership with the best. The bond between Japan and Tennessee is only going to grow stronger, and in today's web of interdependent economies that bond shall surely bring Japan and Tennessee to the forefront of the new world order.

In the ever-growing patchwork quilt of American society, Japan's patch is growing rapidly and through the thread that connects it with Tennessee, it has caused Tennessee to expand also. The thread that joins these two patches will grow until indeed there is a new patch, entirely dedicated to the relationship between Japan and Tennessee.

FOURTH PLACE—TENNESSEE—JAPAN: WORKING
TOGETHER TOWARD A NEW CENTURY

(By Christine Harris)

"It's not us against them," according to Tennesseean William Perry of Portland, Tennessee's Yamakawa Manufacturing. As Japanese investors and businesses move into Tennessee, more and more native Tennesseans are becoming accustomed to our new neighbors. An exploration of this new-found relationship will reveal that these two cultures are indeed working together toward a new century.

Figures from the Tennessee Department of Economic and Community Development show that Japanese investors have contributed \$3.8 billion in capital and investment to the state's economy. Through ninety-four operations (fifty-nine manufacturing, thirty-five sales and/or distribution), Japanese businesses employ nineteen thousand Tennesseans. Tennesseans working directly for Japanese firms and direct Japanese investments are not the only ways, however, that the Japanese are helping to boost the state's economy. Twenty thousand Tennesseans are employed by American firms which rely directly on Japanese businesses.

Another factor, other than the economy, that is affected by Japanese influence is the community. Tennesseans are learning from their Japanese counterparts as well as teaching them through cultural exchange. The Japan Center in Murfreesboro employs four professionals who act as emissaries for schools, companies, and individuals. Sovran Bank in Murfreesboro also held a seminar to acquaint Japanese women with the American checking system. According to Takehito Mochizuki who trains workers at Yamakawa Manufacturing, "The Americans are teaching us to be more spontaneous and outgoing."

Yet another influence of the Japanese on Tennessee can be seen in the labor force. Workers are becoming more open to new opportunities brought to Tennessee by Japanese industry. The relationship between both Japanese and Tennesseean workers is one of optimism and acceptance. "They want you to feel that this is your company, not theirs, so that you're working for yourself, too," said William Perry. Working for Japanese firms has not made Tennesseean workers lose sight of their American pride, according to Mary Green of Smyrna's Nissan plant. She says, "I know they make a lot of decisions back in Japan, but that's abstract. We don't see many Japanese. We're making the cars, and we're Americans."

As one can clearly see, Tennessee is greatly affected by the Japanese. What remains unseen to most Tennesseans, however, is Tennessee's influence on Japan. Japan is the third largest economic power in the world and is the United States' chief competitor. Japan's investment in Tennessee does not only aid the state's economy, but it also boosts Japan's economy in relation to the international market.

Through Tennessee's economy, community interaction, effects on the labor force, and Tennessee's effect on Japan's international influence, Japan and Tennessee have become partners working toward the common goal of prosperity through peaceful international relations. Tennesseans are learning more about foreign culture. The economy has been boosted through Japanese employment and investment. Workers are now working on an international scale. Takehiko Mochizuki of Yamakawa Manufacturing says, "The reward is not so much the money, it's also the friendships and the working relationships. We don't think so much about salary." The people of Japan view the corporation as something that belongs to them, not something they belong to. The feeling is relayed to Tennessean workers as well. Liberal Democratic Party elder Shin Kanemaru sums up the relationship by saying, "Japan would not exist without America." Evidently, Tennessee relies on Japan in much the same way.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY
(By Carla Strassle)

Allies in World War I. Enemies in World War II. Where did America and Japan's path lead after the war? Why, to Tennessee!

Today, we have almost one-hundred Japanese companies located in Tennessee. There are many reasons why Japanese companies settle here. Our topography reminds them of home. The rolling countryside and small-town atmosphere of our communities gives the a sense of belonging. The climate of our state, the people who live here, and our culture here in Tennessee makes it an ideal place for the Japanese companies to locate.

Adjusting to our new partnership has taken some time and patience. Although there are some things between us that are similar, there are many ways in which Japan and Tennessee are very different. In America we enjoy a good night's sleep on a comfortable mattress, but in Japan, their "mattress" is a futon, bedding that is laid out on the floor at night and stored during the day. Another difference between us is the use of a bathtub. When we get in a bathtub, we take a bath to get clean, but in Japan, the bathtub is used to clear the mind and relax the body. Cleansing is done in a shower before they get into the clean water in the tub. Even the things we eat are different. We can both get a hamburger, but fruits and vegetables that make up a good part of our diet are delicacies to them. Their main staple foods are fish and rice, and although we can purchase those at any grocery store, we just can't seem to master the chopsticks that they eat with. Instead we opt for the silverware. All these things show us how different things are between us, and their focus on education is no exception. In America, teenagers have many privileges that are taken for granted. More often than not, school is the least of our worries, but in Japan this is not the case. Japanese teenagers study both in school and in juku, after-school tutorial classes. They go to school six days a week and as much as eleven hours a day. Japanese

students attending schools in America like the shorter school days and week, the lighter homework load, and the other privileges that they have experienced during their stay in Tennessee, such as being able to receive a license at sixteen instead of eighteen. Working through our differences has helped us gain a better understanding of each other, and we continue to learn new things through them.

It is obvious that we are very different in many ways, so how do we manage to work together so effectively? Teamwork is the key. By finding similarities in our cultures, working through our differences, and learning with each other, we are facing the future together, as a team. The Japanese know that in our right-to-work state, employees are assured of employment without union pressures. They also know that the laws governing business practices are well established, and that our plentiful resources, central location and low level of taxation make it economical to run a business in Tennessee. While the business practices of Japan may differ from our own, in such ways as decision making and morning calisthenic exercises, we have compromised to form a partnership that is part of a global economy which consists of the worldwide manufacturing, distributing, and consuming of wealth. The companies located in Tennessee provide jobs for over 18,000 Tennesseans, as well as business for existing Tennessee firms, and for every manufacturing job that is created, other jobs are created in other industries. The salaries of the employees of these companies feed directly back into our state economy.

The Japanese companies located in Tennessee are often the largest private taxpayers in the area. Because of this, local governments are able to improve schools, roads, and hospitals. The companies, however, do not stop there when it comes to enhancing our communities. They donate computers and televisions for our schools, sponsor homes for abused children, and sponsor trips to Japan so that we can experience Japan as they are experiencing Tennessee.

The partnership between Tennessee and Japan is strengthening every day as we learn to work together to accomplish our goals. As we progress into a new century, so does the world. This is not just a business relationship, it is a growing friendship and understanding of things and people who live half a globe away. In Portland, Tennessee, just twenty minutes from my house, the Yamakawa Manufacturing Corporation of America, a parts supplier for the Nissan plant in Smyrna, has made its home. I never knew Japan could be so close.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY
(By Jeremy Latimer, 9th grade, Henry County High School, Paris, TN)

Tennessee and Japan are very involved today through Japanese industries and investments. The relationship actually began in the early 1970s, when Tennessee got its name in the hat with Japanese companies that were beginning to look for sites in the United States to locate their factories. As Tennessee and Japan work together toward a new century, many areas will be affected: education, job quality, financial investments, communications and the cultures of the two countries.

Education in the United States will be influenced by the Japanese ideas. Japanese children are used to a longer school year than we are and three Tennessee cities,

Memphis, Murfreesboro and Knoxville now offer "Saturday schools" for Japanese children. They take additional classes in language and math. The Japanese idea may eventually affect what is offered in American schools and the length of the school year. More schools may offer the Japanese language as a subject choice. This would make it easier for Tennesseans going to Japan to train for jobs. They could communicate better if they knew some of the language.

The Japanese are very strict about the quality of the products they produce. Job performance determines job security in factories operated by the Japanese. Their concern shows up first in their hiring process. An applicant may go through several interviews as well as unpaid pre-employment training sessions before being hired. They want to know about work habits and attitudes before they hire a person.

Not only are they very strict about the products they produce, they also are very particular about the parts and materials they buy from other companies. This forces their suppliers to work hard to meet the Japanese standards. It is often hard to obtain a contract with a Japanese company. For example, Plumley Companies in Paris, Tennessee, attempted for approximately four years, to provide fuel hoses to the Nissan Company. They finally signed a contract to supply the hoses.

The involvement of foreign countries such as Japan has changed the financial markets in our country. The Japanese have brought a lot of money into Tennessee as well as other states. They have spent billions of dollars buying land and building factories. Many Tennesseans own stock in these successful companies. Investors also now have the opportunity to invest in international funds that were not always available. Our investment opportunities are now international rather than limited to the United States.

The Tennessee-Japan relationship should also affect our communications future. The Japanese are a highly technical people, being very involved in electronics. They will continue to move ahead in the world of telephones, television and other communication equipment. In some Tennessee cities, a Tokyo newspaper is available on a daily basis. This proves that advances in communication and information have made the world much "smaller" than a few years ago.

The cultures of both Tennesseans and the Japanese are affected by their relationship. The Japanese have changed the work attitude of many Tennesseans. A job is no longer just a job. The Japanese promote pride in accomplishment and a loyalty to the company that many Tennesseans did not have. Workers now feel that they are a part of the company and that, in a sense, they work for themselves. There is a very low rate of workers being absent and workers are punctual, which is very important to the Japanese. Likewise, the Tennesseans have taught the Japanese to relax some and be a little more spontaneous.

The Japanese are also very neat in appearance, most having short hair and no beards. They have learned to accept Tennesseans with long hair and beards by looking to the inside of people not just to the outside appearance.

Tennesseans have learned to appreciate Japanese foods while the Japanese enjoy Jack Daniel's Whiskey (made in Tennessee) and fried catfish.

Tennessee and Japan are working together toward a new century. It takes compromise

on both parts but it is a very beneficial relationship.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Greg Proffitt, 11th grade, Hermitage Springs School, Red Boiling Springs, TN)

Each time that we pick up a newspaper or turn on a T.V., we are reminded that we are living in a troubled world. The past decade has witnessed an increasing crime rate, a struggling economy, and the alarming decline of the family unit. It was—and is—difficult for many to remain optimistic about the future, especially the new century which is so near at hand. If ever our country needed a friend, it is now, and Tennessee has been fortunate enough to find that friend—Japan.

Although Tennessee is noted for its beauty, warmth, and hospitality, it is not immune to the many problems facing our world. For example, economic instability has taken its toll on many a businessman in our state. The small, family owned and operated business is quickly becoming a thing of the past. Tennessee is also in the process of reassessing its educational system and evaluating reforms which it hopes will produce young adults better prepared for the future that lies ahead. It is obvious that these problems and many others are money-oriented to a certain extent, if not totally. It has been said that "money is the root of all evil." It would be more accurate to say that a lack of money is largely responsible for the many problems plaguing our nation.

However, Japan has helped Tennessee through these difficult times by introducing much needed industry into our state. As early as 1978, Japan began establishing companies throughout the state. Thanks to their interest and involvement, Tennessee now has 95 Japanese corporations employing some 18,000 people, mostly Tennesseans. As a result, salaries totaling $\$1\frac{1}{2}$ billion each year are now flowing into the state's economy. Too, many existing Tennessee firms in areas such as retail, construction, and education have benefited because of supplies or services needed by these Japanese corporations.

Yet, we must give Tennessee credit where credit is due. We live in a beautiful state, one in which the Japanese have recognized and learned to appreciate a landscape and climate very similar to theirs. They have also experienced Southern hospitality, which can be as simple as a friendly wave or even a smile.

There are also certain business traits characteristic of Tennessee which have drawn the Japanese to our state. First, they like the low level of taxation and government regulations. The Japanese also appreciate the fact that Tennessee does not allow unions to be ruling forces among its workers. Also, Tennessee, which is centrally located in the nation because of its extensive interstate system, is served by TVA, a provider of clean, affordable energy. Yes, Tennessee has much to offer Japan in their on-going partnership.

This partnership is now striving to improve the problem of the dissatisfied and disillusioned American worker. We have long been aware of the unique relationship between the Japanese employer and employee. Included in the formal decision-making process, the Japanese worker has a strong bond with his or her work, viewing it as a job for life. As a result, employees work harder because they have a tremendous sense of pride in themselves and their work. It is no secret that self-esteem, along with good pay and attractive benefits, is the key to a happy, productive worker.

In conclusion, if Tennessee is to become a part of the global economy, it must continue to be open-minded and willing to change that which has proven to be ineffective. It must look to the future, aware that "times are a-changing." Fortunately, Tennessee has a friend who will stand by it, working hard to see that future generations can enjoy a sense of security and well-being. Yes, Tennessee and Japan are working together to assure us that if the new century holds any surprises, they will be pleasant and welcome ones.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Leigh Ann Curt)

The United States and Japan have had troubles since the turn of the century. Pearl Harbor and related events created much hostility between the peoples of these two nations. The relations have improved, but there still is a prejudice against the Japanese people. There is one state that has extensive interest in a positive relationship with Japan. With a firm partnership between Tennessee and Japan, we can mutually strive toward the expansion of high-tech industries, education, and well-being for our citizens for the upcoming century.

One might ask, "Why is Japan so interested in Tennessee?" Many factors contribute to the attraction. Japanese people feel comfortable here because of the similarities found here such as the landscape, climate, and culture. It is also economical to run a business here. Our state has a low level of taxation, plentiful and cheap energy resources, and a good location for access to other parts of the country. Japanese companies can far better serve the American people from one of its own states than it could from a plant in Japan.

Japan is bringing to Tennessee their industries while Tennessee provides the skilled labor and marketing techniques. Currently, there are 95 Japanese corporations that have opened manufacturing plants and/or distribution centers across the state. Products from these centers and plants can be found almost anywhere you find electronics and automobiles. Toshiba, Nissan, and Bridgestone are examples of Japanese based companies that produce and distribute goods in our state. Typewriters, computers, radios, cars, trucks, and tires are just a few of the products that are shipped from our state to the rest of the world by these 95 companies. Tennessee contributes marketing skills to this business. We have the information needed to enable the industries to compete with American companies for American consumers. With these two contrasting peoples working as one, there is the need to better educate our people about our respective ways of life so we can use this partnership to its fullest potential.

Tennessee and Japan share the common concern of education among our integrated children and the involvement in our respective cultures. Japanese children have a privilege of a more thorough education than that of our children. They study longer hours and also on Saturday. Some students who have been enrolled in both school systems say that Tennessee is definitely much easier. Because there are Japanese children in our schools, adults in our work force, and citizens in our community, we are learning first hand about their culture and they about our culture. Many of the previously mentioned companies have formed partnerships with our schools. They offer financial support, donate televisions, computers, and other needed items, and create "hands on" experience

for the children. Bridgestone brought the Masterworks art exhibit to Nashville to share with our citizens. From education to culture, from sushi to hamburgers, we are sharing our ideas, our experiences, and our knowledge, therefore educating our people.

The citizens of Tennessee and Japan greatly benefit from this partnership. Both economies are expanding. Jobs for people of both lands are being created. Because of the competition formed by the number of new businesses, prices are going down. The educational opportunities are being opened for all people. Charitable functions such as the Toshiba boys home are being made available to our citizens. Together, this partnership is doing wonders for both parties involved. We are partners looking to build a better future for ourselves, for our children, and for generations to come.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Jason Couch)

Nowhere else in our nation has the spirit of cooperation between the east and the west in the fields of industry and technology been felt more strongly than in Tennessee. Japan and Tennessee have been drawn together in an exchange of methods and ideas which are proving to be of mutual benefit.

The influx of Japanese companies into Tennessee has already created some highly visible benefits to Tennesseans in job opportunities and improved economics. Almost one hundred Japanese companies are now in Tennessee and close to twenty thousand jobs have been created. In addition Japanese firms have invested millions of dollars in Tennessee real estate. These same companies increased construction and building revenues for the state. The trickle down benefits have provided new revenue generating opportunities for many Tennessee owned and operated businesses. Japanese corporate dollars are being retained in the state. These monies in turn are used to strengthen the economy and attract additional businesses.

Japanese companies base themselves in Tennessee due to our abundance of natural resources, energy supplies, and work force. Low corporate and trade taxes are another added incentive.

In addition to the economic interaction there is also cultural interaction taking place. This interaction manifests itself in the areas of music, art, language, and cuisine. Tennesseans may not yet be eating their grits with chopsticks, but the impact of Japanese culture is being felt in a positive manner across the state. Tennesseans are learning to eat sushi while the Japanese are becoming great country music fans. In a recent extended showing, a Japanese corporation gave Tennesseans an opportunity to view its priceless European art collection. One Tennessee radio station now offers a daily news broadcast in Japanese. Hospitality and a sense of tradition is strongly woven into both cultures creating common denominators. Each culture enriches the other through exposure to new ideas and customs.

Tennessee and Japan must now look to a new century. It will be a century of rapidly expanding technology, and an era of adjustment to continued advances in automation. Corporations will find themselves in growingly competitive markets, while the work force will find a need to be flexible and resilient in the face of change. Tennesseans have learned the benefits of team spirit in the workplace from the Japanese. In return the Japanese have learned about old fash-

ioned American ingenuity from Tennesseans. In the future there will be a growing awareness of the need to utilize natural resources more efficiently, and to avoid the pollution of the planet. Japan has been forced to deal with limited natural resources for many years, and Tennessee will learn new ways to manage its resources from Japan's experience. Japan and Tennessee will need to continue to promote fair trade and business practices with each other.

The next century will bring its own set of problems but also new and exciting opportunities. Japan and Tennessee must continue to build a friendship based on mutual respect and understanding. It must be remembered that friends draw strength from one another and are interested in each other's welfare. The continued combining of unique strengths will enable Japan and Tennessee to face the challenges of the new century with confidence.

Source for corporation and employment figures: The Tennessean.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Billy Copenhagen, 9th grade, Brentwood Senior High School, Brentwood, TN)

FOLLOW ME INTO THE NEXT CENTURY

As I pulled out of my driveway to go to my job at Yamawaki Industries, I waved to my neighbor Don Watl. I am driving in my Toyota on the left hand side of the road. I drive my car to the toll road. I don't mind paying a little extra to travel on the toll roads because 80% of the revenue made is given to the school system which has the best schools in the United States.

As I pull up, I see Charlie the Robot. In his synthesized voice he asks me for my destination. I tell him downtown at the third exit. He gives me my card, and I am off. As I drive, ahead of me is the bluest sky, and to think it used to be a greenish-grey before it was cleaned up by Tatsunoco Enterprises.

I look at my office building, which can't be missed because it's 98 stories of high energy technology. Where am I, you ask? Although you may think I'm in Japan, I'm really in Nashville, Tennessee, about ten years from now.

You see, the Japanese came here to team up with Americans to improve and modify our techniques and skills. At the same time, we have Nashvillians in Japan helping them with their music and entertainment industry.

So you see that since we've teamed up with the Japanese, our productivity and quality has gone up considerably and is unlike that of any other state.

I leave the toll road and drive to my private parking spot underneath the mammoth building in which I work. I pull out my Emerson pocket recorder to make a note to my secretary as I enter the elevator and punch in my floor number. It takes only seconds to reach the eighty-eighth floor because of the technology of vacuum elevators which was another Japan/Nashville development.

I write myself a note to call the Nashville Stock Exchange to buy 25 shares of Eastern II, which is an exclusive airline rebuilt from the old Eastern Airline and moved to Nashville. In a realistically human voice the elevator tells me that I've reached my destination.

Our office is run in a different way than back in the early nineties. Each person is in charge of one thing, so there are no vice-presidents and no private offices. Because of this, there is no one stepping on anyone else, and there is no brown nosing. This is a very

effective way to run a business, and because of it, we are 50% more efficient.

After some office work, I go to lunch with a buddy of mine. We take the levitating train to McDonalds Sushi Bar.

On the way back to work, we can't help but marvel at the fusion power plant, which was built as a joint Nashville/Oak Ridge/Japanese team project. I am glad that I don't have to worry about nuclear waste.

It is now the end of the working day, and it is time to unwind and take the required end of day relaxation on the eighty-ninth floor. Mr Yamawaki requires it because the more relaxed we are, the more productive we will be.

I leave the health spa around 7:00 and head home. I get home at about 7:30 thanks to the enhanced tollway system which provides more lanes during evening rush hour.

Ah! home sweet home. I punch in my code to disarm my alarm, and ask the house computer if anyone has called. I am really tired, so I think I'll watch some television on my American/Japanese made television. Of all the things that have changed over the years, I am sure glad that home life has remained simple and uncomplicated.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Billy Strasser, 11th grade, Montgomery Bell Academy, Nashville, TN)

When one works by himself on a project, the project is tough. However, the project is made easier when two people work on it together. By working together, Tennessee and Japan can create a better future. There is much to be learned about the Japanese, such as their cultures and customs. Once we learn about the Japanese, we can apply this knowledge to our jobs in Tennessee. We can create a bright new future by working with Japan toward a new century.

Through the 4-H/LABO exchange program, I have hosted two Japanese exchange students in my home and I have traveled to Japan. I discovered that the Japanese culture is very different from the American culture. When I first arrived in Japan, everything seemed to be different. From food to language to taking your shoes off at the door, the Japanese are very different from us. However, there are similarities also. The hospitality with which they greeted me was much like our Southern hospitality. I also found that a smile crosses any language barrier, and I often had to smile when I tried to say something they could not understand. We developed a great friendship, and it is friendships like these that help us work together toward a great future.

In a global economy, goods and services are exchanged across national boundaries in a process known as international trade. It is evident that Tennessee is part of a global economy when one looks at the amount of Japanese businesses in Tennessee—Nissan, Bridgestone, Toyota, and Sharp. These are only four of the almost one hundred Japanese businesses in Tennessee. This certainly helps our economy: the Japanese businesses employ Tennessee workers and pay salaries to those workers, which puts more money into the Tennessee economy; it helps the problem of United States-Japan trade relations; and Japanese products are now made in the United States and shipped overseas. There is much to be gained economically by Tennessee-Japan partnerships in business.

What can we learn from the Japanese? Quite a bit. The Japanese and Tennesseans can learn from each other in many ways. Their education system is excellent, while

ours is in need of reform. They are advanced in the field of technology, and we can learn from them. They have a very low crime rate, while this is certainly not the case in America. These are only three of the areas in which we can learn from the Japanese; there are many more benefits to be reaped as Tennessee and Japan work together toward a new century. Most recently, Tennessee has welcomed the Masterworks exhibit from the Bridgestone Museum of Art in Tokyo, Japan. The exhibit has never been to the United States before, and we are thankful to have had the exhibit here. The Japanese have much to share with us, and we should be receptive to this.

When I went to Japan, I was proud to be from Tennessee. Many Japanese seemed to know Tennessee. When I hosted two students from Japan, they liked Tennessee very much. The hills and countryside of Tennessee reminded them of home. We developed a friendship that will never be forgotten. Through these types of friendships, we can grow and learn together into the next century.

Thomas Jefferson once said: "I like the dreams of the future better than the history of the past." I like the dreams of the future too. Working together with the Japanese, we will have a better future. As long as we take advantage of friendships between Tennesseans and the Japanese, we can work together toward a new century.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY

(By Jason Holleman, 12th grade, John Overton High School, Nashville, TN)

Tennessee, the "Volunteer State," and Japan, the "land of the rising sun," are two cultures very different in history, but very alike in values. These two peoples are doing what the rest of the world must do. They are fighting their dilemmas with the weapons of trust, diplomacy, and ingenuity.

Japan is a nation of great technology, corporate structure, and global economic power. The rapid growth of Japan's population continues to crowd into its relatively small geographic area, an area lacking adequate supplies of raw materials. Tennessee is a land of plentiful natural resources, proud, eager workers, and American ingenuity. However, in Tennessee as well as most of the United States, people are distraught with the loss of jobs and income, partially due to the influx of Japanese-made products in both domestic and world markets. Thus, Tennessee and Japan have joined forces, and are combatting these problems by bringing Japanese manufacturing plants and distribution centers to Tennessee, using our raw materials, while boosting our economy. So, statistically these two seem to be a perfect match for any business endeavor.

Even more amazing than facts and figures, is the colloquial traits that draw this pair together. Japan and Tennessee lie upon the same longitudinal line, so their climates are very similar. Both cultures value honor, trust, etiquette, and tradition. If Japan is the tea brewed from the heritage of courageous shogun warriors, Buddhist philosophers, and Eastern empires, then Tennessee is the lemonade blended from its spirit of early pioneers, its brave volunteer soldiers, Bible-belt Christianity, and Southern gentility.

It is obvious to a knowledgeable observer that these two cultures complement each other in business and as well as in life. Tennessee has provided high worker productivity and low government regulation. They

have laws that prevent workers from being forced into labor unions. Energy resources are cheap and abundant. The Tennessee Valley Authority is the largest electrical power producer in the country, and Tennessee's location makes it accessible to three-fourths of the United States population in a day's drive. Japanese companies have invested in local contractors and laborers for the construction of their plants, providing excellent jobs with many fringe benefits to Tennesseans. A Japanese company is often the largest private taxpayer in their surrounding Tennessee area, and they have boosted America's global economic status. However, these two cultures have aided one another outside of business. Tennesseans have given the Japanese Western music (There is one song that is known by every band in Tokyo, a song that makes every Southerner feel at home, the "Tennessee Waltz"—made popular there in the early 1950's.), Southern food delicacies, and clothing styles. Most notably, we have also introduced to them western hobbies and athletics, such as bowling, baseball, basketball, and golf. This introduction to American sporting events has given them a sense of our ideas of athletic competition and most importantly, individual creativity. Japan has shown us a superior educational system that promotes a strong curriculum and a well-structured school system. This influence is apparent, as Gov. Ned McWherter and Tennessee's state government and local school boards are presently striving towards drastic reforms in our educational system. They have also exposed us to their food and hobbies, and have shown us their loyalties to their jobs and their spirit of team effort.

So as the names Tennessee and Japan grow even more synonymous with the words quality, progress, and integrity, we feel certain that the ninety-five Japanese companies presently in Tennessee will continue to grow in size and number. We know that this relationship will foster the Volunteers into a new era, an era of "the land of the rising economy." And as we further influence each other in the ideals and traditions that made our nations strong and developed them into world powers, may we continue to grow in this great task, not as a single unit, but as two, each preserving its individual heritages, while striving towards a common goal.

FOURTH PLACE—TENNESSEE-JAPAN: WORKING TOGETHER TOWARD A NEW CENTURY
(By Lane Mullins, 11th grade, Lebanon High School, Lebanon, TN)

Tennessee has opened its doors and its heart to a people whose love of simplicity and beauty truly make Tennessee a home away from home. Tennessee and Japan have formed a lasting friendship. Once enemies, we now share new ideas and technologies for the benefit of us all. What was once thought to be cultural differences have, in many cases, turned out to be similarities. Through mutual respect and understanding, the Tennessee-Japan alliance can boldly face the challenges of the twenty-first century.

Why do the Japanese like to operate in Tennessee? Tennessee has many features that are appealing to a Japanese manufacturer. First, it is centrally located—a day's drive in all directions encompasses three-fourths of the U.S. population. We have a largely non-union oriented labor supply with little government regulation. Tennessee and Japan have a similar climate, also. We are on the same latitude and have similar land features. We have space for building manufacturing facilities—a resource which has been exhausted on the crowded Japanese is-

lands. Tennessee has low taxes, and shipping costs are greatly reduced. Tennessee also produces natural resources needed by the Japanese companies.

But the benefits are mutual. The Japanese companies create new jobs and more money in the economy. Each new Japanese plant creates the need for support businesses which in turn create more jobs. The payroll from Japanese companies is worth \$500 million a year. If the local economy is strong, we will buy more goods, build more houses, and spend more on leisure activities. This increases sales for American companies in Tennessee as well.

The Japanese and American cultures appear so different that it was thought the people could not function in a working relationship. The Japanese are meticulous in their decisions and their lives. A new plan is scrutinized and redone until all the bugs are worked out. Only then is it put into action. The process is time-consuming, but leaves nothing to chance. Americans are less formal in both actions and appearance. They often speak first and think later. The success of Japanese manufacturing has forced American workers to regain our lost pride in workmanship and commitment to quality. Still, Japanese and American workers have successfully blended their talents into extremely successful joint ventures.

A Japanese employee is hired for life. A company expects to build a worker before it builds a product. A Japanese person works hard in high school in order to get into a good company. It is a great shame to be fired or quit your place of work. All company employees are considered equal. The men wear the same type suit and have the same benefits. The American system is a "climb-the-ladder" system to get to the top. Very often it is the labor side versus the management side. New emphasis by American companies on employee involvement, "quality circles," and the team concept are a direct result of Japanese influence.

In 1975 only one Japanese firm was established in Tennessee. A major breakthrough came in 1978 when Toshiba came to Lebanon. Bob Traeger was hired by Toshiba to create a television factory in America. He found 107 acres in Lebanon's Industrial Park for \$374,000. He knew he had found the place. Toshiba is now an important part of Lebanon.

The largest investment in Tennessee by a Japanese company is the Nissan plant in Smyrna, which began in 1980 with an investment of \$500 million. The Nissan plant spurred the opening of many smaller companies to supply their operation, both Japanese and American. Today almost 100 Japanese companies are scattered throughout the state.

The Japan Center of Tennessee, located on the campus of Middle Tennessee State University in Murfreesboro, is helping to inform Tennessee citizens about the culture and society of contemporary Japan. It also helps the Japanese to make the transition into Tennessee life. They offer programs and workshops to assist us in learning about Japanese culture and business practices. The Center is funded by the State of Tennessee and by Japanese and American companies.

It looks as if Japan is here to stay as long as Tennessee deals a dose of southern hospitality and the right atmosphere in which to work. The differences in our cultures are not that significant. We have come to learn that we all like southern music and fish, be it sushi or fried catfish. Tennessee and Japan are working together to make the future brighter for the world of tomorrow.

THE DISASTER IN BANGLADESH

Mr. KENNEDY. Mr. President, once again, a powerful natural disaster has devastated Bangladesh and brought new tragedy to the long-suffering Bangladeshi people. And once again, the lives of countless thousands of destitute men, women, and children are dependent upon the generosity and concern of the international community.

At least 125,000 Bangladeshis lost their lives in the latest monsoon cyclone and the final death toll may rise to 200,000. Most of those drowned were children. Nearly 3 million people have been left homeless by this catastrophe and the lives of over 10 million others have been affected. Economic and property damage exceeds \$1.25 billion.

I am deeply concerned over this tragic loss of life in a country that has already borne far more than its share of natural and man-made disasters. In 1971, I visited Bangladesh, then—and still—one of the poorest countries in the world, shortly before its recognition by the United States as an independent nation. Since that time, Bangladesh has suffered almost annually from catastrophic droughts, floods, and cyclones, in addition to the multitude of problems wrought by poverty.

This disaster may be the worst yet. Thousands of acres of farmland have been devastated and much of the country's rice crop has been lost. There is little safe drinking water in places affected by the disaster and poor sanitation in these areas has raised serious concerns about an outbreak of cholera.

Humanitarian groups and international agencies have rushed food and medical aid to Bangladesh, but relief operations have been hampered by a shortage of helicopters and speed boats to reach remote areas. Relief operations have also been undermined by bad weather—a tornado and heavy thunderstorms have deluged large areas of the country.

By the end of this week, the United States will have contributed over \$7 million in aid and medical supplies to Bangladesh. Yet initial estimates of the total assistance needed for emergency aid and to rebuild damaged infrastructure range from \$500 million to over \$1 billion—posing a major challenge for U.S. leadership of this international humanitarian issue.

It is my profound hope that the United States will accept this challenge and agree to provide a much more generous share of humanitarian and reconstruction assistance to Bangladesh as the people of this poor but proud country seek once again to rebuild their lives.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business has closed.

CONSUMER PROTECTION AGAINST PRICE-FIXING ACT

The PRESIDING OFFICER. Under the previous order, the time between 1:15 p.m. and 3 p.m., and between 4:30 p.m. and 6 p.m. shall be equally divided and controlled by the Senator from Ohio [Mr. METZENBAUM] and the Senator from South Carolina [Mr. THURMOND].

The clerk will report the pending bill.

The legislative clerk read as follows: A bill (S. 429) to amend the Sherman Act regarding retail competition.

The Senate resumed consideration of the bill.

Pending:

Brown amendment No. 90, in the nature of a substitute.

The PRESIDING OFFICER. Who seeks time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, am I correct we are on the bill at the moment?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, I rise to urge my colleagues to invoke cloture so that we can vote on the Consumer Protection Against Price Fixing Act of 1991. This is a critical vote for the American consumer. It is a vote to stop price fixing, and it is a vote for the free market and free enterprise.

Our President spoke just the other day at the University of Michigan to the commencement class and talked about free enterprise. There is no bill that this Congress will consider that is more in the concept and scheme of free enterprise than is this piece of legislation.

How can anyone argue that an individual, a merchant, who wants to sell his or her product at a lower price, should be prohibited from doing so, should be precluded from doing so, should have jeopardized his or her right to continue selling that product by having the manufacturer withdraw the product from the particular merchant?

This is not a Democratic or a Republican issue. Eleven Republicans voted to invoke cloture yesterday so that we might consider this vital legislation. It is not a conservative measure; it is not a liberal measure. Nor is it a conservative versus a liberal issue.

Many Members from both sides of the aisle who are hardly liberal, and some who are hardly conservative, support this legislation. This legislation has broad-based support.

S. 429, the Consumer Protection Against Price Fixing bill, has undergone many changes over the last three Congresses to try to accommodate legitimate business concerns. I told Sen-

ator BROWN I would accept an amendment in the nature of a substitute which he offered. This amendment addresses every single concern raised by those who oppose this bill. But addressing their substantive concerns does not seem to matter. Those who oppose consumers on this issue want this bill dead.

I say to my colleagues on the floor of the Senate, how can you be opposed to the right of the housewife or the head of the house who wants to go to the store, trying to eke out a living, trying to have enough money available to keep the family and home together, going into the store and buying something at a discount? What would cause you to come out here and oppose that?

You can use all the gobbledegook you want about the legal systems in connection with this bill, but when push comes to shove, and when you look at the bottom line, we are talking about the right of the American consumer to buy a product at a discount. Make all the legalistic arguments you want. Quote all the authorities you want. Give us all the legal mumbo jumbo you want. Pontificate as to the question of whether there might be some lawsuits. There can only be a lawsuit if a retailer complains about the fact that one of his competitors or her competitors is selling at less than the price set by the manufacturer.

Under this bill, the manufacturer has the right to set the price. As long as there is no intervention by a competing retailer, there is no problem. Even with the bill, the manufacturer has the right to set the price. The manufacturer has the right to set which area of territorial restraint to give exclusives in certain areas. Nothing would stop that. Nothing would change that.

But the fact is that some manufacturers want this bill dead at any cost. We looked at the Brown amendment. It was not everything that I thought it ought to be. It does not move in the direction of making this law tougher. As a matter of fact, the Brown amendment actually makes it more complicated to maintain a cause of action if there is a violation. But we accepted it, because we thought it was a reasonable approach to the problem.

But in spite of that, we will hear arguments here today against the Brown amendment. We will hear arguments against the basic bill. My colleagues, I just say that is outrageous.

Let me quote from the Philadelphia Inquirer editorial, "Retail Class Wars; Is K mart a Victim of Discrimination?" This is the editorial:

Price-fixing hurts consumers and corrupts the free-enterprise system. But there's growing pressure on discount stores to raise prices on items ranging from furniture to clothes to computers. Manufacturers apply this pressure to please tonier stores that have higher markups.

If this sounds illegal, well, it used to be. But in 1988 the Supreme Court diluted the law's protection for consumers and discounters. Under the new legal standard, it's not clear-cut price-fixing to cut off a discounter unless the manufacturer has dictated a specific, higher price for its product. Of course, that left suppliers with a host of phrases, gestures and expressions for telling stores that their prices are too low.

Fortunately for consumers, a slew of organizations are pushing legislation that would restore the stronger standard against price-fixing. This coalition includes the National Association of Attorneys General, the Consumers Union and the American Association of Retired Persons. Still this strong backing didn't keep the anti-price fixing bill from dying in Senate last year.

Many of the bill's opponents say that manufacturers need to be able to set minimum retail prices so that the stores can afford to provide good service. They say that otherwise, the customer will learn all about personal computers, say, at a specialty store, then buy the item at K mart. But as Business Week put it in endorsing this bill, anyone who believes that higher prices mean better service hasn't been shopping lately." The less-flippant rejoinder is that even under this bill, suppliers could insist that retail stores meet standards for service and support.

Despite high-toned arguments from pricey stores and manufacturers, the fundamental problem is that some businesses don't really like competition. They seem aghast that many Americans shop at outlets where products sit in cardboard cartons and shoppers listen to the P.A. system for the latest special. But such choices should be decided by the free market, not by federal tolerance of price-fixing.

The Philadelphia Inquirer is not the only newspaper or magazine that editorialized on this subject, including Business Week, as I just mentioned. The Journal of Commerce of Friday, April 12, 1991, indicated its support for this legislation. The Boston Globe, in an editorial entitled "Curbing Price Fixers," editorialized in support of this legislation. The Patriot News of Harrisburg, PA, had an editorial, "Keep the Marketplace Free." The Arizona Daily Star had an editorial on March 13, "The Price is Right Bill Would Give Consumers Break on Cost and Choice."

Mr. President, this is one of the few times we can do something for the American consumer that will not cost the Government a penny. A vote for this cloture motion is a vote to stop price fixing. Price fixing raises prices for clothes, toys, TV's, luggage, stereos, perfume, skis, furniture, tennis rackets, cameras, shoes, and a host of other items that people buy every day. This is not about the fanciest stores in the world. They do not have plush carpets and fawning service. You will not see Zsa Zsa Gabor in these stores. Most of them just provide the consumers with the bare essentials: a solid product at a fair price. That means an awful lot to millions of Americans who are struggling to get by on weekly paychecks. Especially at a time when the economy is so weak, we must do something to help the average American.

When it comes to helping out these people, when it comes to trying to allow free and open competition, to lower prices for everyday goods, when it comes to the little guy, we are being asked by opponents to kill a bill dead, no matter how it reads, "do not let it come to a vote." There is no question that a majority of the Members of the U.S. Senate are for this legislation. The question is, can we cut off debate so we can get to a vote on the issue? There is not a doubt at all, and everyone concedes—the opponents as well as the proponents—that there are 51 Members of this Senate prepared to vote for this piece of legislation. Our only problem at the moment is that under the rules of the Senate, which I do not find fault with proponents using, we are engaged in a filibuster, and the only way you can cut off a filibuster is with cloture. So we need 60 votes, three-fifths of the U.S. Senate voting for it. I am frank to say to you that it does make our job more difficult that two of our Members are not able to be with us at this moment. We still need 60 votes; so that means they need 39 votes to defeat us with respect to this bill. That, I believe, they will not get. But I am not certain.

It is a tough thing that the U.S. Senate is being asked to do today. This body is about compromise, not killing bills no matter what they say. When the distinguished Senator from Colorado, a rather new Member of this body, came forth and said, "I am having difficulties with this bill in the committee," we said, "We will be happy to sit down and work with you." The distinguished Senator from Pennsylvania also gave the same indication. Both of them voted against the bill when it was originally proposed to the Judiciary Committee. We said, "we will work with you." When the bill came out to the floor on a 10 to 4 vote with our recommendation, and we have worked with the Senator from Colorado, and the Senator from Pennsylvania came in later and indicated that he had an interest in the amendment offered by the Senator from Colorado, and I am pleased both of them saw fit to vote for cloture yesterday. I make no bones about it that we are prepared to accept the proposal of the Senator from Colorado [Mr. BROWN] when and if we get to a vote on that subject.

If we invoke cloture on the Consumer Protection Against Price Fixing Act, we cannot only consider the Brown amendment, but we can consider all other legitimate amendments. I am and have been open to all and any legitimate changes necessary to make this bill work.

Mr. President, I believe that this is the most important piece of consumer legislation that will come before this body in this entire session. It is not fair to kill this bill by a filibuster. It is

not right. I urge my colleagues to vote to break the filibuster.

I yield the floor and reserve the remainder of my time.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield myself about 3 or 4 minutes, and then I wish to yield to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise in opposition to S. 429, the Consumer Protection Against Price Fixing Act of 1991, and to the substitute amendment which was offered last night by Senator BROWN. In the 100 years since the Sherman Act has been in existence, no legislation has posed as great a threat to well established antitrust principles and to American business, as these proposals.

Although Senator BROWN has offered his amendment as a compromise proposal, in fact, it is no compromise and it does nothing to solve the problems of the underlying legislation. If anything, it makes the original proposal worse.

At the outset, let me make clear to my distinguished colleagues that the administration and the Department of Justice are as adamantly opposed to the Brown amendment as they are to the Metzbaum bill. The Assistant Attorney General for the Antitrust Division, James Rill, has written a letter setting forth their opposition, and has stated that the President's senior advisers would recommend a veto of S. 429, even if amended as proposed, if it reached the President's desk. I would like to read that letter because I believe it would be helpful to my distinguished colleagues in understanding the two proposals.

This letter is from Mr. James F. Rill, Assistant Attorney General for Antitrust:

DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION,
Washington, DC, May 8, 1991.

Hon. STROM THURMOND,
Ranking Minority Member, Committee on the
Judiciary, U.S. Senate.

DEAR SENATOR THURMOND: This letter is in response to your request for the views of the Department of Justice on the amendment to S. 429 offered yesterday by Senator Hank Brown. This amendment, while making cosmetic changes, would still permit findings of conspiracy and price fixing where no one has conspired and prices have not been fixed. It thus does not resolve the Administration's serious concerns with this legislation. Therefore, as indicated in the Attorney General's letter to you of April 30, 1991, and in the Statement of Administration Policy on S. 429, the President's senior advisors would recommend a veto of S. 429, even if amended as proposed, if it reached the President's desk.

Our serious concerns with the bill, even if amended as proposed, remain as follows:

Notwithstanding the proposed amendment, S. 429 would allow an inference of an illegal conspiracy where a manufacturer has done

no more than decide unilaterally how to distribute its products, subjecting the manufacturer to potential treble damages.

Manufacturers rely on feedback from their distributors to supply the goods and services that consumers desire. Notwithstanding the proposed amendment, S. 429 would hinder this important exchange of information.

Product expertise and product service directly benefit consumers. Manufacturers should be able to terminate distributors who do not provide such benefits, and to establish procompetitive exclusive distributorships or other arrangements to guarantee them. Notwithstanding the proposed amendment, S. 429 could make this illegal.

The Office of Management and Budget has advised us that there is no objection to the submission of this report and that enactment of S. 429, even if amended as proposed, would not be in accord with the program of the President.

Sincerely,

JAMES F. RILL,
Assistant Attorney General.

I just want to say the President is against this bill, the Attorney General is against this bill, the antitrust department is against this bill, the Federal Trade Commission is against this bill, the American Bar Association is against this bill and various experts on antitrust questions are against this bill. They say it will cost the consumers more if you pass this bill.

Mr. President, I now yield to the able Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah. How much time does the Senator from South Carolina yield?

Mr. THURMOND. Mr. President, I yield him 40 minutes, if he needs that long.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I thank my good colleague from South Carolina.

Mr. President, I enjoyed listening to the distinguished Senator from Ohio. If there is anything manufacturers are worried about, it is going out of business; it is being sued interminably with the procedural rules stacked against them in the courts of law, that is precisely what this particular bill will do.

If they are afraid of anything, it is of any bill that is a litigation bonanza for lawyers. We have done that with regard to products liability and now many, many manufacturers have taken their products offshore and their manufacturing facilities, offshore because they cannot do it in the United States of America anymore.

I am not saying the products liability suits are not good; it is just that we made them too easy and consequently manufacturers all over this country are going through unjustified, frivolous products liability suits that they have to settle in order just to save some money, because of defense costs alone.

This bill goes even further. It goes even more into a litigation bonanza for attorneys than products liability, and it is packaged neatly under the idea that we are trying to help consumers. The New York Times thought that.

They thought this bill was good when they first reviewed it. They wrote editorials for it. I have to say the New York Times editorial writers, although I do not always agree with them, are very, very thorough in their approach toward some of these issues. I cite in particular an article and ask unanimous consent that a New York Times editorial, "Price Fixing Isn't Always Gouging," be printed in the RECORD at this point.

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

[From the New York Times, Apr. 1, 1991]
PRICE FIXING ISN'T ALWAYS GOUGING

Should a manufacturer ever be allowed to stop a retailer from cutting prices? No, said the Supreme Court in 1911, declaring any such attempts automatically illegal. No, say many consumers, fearing the demise of their favorite discounter.

But over the past decade many economists, and lately the Supreme Court, have come to a different conclusion: Minimum prices imposed by manufacturers—known as vertical price restraints—can sometimes help consumers by encouraging dealers to provide valuable information and services.

In two decisions during the 1980's, the Supreme Court ruled that efforts by manufacturers to prevent price cuts by dealers were not always illegal; in some circumstances, the question of whether the practice discriminated against the consumer was to be answered on a case-by-case basis.

Senator Howard Metzenbaum, the Ohio Democrat, is pushing a bill that would again make vertical price restraints illegal in virtually every case. At one time this page favored Mr. Metzenbaum's bill. But recent studies suggest that a blanket prohibition could be legislative overkill.

Vertical price restraints can be anti-consumer when rival dealers conspire to fix prices and use manufacturer-imposed price restraints to enforce the deal. Price restraints can also be used by rival manufacturers jointly to keep prices high. But these practices aren't common and would violate the antitrust laws with or without the Metzenbaum bill.

If manufacturers were trying to jack up prices, they wouldn't ordinarily use vertical price restraints. All they would need to do is charge all their dealers more. The purpose of vertical price restraints is to encourage better service to customers.

Buyers of products like computers and cameras need advice and information before making the purchase. Dealers who provide that service do so at considerable expense and risk. Consumers, educated for free, are then tempted to make the actual purchase, for a bare-bones price, from discounters who provide no such information. That can drive full-service dealers out of the market.

Manufacturers can help full-service dealers—to the extent the law allows—by prohibiting price cutting. That leaves dealers no other option than to compete for customers with better service. Yet not many manufacturers sell products that require extensive pre-sale services; most will continue to profit from sales to discount stores.

Mr. Metzenbaum argues for a blanket prohibition because a case-by-case review of vertical price restraints would be too impractical. Customers would not suffer, he claims, because the bill would not forbid manufacturers from requiring all dealers to

provide information and marketing services. But case-by-case review of such non-price restraints would be every bit as difficult, probably harder.

Discounters have thrived despite the Supreme Court rulings. The system isn't broke; consumers aren't threatened. There are, however, circumstances when manufacturers have legitimate grounds for protecting full-service dealers. They should have the right.

Mr. HATCH. I would suggest that if the Philadelphia Inquirer and the other editorial writers that the distinguished Senator from Ohio has cited here would look at this matter as deeply as the New York Times has looked at it, they would conclude as the New York Times did. They said this: I will only read part of it:

Senator Howard Metzenbaum, the Ohio Democrat, is pushing a bill that would again make vertical price restraints illegal in virtually every case. At one time this page favored Mr. Metzenbaum's bill. But recent studies suggest that a blanket prohibition could be legislative overkill.

Vertical price restraints can be anti-consumer when rival dealers conspire to fix prices and use manufacturer-imposed price restraints to enforce the deal. Price restraints can also be used by rival manufacturers jointly to keep prices high. But these practices aren't common and would violate the antitrust laws with or without the Metzenbaum bill.

So what the distinguished Senator from Ohio is saying is that, my goodness we have to have this bill so we can do something we can already do under the law.

The only difference is that he stacks the case and stacks it against manufacturers, even with the Brown amendment, to the point manufacturers are going to be sued until they do not manufacture in this country anymore. Then where are the consumers going to be?

The New York Times continues:

If manufacturers were trying to jack up prices, they wouldn't ordinarily use vertical price restraints. All they would need to do is charge all their dealers more. The purpose of vertical price restraints is to encourage better service to consumers.

That is a legitimate purpose.

Then they go on to say:

Buyers of products like computers and cameras need advice and information before making the purchase. Dealers who provide that service do so at considerable expense and risk. Consumers, educated for free, are then tempted to make the actual purchase, for a bare-bones price, from discounters who provide no such information. That can drive full-service dealers out of the market.

It goes on to tell how manufacturers help their full-service dealers and how legitimate it is and how consumer oriented it is, how proconsumer it is.

Finally they wind up with this last paragraph:

Discounters have thrived despite the Supreme Court rulings. The system isn't broke; consumers aren't threatened. There are, however, circumstances when manufacturers have legitimate grounds for protecting full-service dealers. They should have the right.

Mr. President, it is nice to come on this floor and say it is outrageous for people to be pointing these things out, but he is saying the New York Times is outrageous. I am submitting that if the Philadelphia Inquirer really looked at this carefully, they would realize that the New York Times was right.

Mr. President, I strongly favor vigorous retail price competition in the marketplace and low prices for the American consumer. I think every Senator favors that. For those reasons though, I have to express strong opposition to this legislation. I ask our colleagues to vote against cloture which is the way to defeat this legislation and save the American public time and money.

Simply stated, despite all of the concerns that are continually expressed before the Judiciary Committee and the Senate as a whole about the burdens being placed on our court systems, and the concerns that are being expressed about "lawyer relief" bills, this legislation has been written so as to ensure an increase in litigation. This bill imposes these burdens on American businesses at a time when these businesses find themselves in hot competition with foreign companies.

Even if the Senate adopted the pending Brown amendment, S. 429 is unnecessary and counterproductive. The Brown amendment solves none of the problems of S. 429, as introduced, and creates additional problems. I appreciate the hard work of my friend, the Senator from Colorado, but, in my view, the Brown amendment is no reason to vote for cloture.

The Brown amendment allows a case of an alleged agreement to fix resale prices to go to the jury under the per se rule based on wholly inadequate evidence that any agreement between a manufacturer and one or more of its dealers ever actually occurred. In doing so, it overturns an 8 to 0 Supreme Court decision on Monsanto.

Further, where an agreement between a manufacturer and a dealer to terminate a second, free-riding dealer can be shown, the Brown amendment virtually dictates a finding of a per se price violation of the antitrust laws without any need whatsoever to show that the manufacturer and the first dealer actually agreed on a price or to set prices at some level. This overturns a 6 to 2 decision of the Supreme Court, which spanned the Court's ideological spectrum from Scalia and Rehnquist to Marshall and Brennan—the Sharp decision.

As a consequence of the Brown amendment, a manufacturer's ability to undertake, and enforce, many proconsumer, procompetitive agreements with dealers is severely threatened, if not, as a practical matter, virtually eliminated. These include manufacturer requirements that dealers maintain a trained sales force, provide

repair and warranty services, undertake advertising and promotion, and similar agreements that are currently governed under a rule of reason analysis. Under the pending amendment, in stark contrast, suppose a dealer complains to a manufacturer that another dealer is free-riding by not providing these types of services. Suppose the free-riding dealer refuses the manufacturer's request to provide the services. If the manufacturer then terminates the free-riding dealer, the manufacturer is very likely to lose a treble damage case to the terminated dealer, the free rider. This is so because once another dealer other than the free-rider dealer complains about the free-rider dealer's failure to provide these services, these complaints will readily be regarded as resulting in an agreement to terminate because of the cheaper dealer's discount pricing.

As the Supreme Court has made clear, any dealer's complaint about a cheaper dealer's failure to provide repair and warranty services, a trained sales force and the like, can be characterized as being a complaint about the cheaper dealer's price policies.

Litigation costs will go up under the proposed amendment, as defendants find it virtually impossible to obtain summary judgment in their favor. These costs will be passed onto hapless consumers, and America's ability to compete against foreign competition will naturally be eroded.

And I have to ask myself "why?" The Supreme Court was unanimous, 8 to 0, in the *Monsanto* case. It reached its decision in the *Sharp* case by a strong 6 to 2 majority. The bases for its decisions in these cases are well-founded and well-reasoned. Yet, these are the sound decisions that this legislation, even as amended by the *Brown* amendment, would overturn.

OVERTURNING MONSANTO

Some background is useful in considering the Supreme Court's *Monsanto* decision [*Monsanto v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984)].

Our antitrust laws recognize the right of a manufacturer unilaterally to decide under what terms it will allow another business to sell its products. That is the way it is. I cite with particularity the U.S. versus *Colgate* case which was the landmark 1919 case that has been followed right up to today. Of course, it is only fair for a manufacturer to have the ability to set the terms as to how its products reach consumers, especially since the manufacturer's survival depends on garnering market share against domestic and foreign competitors.

Under the Sherman Antitrust Act, whether particular concerted action allegedly in restraint of trade violates the act is usually determined through case-by-case application of what we call the rule of reason. Under the rule of reason, a court analyzes whether an

agreement, on balance, is more anti-competitive than procompetitive, that is, whether it is an unreasonable restraint on trade. This is because some concerted activity, like agreements whereby a manufacturer requires dealers to have a trained sales force, provide repair and warranty services, and advertising and promotions, serve legitimate, competitive purposes. Per se rules are appropriate only for conduct that is manifestly anticompetitive. Since 1911, the Supreme Court has held that manufacturers cannot conspire with their dealers to fix the price of their goods sold to the public. And that is the law and that ought to be the law. A manufacturer's termination of one of its dealers as part of a conspiracy to fix prices has been, and continues to be, a per se violation of Federal antitrust laws. Thus, proof of the existence of the agreement is all that is needed to establish an antitrust violation under the per se rule.

The carefully balanced *Monsanto* decision, an 8-to-0 Supreme Court holding, specifically reaffirmed the rule against price fixing. It also settled technical questions about what amount of evidence is necessary in order for a plaintiff to get to a jury to prove collusion in vertical pricing arrangements. Resale price cases usually arise when a manufacturer eliminates the supply of products to one retailer. The affected retailer inevitably asserts that the supplier's action was caused by a collusive agreement between the supplier and one or more other retailers.

In *Monsanto*, the Court of Appeals for the Seventh Circuit held that the termination of a price-cutting distributor in response to or following competitor complaints is sufficient to establish a conspiracy to fix prices. In its review, the Supreme Court pointed out that such evidence was "highly ambiguous" since it was equally consistent with independent action taken by the manufacturer. The Supreme Court held that the mere existence of price complaints from other retailers is not sufficient to create the inference of a price-fixing agreement. Thus, such a case should not go to the trier of fact and may be decided summarily in favor of the manufacturers or whoever the defendants may be. The Court said, "There must be evidence that tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently" [465 U.S. at 764], in order for the case to go to the jury.

The danger, the Court added, of permitting a jury to find a conspiracy based solely on action taken by a manufacturer in response to a competitor's pricing complaint, is that such a rule would seriously erode the manufacturer's right to take unilateral action, which has been unquestioned ever since the Supreme Court's decision in the *Colgate* case in 1919. It would also seriously erode a manufacturer's right to

enforce legitimate nonprice restraints, which were held to be judged under the rule of reason in the *Sylvania* case in 1977. As the unanimous *Monsanto* Court said, in a well-reasoned opinion by Justice Powell:

[T]he fact that a manufacturer and its distributors are in constant communication about prices and marketing strategy does not alone show that the distributors are not making independent pricing decisions. A manufacturer and its distributors have legitimate reasons to exchange information about the prices and the reception of their products in the market. Moreover, it is precisely in cases in which the manufacturer attempts to further a particular marketing strategy by means of agreements on often costly nonprice restrictions that it will have the most interest in the distributors' resale prices. The manufacturer often will want to ensure that its distributors earn sufficient profit to pay for programs such as hiring and training additional salesmen or demonstrating the technical features of the product, and will want to see that "free-riders" do not interfere. . . . Thus, the manufacturer's strongly felt concern about resale prices does not necessarily mean that it has done more than the *Colgate* doctrine allows.

Nevertheless, it is of considerable importance that independent action by the manufacturer and concerted action on nonprice restrictions be distinguished from price-fixing agreements, since under present law the latter are subject to per se treatment and treble damages. On a claim of concerted price fixing, the antitrust plaintiff must present evidence sufficient to carry its burden of proving that there was such an agreement. If an inference of such an agreement may be drawn from highly ambiguous evidence, there is a considerable danger that the doctrines enunciated in *Sylvania* and *Colgate* will be seriously eroded.

In other words, the Court is saying, juries could find against defendants engaging in truly independent action or who have nonprice agreements that are also perfectly lawful.

That is what this bill will lead to even with the *Brown* language on it.

Justice Powell continued:

The flaw in the evidentiary standard adopted by the Court of Appeals in this case is that it disregards this danger.

Permitting an agreement to be inferred merely from the existence of complaints, or even from the fact that termination came about "in response to" complaints, could deter or penalize perfectly legitimate conduct. As *Monsanto* points out, complaints about price cutters "are natural—and from the manufacturer's perspective, unavoidable—reactions by distributors to the activities of their rivals." Such complaints, particularly where the manufacturer has imposed a costly set of nonprice restrictions, "arise in the normal course of business and do not indicate illegal concerted action." * * * Moreover, distributors are an important source of information for manufacturers. In order to assure an efficient distribution system, manufacturers and distributors constantly must coordinate their activities to assure that their product will reach the consumer persuasively and efficiently. To bar a manufacturer from acting solely because the information upon which it acts originated as a price complaint would create an irrational dislocation in the market. * * * In sum, "[t]o permit the inference

of concerted action on the basis of complaints alone and thus to expose the defendant to treble damage liability would both inhibit management's exercise of business judgment and emasculate the terms of the statute."

It should be noted, however, Mr. President, that while the court in *Monsanto* held that a termination in response to price complaints did not in itself a triable conspiracy make, it also held that if there is additional circumstantial evidence of conspiracy, the matter can go to the jury and the jury can indeed find that the defendant's conduct was per se unlawful.

That is exactly what happened in the *Monsanto* case, which the distinguished Senator from Ohio was trying to overturn. It was a just case where they found price fixing, but they found it on adequate evidence, more than some other retailer filing a mere complaint.

I have to say the Court found in the *Monsanto* case that there was sufficient evidence to sustain the jury's \$3.5 million damage award, trebled to \$10.5 million. So, the very case the Senator from Ohio and his supporters claim is a principal impetus to S. 429 and the pending amendment, the very case that is supposed to make it virtually impossible for terminated dealers or distributors to win resale price-fixing cases, resulted in a victory for plaintiff.

There is no justification for what they are trying to do here today. All it means is more expenses for consumers in the end and larger bank accounts for lawyers.

Monsanto is a sound decision. Plaintiff must prove, by direct or circumstantial evidence, the existence of a conspiracy to fix prices. The *Brown* amendment completely upsets this sound rule. It allows the case to go to the jury without sufficient evidence that an agreement was ever undertaken by the manufacturer and another dealer to set prices or to fix prices.

Let us take a look at the *Brown* amendment step by step.

It allows an alleged case conspiracy to fix prices to go to the jury if a manufacturer received from one dealer "an express or reasonably implied request or demand that the manufacturer take steps to curtail or eliminate price competition," by another dealer; the manufacturer terminated the other dealer; "and the first dealer's request or demand was the major cause of such demand or termination. * * *"

Mr. President, almost anything a dealer says about another cheaper dealer can be construed as an implied request or demand to take steps to curtail or eliminate price competition. A complaint that the cheaper dealer is free riding on services provided by the complaining dealer can be so construed. Saying that the implication of

a request or demand is to curtail price competition must be reasonable solves nothing. Unreasonable implications would be impermissible even absent this amendment. Further, regardless of how a complaining dealer phrases its complaint, the issue is whether the manufacturer's decision to terminate another dealer is unilateral or part of an agreement. That is the continuing flaw in all of the attempted fixes in the *Brown* amendment. They simply do not require a plaintiff to present sufficient evidence of an actual agreement, the precondition of a price-fixing case before the case goes to the jury. It just sends the case to the jury on inadequate evidence, much to the detriment of the defendant manufacturer.

Next, the requirement that the complaint be the "major cause of the termination," has two serious flaws. First, if a complaint by one dealer about another dealer has been made and action is taken by the manufacturer consistent with that complaint, this is certainly some evidence that the complaint was the cause of the termination. How important a cause it is will be an issue of fact which will almost certainly have to be determined by a jury, thus, precluding summary judgment for the defendant. And whether the complaint was "major" or not, there may have been many other causes which justified the termination. But there is a much more fundamental flaw in this "major cause" language.

Let us assume, Mr. President, that the complaint was the major cause of a termination. It by no means follows that an agreement or understanding of any kind between the complaining dealer and the manufacturer, much less an agreement to fix prices, was entered into. A full service dealer may file a legitimate complaint that he cannot continue to afford to handle the products or provide services for a manufacturer who is also supplying the products to a free-riding discounter. This complaint may cause the manufacturer unilaterally to decide to terminate the discounter, which is permissible in the law. This is not evidence of a conspiracy, let alone a conspiracy to fix prices.

A manufacturer has the right under the *Colgate* decision since 1919 to consider the effect of one dealer's pricing or other practices on its overall retail network and make its own decisions about who to deal with. That a complaining dealer led a manufacturer to decide on its own to terminate a free-rider should not lead to treble damages, should not lead to an antitrust conspiracy case going to the jury as is the practical result of this pending amendment.

Next, the pending amendment says that in order for a complaint to be regarded as the major cause of the termination, there must be evidence that the manufacturer did one of two things.

The evidence must show the purchaser "expressly or impliedly acquiesced to the request or demand." But the antitrust laws themselves require an agreement, a conspiracy, not acquiescence. Acquiescence could suggest an agreement to do what otherwise might not be done. But it could also mean the manufacturer took an action it otherwise was going to take on its own.

As for the term "impliedly acquiesced," in general, I am confident that while honest business people scratch their heads trying to figure out what that means in order to avoid treble damage awards, antitrust lawyers will be laughing all the way to the bank.

The alternative that must be met in order for a complaint to be deemed a major cause of the termination is evidence that the manufacturer "expressly or impliedly threatened or took actions in addition to the termination to curtail or eliminate price competition by the terminated dealer or others engaged in the resale of goods or services."

Thus, assume a manufacturer writes a letter to discount dealer No. 1 telling him to adhere to the manufacturer's service requirements or the manufacturer will reconsider its arrangement with him. Further assume the letter is not even generated by a complaint. Under this agreement, that is all that is necessary, together with a complaint about discount dealer No. 2, followed by termination of this second dealer, for a treble damage case to get to the jury. That is all you need. Yet, the fact that the manufacturer sent a letter to dealer No. 1 adds no probative evidence to the allegation of conspiracy with respect to the terminated dealer.

This provision is illogical. It allows evidence of some action or threat to another dealer wholly unrelated to the termination of the dealer bringing the antitrust case, an action or threat not even initiated by a receipt of an outside complaint, to be the basis of a conspiracy with respect to the terminated dealer. Far from curing this bill's fundamental failure to require evidence of an actual conspiracy before a case can go to the jury, this amendment makes the problem even worse.

Next, the pending amendment says that in determining whether a conspiracy exists, "The court shall consider evidence in rebuttal supporting any actual, bona fide nonprice business justification for the termination [of a dealer]."

This sounds good, but it is not. It completely misses the point about the underlying flaw of this portion of the bill. The question is not why a manufacturer might have terminated a dealer, but whether its decision to do so was unilateral or part of an agreement or conspiracy to set prices.

No inference of an agreement, one that can result in ruinous treble damages, should be allowed on the basis of

highly equivocal evidence equally consistent with proper unilateral action.

The problem with all of these attempted fixes is they readily continue to permit inferences of conspiracy on inadequate evidence. As a practical matter, under the Brown amendment, a manufacturer would risk antitrust liability almost any time it stopped doing business with a retailer or otherwise changed its relationship with such retailer. Retailers complain about each other and their price policies all the time. Manufacturers cannot prevent such complaints and should not be blackmailed on the basis of these complaints.

Often, manufacturers must alter their distribution agreements in order to ensure that consumers get proper service or to ensure that products are adequately advertised or for many other valid and beneficial reasons. The Brown amendment would endanger all of these protections that are consumer-oriented protections.

Under its provisions, an allegation of collusion would be permitted to go before the trier of fact or the jury, in this case, if a terminated retailer merely shows the manufacturer received complaints about its pricing from other retailers and acted against the retailer on the basis of those complaints in terminating or otherwise changing the retailer's relationship with the manufacturer.

Never mind that these other retailers could also be complaining about nonprice matters as well and that a manufacturer's decision to terminate a retailer is more likely based on these nonprice factors.

Moreover, I want to reiterate that acting pursuant to a complaint on pricing is not the same as agreeing to fix prices. It is price fixing, however, that is illegal.

As a practical matter, this bill lets a mere complaint about pricing, followed by a termination, go to the jury, when it should be, in many instances, summarily dismissed.

Mr. President, under the pending amendment, amazingly, a complaining dealer does not even have to mention price in order for a plaintiff to get to the jury. The term "price" or "price fixing" does not even have to be mentioned and the case goes to a jury, even though there was none and even though the retailer acted in totally good faith. This amendment says a complaining dealer need only have made an expressed or reasonably implied request that the manufacturer "take steps to curtail or eliminate price competition."

This language easily encompasses, for example, complaints about a competitor's failure to live up to its agreement with the manufacturer to provide advertising and repair services with respect to the manufacturer's product. After all, as the Supreme Court has

correctly noted and as I will discuss further with regard to the Sharp decision, all nonprice vertical restraints can affect price.

Complaints regarding another dealer's failure to adhere to service requirements can easily be characterized as really motivated by the desire to terminate a price cut.

Simply stated, this amendment will shift the burden of proof from the complaining retailer, the plaintiff who under the current law would normally have to present evidence of collusion in setting prices; it would shift the burden of proof to the manufacturer and other dealers who would have the burden of showing collusion did not take place.

That is the new form of liberal law: Shift the burden of proof from the person making the complaint to begin with to the defendant to have to prove his or her innocence. That is not American jurisprudence. It should not be American jurisprudence. In this case, it just means more litigation, more legal costs, and more ultimate costs to the consumers.

The terminated retailer would not be required to present any evidence of actual collusion on setting prices prior to going before the trier of fact. This is not sound antitrust or economic policy.

Mr. President, I now wish to turn to this bill's override of the Sharp decision. This issue assumes an agreement between a manufacturer and the dealer does exist, and the question is, what kind of agreement constitutes a price fixing agreement subject to the per se rule?

In the case of Business Electronics versus Sharp Electronics, the Supreme Court held 6 to 2 that a vertical restraint of trade is not illegal per se under the Sherman Act unless it includes some agreement on price or price levels. Ordinarily, as I mentioned earlier, whether particular concerted action violates the act is determined through a case-by-case application of the rule of reason.

Per se rules are appropriate only for conduct that is manifestly anti-competitive. That is not the case here. The Supreme Court has found some nonprice vertical restraints, such as exclusive territorial agreements, serve legitimate purposes such as stimulating interbrand competition.

The pending amendment would make an agreement between a manufacturer and a dealer to terminate another dealer because of its discount pricing per se violation of the Sherman Act, even though a specific price or price level is not established as part of the agreement. Thus, in cases such as Sharp, where one dealer complains about another dealer's pricing policies and the manufacturer does enter into an agreement to terminate the second dealer, the pending amendment would find a

per se violation of the Sherman Act, and this would be the case even though the dealer, who had complained about the terminated dealer, neither expressly nor impliedly agreed to set its prices at some level.

Under these circumstances, under current law, a rule of reason analysis applies and, in an appropriate case, will yield a judgment for the plaintiff.

As Justice Scalia wrote in the Sharp case in an opinion spanning the ideological wings of the Court, joined by Chief Justice Rehnquist, Justice O'Connor, as well as Justices Brennan and Blackmun:

There is a rule-of-reason standard; * * * departure from that standard must be justified by demonstrable economic effect, such as the facilitation of cartelizing, rather than formalistic distinctions; that interbrand competition is the primary concern of the antitrust laws; and that rules in this area should be formulated with a view towards protecting the doctrine of [the Court's earlier caselaw]. These premises lead us to conclude that the line drawn by the fifth circuit is the most appropriate one.

The fifth circuit had ruled that for a vertical agreement between a manufacturer and a dealer to terminate a second dealer to be per se illegal, the first dealer must expressly or impliedly agree to set its prices at some level, though not necessarily a specific one. Justice Scalia went on to say:

There has been no showing here that an agreement between a manufacturer and a dealer to terminate a "price cutter," without further agreement on the price or price levels to be charged by the remaining dealer, almost always tends to restrict competition and reduce output

[If an agreement to terminate a price-cutter is made to be per se illegal], any agreement between a manufacturer and a dealer to terminate another dealer who happens to have charged lower prices can be alleged to have been directed against the terminated dealer's "price cutting." In the vast majority of cases, it will be extremely difficult for the manufacturer to convince a jury that its motivation was to ensure adequate services, since price cutting and some measure of service cutting usually go hand in hand. Accordingly . . . even a manufacturer that agrees with one dealer to terminate another for failure to provide contractually obligated services, exposes itself to the highly plausible claim that its real motivation was to terminate a price cutter. Moreover, even vertical restraints that do not result in dealer termination, such as the . . . requirement that certain services be provided, can be attacked as designed to allow existing dealers to charge higher prices. Manufacturers would be likely to forgo legitimate and competitively useful conduct rather than risk treble damages and perhaps criminal penalties.

We cannot avoid this difficulty by invalidating as illegal per se only those agreements imposing vertical restraints that contain the word "price," or that affect the "prices" charged by dealers. Such formalism was explicitly rejected in *GTE Sylvania*. As the above discussion indicates, all vertical restraints, including the exclusive territory agreement held not to be per se illegal in *GTE Sylvania*, have the potential to allow dealers to increase "prices" and can be characterized as intended to achieve just that. In

fact, vertical nonprice restraints only accomplish the benefits identified in GTE Sylvania because they reduce intrabrand price competition to the point where the dealer's profit margin permits provision of the desired services. As we described it in Monsanto, "The manufacturer often will want to ensure that its distributors earn sufficient profit to pay for programs such as hiring and training additional salesmen or demonstrating the technical features of the product, and will want to see that "free-riders" do not interfere."

By overturning Sharp, this bill will open a Pandora's box of costly and counterproductive litigation. While the lawyers will benefit from the overrule of this case and the Monsanto case, the costs of litigation will be passed along to American consumers.

One more part of the pending amendment also needs to be briefly addressed. Section 5 says that this bill does not affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints, "or the existing state of law with respect to other types of non-price vertical restraints."

Now, Mr. President, I am not sure if any two Senators would agree on precisely what that state of the law is. The Sherman Antitrust Act is applied to diverse fact patterns. Indeed, reasonable judges could come out differently on some of these cases. Moreover, the law in this area is a continuously evolving one. That is one of its strengths. The lower courts, guided by the general language of the underlying statute and by controlling Supreme Court precedent, have been free to consider these fact patterns without the convoluted gloss of language such as the pending amendment. The quoted language in section 5 seeks to freeze the law at a given point in time, and I believe that is unwise.

But, Mr. President, it is not only the vagueness of this provision and its interference with continued evolution of the law in this area that concerns me. As I mentioned earlier, the rest of the bill itself threatens the viability of legitimate, procompetitive, nonprice vertical restraints.

Suppose a manufacturer receives a complaint by one dealer concerning the failure of a discount dealer to provide a trained sales force and the same repair and warranty services he does. Suppose, further, that the manufacturer truly wishes unilaterally to enforce the provision of these services. The manufacturer will refrain from seeking to enforce these service, warranty, and similar requirements in order to avoid the likely treble damages that will arise if this pending amendment is adopted.

Moreover, as the Supreme Court has persuasively stated, the complaint by one dealer that a price cutting competitor is free-riding on the services provided by the complaining dealer will readily be construed as a com-

plaint about price competition or discount pricing. Blurring the distinction between nonprice and price restraints in the operative provision of the bill renders any attempted savings clause a practical nullity.

CONCLUSION

Price-fixing is an issue that deserves our careful attention. But in its review of the matter, Congress should not pass a measure which would, as a practical matter, condemn perfectly legitimate conduct on the part of manufacturers. Monsanto and Sharp are eminently sound decisions. It would be a terrible mistake for Congress to overrule these decisions by adopting the pending amendment.

Why encourage a flood of unwarranted litigation? It is not as if there are no cases that are successfully filed and won under these court rulings. We have evidence that good plaintiffs' cases are readily successful under existing law. By making it too easy to allege an antitrust violation and get to a jury in the absence of actual evidence of a conspiracy, S. 429 would multiply litigation and "whipsaw" many companies into early settlement. Moreover, to the extent that more cases are likely to be assigned to a local jury in a trial against a distant manufacturer, plaintiffs are going to have incentives to file more suits on less evidence.

This bill has been touted as a consumer measure, but, in fact, it would impair the ability of manufacturers to ensure that their products are sold and serviced by retailers who are sensitive to consumer needs. It is not as if discount dealers are closing their doors right and left. They are doing well. Such was the point of a New York Times editorial on April 1, 1991, in which the editorial argued:

Discounters have thrived despite the Supreme Court rulings. The system isn't broke; consumers aren't threatened. There are, however, circumstances when manufacturers have legitimate grounds for protecting full-service dealers. They should have the right.

In sum, the pending amendment harms competition. The pending amendment would encourage lawyers to file antitrust suits on slim evidence. This would tie up U.S. firms in litigation while foreign competitors are free to seek new channels of distribution and greater market flexibility. I urge its rejection, and I urge my colleagues to vote against cloture.

The PRESIDING OFFICER (Mr. ADAMS). The 40 minutes of the Senator has expired.

Mr. HATCH. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I wonder if my distinguished friend from Utah would be willing to remain on the floor for a few moments. Perhaps it would be helpful if we had an exchange of some views in a moment.

Mr. HATCH. I will be happy to, but I do need to get to the Labor Committee, where we are holding a hearing on the free-trade agreement.

The PRESIDING OFFICER. If the Senator from Pennsylvania will pause for a moment, we are under time limitations, and it will be necessary for the Senator from Pennsylvania to either receive time allocated to him by the Senator from South Carolina or the Senator from Ohio, or receive consent from one of them that that be done.

Mr. SPECTER. I am advised that I may receive time from the Senator from Ohio.

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

Does the Senator request a specific amount of time?

Mr. SPECTER. In the absence of any other Senator on the floor, I wish to take up to 15 minutes. But if another Senator comes, I will curtail my comments below that time.

The PRESIDING OFFICER. On that basis, the Senator is recognized for 15 minutes.

Mr. SPECTER. I thank the Chair. I have asked my distinguished colleague from Utah, Senator HATCH, if he would remain on the floor because it might be useful to have some discussion on these issues.

Mr. President, I am not satisfied with the current standards of the Monsanto and Sharp decisions as they apply the law on retail price fixing, but I do not believe that the present bill or the amendment offered by the distinguished Senator from Colorado [Mr. BROWN] establish an adequate standard.

I voted in favor of cloture yesterday on the motion to proceed because I felt the Senate ought at least to take up this bill and consider it. There is a vote pending on the cloture motion at 6 o'clock this evening, and it is my intention to vote in favor of that motion as well, even though I make no commitment in support of the bill. In its present form, even with the Brown amendment, I am not satisfied with it. It is my intention to oppose the bill unless there can be crafted language which meets the objectives which I am about to articulate.

Mr. President, there is no doubt that price fixing is against public policy and is illegal and ought not to be countenanced. But the issue which we confront in this legislation is what is the appropriate standard to submit a case to the jury, because just as it is plain that price fixing ought not to be countenanced, it is undesirable as a matter of public policy for unfounded lawsuits to be brought where there is enormous pressure on defendants to make settlements where there is no material issue of fact.

The reality in the courts is that if the case can be submitted to a jury on

a complicated antitrust matter, then there are enormous costs and substantial sums may be paid even though there is not a meritorious case. So what we are really striving to do is to find an appropriate standard where we really recognize that meaningful case.

Mr. President, at the conclusion of my remarks, I ask unanimous consent that my views on S. 429 be included in the RECORD, because that will enable me to abbreviate my comments because other Senators are on the floor and I do wish to take a few minutes to discuss the issue with Senator HATCH.

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

(See exhibit 1.)

Mr. SPECTER. Let me then, Mr. President, at this point state the crux of the concern which I have about Monsanto and the crux of the concern which I have about Sharp, the concerns that I have about Senate Bill 429, and the amendment offered by Senator BROWN.

I think it would be appropriate for me to make it clear that I am not in support of the Brown amendment, even though there has been some representation made to the contrary.

Mr. President, in the Monsanto case, the following language appears:

Something more than evidence of complaints is needed. There must be evidence that tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently.

I find it very difficult to see in a practical sense what a plaintiff can do to submit evidence to prove a negative, and even to exclude the possibility of a negative.

In common speech parlance, it is frequently said, "anything is possible." I had considered offering an amendment which would say to exclude the probability of independent action.

The Sharp case has the following language. I am simplifying it because of the brevity of time here:

In sum, economic analysis supports the view—and no precedent opposes it—that a vertical restraint is not illegal per se unless it includes some agreement on price or price levels.

The difficulty with this language is that it has led courts to find no price fixing in a factual context where it seems to me the evidence was sufficient to get to a jury. Illustratively, the case of Toys 'R' Us versus R.H. Macy, where the U.S. District Court for the Southern District of New York found no evidence of a conspiracy to set prices at some level as required under the Sharp decision despite evidence that the defendants sought to maintain its keystone price, which was a phrase known throughout the clothing industry to show double the wholesale price.

Having recited these brief extracts from Monsanto and Sharp, this establishes my concern—and I have had

some experience in the trial of these cases—that the standards of proof are unrealistically difficult. But as I have analyzed Senate bill 429—and there are amplifications of the reasons in the written portion which will be added—and as I analyze Senator BROWN's amendment, I am not satisfied that the language in either the original bill or the amendment will clarify the law to preclude the submission of cases to juries where there really is not sufficiently evidence to take them to the jury because, in addition to the question about price, there are many other circumstances where a dealership may be terminated for valid reasons, such as failing to provide consumers with proper services, failing to provide appropriate warranties, failing to provide product information, or failing to comply with other contractual commitments to the manufacturer.

Those are circumstances where the manufacturer ought to have the freedom to terminate which are not related to price so that the focus of our attention has to be how do you bring the microscope right down to prices as the issue and sufficient proof.

I have consulted with a number of experts in the antitrust field to try to get language which would bridge and accommodate the interests discussed. I met on two occasions with the distinguished Assistant Attorney General, James Rill, the head of the Antitrust Division, to try to find language, and with the marvels of C-SPAN II, the considerable public interest in this issue, it maybe that lawyers around the country are listening to this debate, and can provide suggested language which would bridge this gap because I am vitally interested in finding an answer to meet the deficiencies which I see in Monsanto and Sharp. But I do not want to have a new law which is going to provide additional ambiguities which will cost a lot of money in court to test and have cases which will raise the jury issues submitted to juries, which is very expensive, and all of the expenses ultimately come back to the consumers of America.

So, if someone has a better idea, I again emphasize that I am interested, and with the fax machines and my telephone number is (202) 224-4254—some people have said, "You know what number" in a derisive way—I am asking for suggestions. My staff is going to love that, but we really are interested in getting some language.

EXHIBIT 1

While I am not satisfied with the current standard articulated by the Federal court decisions on what evidence is sufficient to constitute a jury question on resale price fixing, I do not believe that S. 429 established the proper standard. There is no doubt that price fixing is undesirable as a matter of public policy and is illegal under our present statutes. The difficulty arises in determining what evidence is sufficient to submit that

issue to the jury. Aside from pricing, a retailer may be appropriately terminated for valid reasons such as failing to provide consumers with proper services, warranties and product information or failing to comply with other contractual commitments to the manufacturer.

As a threshold question, I believe that the legislative branch must be extremely careful in overturning judicial decisions which have been built up over years or even decades of carefully crafted case-by-case judgments. But, there are situations which require legislative clarification, and I agree with the sponsors of S. 429 that such clarification is necessary in the current context of existing Federal judicial decisions.

In order to establish a vertical price-fixing case, a plaintiff must show two things: (1) an agreement between a manufacturer and a complaining dealer to terminate a discount and (2) that the agreement relates to price. The two Supreme Court decisions at issue in this bill sought to clarify the quantum of evidence necessary to meet these two prongs. *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984), attempted to set the standard for what constitutes evidence of an agreement, while *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1988), sought to define what constitutes an illegal agreement about resale price.

The unanimous Supreme Court decision in Monsanto addressed the quantum of evidence of agreement necessary to survive what is known as "summary judgment." Summary judgment under Rule 56 of the Federal Rules of Civil Procedure ensures that only cases where there are material facts in dispute will go to the jury. Because litigation costs are so high and defendants are frequently induced to settle an unmeritorious case because of litigation costs, summary judgment serves an important function in terminating unworthy cases where there is not sufficient evidence to go to a jury.

In Monsanto, The Supreme Court stated that "something more than evidence of complaints" by competitors about a terminated dealer's pricing was needed for a plaintiff to survive summary judgment. 465 U.S. at 764. In the case, the Court found the "something more" in evidence that, on at least two occasions after Spray-Rite was terminated, Monsanto advised price-cutting distributors that they would not receive adequate supplies if they did not maintain the suggested resale prices. After one of the distributors still did not comply, its parent company was informed of the situation and the parent company instructed its subsidiary to conform to the resale price. There was also a distributor newsletter which stated that "every effort will be made to maintain a minimum market price level." *Id.* at 765-66.

The concern about the Monsanto opinion is that it also suggests that the evidence of "something more" must "tend[] to exclude the possibility" that the supplier had acted independently. *Id.* at 764. This language suggests that plaintiffs must prove a negative, which may be unrealistic in many situations. Several lower courts have granted summary judgment to defendants in spite of evidence of "something more" precisely because of this language. See *Parkway Gallery Furniture v. Kittinger/Pennsylvania House Group, Inc.*, 878 F.2d 801, 806 and n. 4 (4th Cir. 1989) (evidence that defendant sought assurances from its dealers that they would comply with its new marketing policy); *The Jeanery, Inc. v. James Jeans, Inc.*, 849 F.2d 1148, 1158 (9th Cir. 1988) (manufacturer said he would "take care of things" when presented

with dealer's complaints about plaintiff's price-cutting).

Other courts, however, have relied more on what the Supreme Court did in *Monsanto* rather than what it said and have found similar evidence sufficient to meet the *Monsanto* standard. See *Helicopter Support System, Inc. v. Hughes Helicopter, Inc.*, 818 F.2d 1530, 1535-36 (11th Cir. 1987) (evidence that manufacturer notified the complaining dealer that "corrective action has been taken" and requested that the dealer notify it of any further problems, when combined with the dealer's "thank you," met the *Monsanto* standard); *McCabe's Furniture, Inc. v. La-Z-Boy Chair Co.*, 798 F.2d 323, 328 (8th Cir. 1986), cert. denied, 486 U.S. 1005 (1988) (evidence that manufacturer had reported to dealer that "the problem had been taken care of" sufficient to meet *Monsanto* standard).

S. 429, however, does not merely clarify *Monsanto* along these lines. As currently drafted, it would allow a case to go to a jury where there is evidence that a complaint by another retailer to the manufacturer was the "major cause" of the manufacturer's termination of the retailer. But retailers are constantly complaining about other retailers and, not surprisingly, their complaints about competitors usually concern price. Indeed, a retailer is usually able to offer discount prices precisely because he is not offering customer services. And, consequently, complaints about discounting frequently may lead to decisions to terminate because the retailer is offering consumers poor services which would justify termination.

Given the current language in the bill, a unilateral decision by a manufacturer to terminate a retailer for legitimate nonprice reasons would go to a jury. This is because the determination of whether a complaint constitutes the "major cause" of the termination is inherently fact-based and, thus, any court constructing this language would refuse to grant summary judgment where there was any complaint about "price competition" and thus where there was a dispute concerning a *material* fact. See Fed. R. Civ. P. 56(c) (Summary judgment is only granted where "there is no genuine issue as to any *material* fact" and thus "the moving party is entitled to judgment as a matter of law") (emphasis added).

This conclusion is further reinforced by last year's committee report on this bill which provides an infinitely expandable, "only illustrative" universe of types of direct and circumstantial evidence which would suffice to show that the complaint was the major cause of the termination.¹ Moreover, the language in Sec. 8(a)(2) to the effect that a court should not make inferences which are implausible does nothing to cure this problem. Given the fact-bound nature of the "major cause" inquiry, the existence of one complaint about price in the files of the manufacturer could lead to a plausible inference that the complaint was the "major cause" of the termination so as to make summary judgment virtually impossible.

The *Sharp* decision sought to draw a line between price vertical restraints—which are per se illegal—and nonprice restraints—which are judged under the "rule of reason" standard and are thus lawful unless they would affect market prices (a difficult proposition to prove). I agree with the proponents of this bill that Justice Scalia, in drawing this line in *Sharp*, erred in excluding too many agreements which should legitimately be considered under the per se standard. In

fact, his requirement that the complaining retailer and the manufacturer, in addition to agreeing to terminate a discounter because of his price cutting, have also agreed to set resale prices at some level is too difficult a standard for plaintiffs. For example, in the case of *Toys "R" Us, Inc. v. R.H. Macy & Co.*, 728 F. Supp. 230 (S.D.N.Y. 1990), the court found no evidence of a conspiracy to set prices at some level as required under *Sharp* despite evidence that the defendant sought to maintain its "Keystone" price, a phrase known throughout the clothing industry to indicate "double the wholesale price." Consequently, the portion of the bill which overturns *Sharp* is not nearly as troublesome as the language overturning *Monsanto*, although possible refinements in that language could assist in reaching an overall compromise on the bill.

Although an agreement between a manufacturer and a retailer to terminate a discounter results in artificially high prices for consumers, manufacturers' requirements that retailers provide certain services at point-of-sale—particularly in the area of high-tech goods like computers—are equally beneficial to consumers. The bill as presently drafted could force manufacturers, fearful of the possibility of treble damage lawsuits, to no longer require retailers to provide consumers with proper services, warranties and product information. Consequently, contrary to the arguments of its proponents, I do not believe S. 429 as presently drafted is a pro-consumer bill.

My staff and I have worked extensively with Senators who are proponents of the bill and their staffs, opponents of the proposed legislation, and Assistant Attorney General James F. Rill of the Antitrust Division and his staff. I personally met with Assistant Attorney General Rill on two occasions and had a series of lengthy telephone conversations in an effort to work out the appropriate statutory language. My staff and I intend to continue to work with the parties in interest to try to structure appropriate legislation.

Mr. SPECTER. Mr. President, let me now come to the question which I would like to discuss with my distinguished colleague from Utah. This is, to put it bluntly, tough stuff. It is not easy to try to craft this. Senator HATCH and I have not discussed this in advance so that is why I am asking him to be willing to have a discussion. The two of us have a lot of discussions, both on the Judiciary Committee and off. But this is my concern. Where the Supreme Court in *Monsanto* said: "There must be evidence that tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently," how can a plaintiff prove the existence of a negative, that there is no collaboration and even exclude a possibility?

Mr. HATCH. I think it is a good question. As usual, the distinguished Senator from Pennsylvania is an expert in the law and has had very, very great experience in the law. I think that what the Senator has done is quote a paragraph that indicates you have to disprove a negative. The fact of the matter is *Monsanto*, is a case where the plaintiffs did recover because they were able to prove the positive that

there was, in fact, not only a termination but an agreement on fixed pricing. And the \$10.5 million treble damages of the case stood.

There was additional evidence that there was literally an agreement to fix prices. That included direct evidence that the manufacturer agreed to terminate price cutters. In that case, they were able to show it.

The *Monsanto* case also said, as I recall, that you can prove price fixing and an agreement or conspiracy to fix prices under the antitrust laws by direct or circumstantial evidence, which is precisely what they did.

I think the distinguished Senator raises a very crucial issue; that is, how can we best serve customers in cases where it may be difficult to prove that there was, in fact, an agreement or price fixing to begin with? My experience in the law has been that if we have a dealer come in who wants to be a plaintiff and we want to bring a suit because they have been terminated and they know of a complaint that was filed by a competitor. And it looks to them like they have been unfairly dealt with under the antitrust laws, that there is, in fact, an agreement and a conspiracy to fix prices, that the way we have to do that is go in and try to find somebody within the organization of either the complainer or the manufacturer, find documents, letters, memoranda, and so forth through the discovery process, and try through inference and many times through circumstantial evidence to get a case that will go to the jury.

Mr. SPECTER. If I may interrupt my distinguished colleague just for the purpose of debating the issue, the difficulty in finding such documentary evidence is—

Mr. HATCH. It is difficult.

Mr. SPECTER. You do not have to be too sophisticated in the commercial business world not to put it in writing. When Senator HATCH referred to *Monsanto* and that there was a finding for the plaintiff, that is correct. But there was very substantial evidence in *Monsanto*. After *Spray-Rite* was terminated, *Monsanto* advised price-cutting distributors that they would not receive adequate supplies if they did not maintain the suggested resale prices. After one of the distributors still did not comply, its parent company was informed of the situation, and the parent company instructed its subsidiary to conform to the resale price, and there was also a distributor newsletter which stated that "every effort will be made to maintain a minimum market price level."

What *Monsanto* did was educate business people in ways not to get caught.

Mr. HATCH. With those documents, they were found out.

Mr. SPECTER. That is the point. The point is you are not going to find a contract made at high noon under seal.

¹ See S. Rept. No. 101-251, p. 14.

But where there are forms, and as Senator HATCH and I know very well, having been practicing attorneys, where in the language of the Supreme Court decision there has to be some evidence to at least tend to exclude the possibility of unilateral action, this phrase is seized upon in the trial courts across this country and it establishes a burden which is impossible.

Mr. HATCH. If the Senator will yield, I think the Senator points out a good point. I do not think the courts are going to require the plaintiffs to prove a negative. That is a good point. On the other hand, I do not know anybody that can make the case under current law that discounters are suffering or that they cannot bring these cases in legitimate ways and recover today or that the law is not working.

I acknowledge that the Senator has raised a point that may be important. But from my experience, the law is working as it currently stands under Monsanto, Sharp, Colgate, and Sylvania. Let me make this one point. These are very difficult cases.

The PRESIDING OFFICER. The time of Senator SPECTER is up.

Mr. HATCH. Mr. President, I ask unanimous consent that we have 1 more minute.

The PRESIDING OFFICER. The time is extended 1 more minute from the time of Senator THURMOND.

Mr. SPECTER. Mr. President, I ask unanimous consent that we be permitted to continue this exchange for 5 more minutes, because I have a brief reply.

Mr. THURMOND. Mr. President, the time has been apportioned, and unless we can be guaranteed our proper time, I could not agree.

Mr. SPECTER. I see a gesture on the other side indicating acquiescence.

Mr. THURMOND. I would agree, if we can work it out.

The PRESIDING OFFICER. Without objection, Senator SPECTER shall have 5 minutes under the time of the Senator from Ohio [Mr. METZENBAUM].

Mr. SPECTER. There was an audible call at the line of scrimmage.

Mr. THURMOND. We get 5 more minutes, if I understand?

The PRESIDING OFFICER. No. The time will not be charged against the Senator from South Carolina at all. Five minutes will be charged against the Senator from Ohio for this exchange.

Mr. SPECTER. Mr. President, in view of the limited time, let me pose the other question to Senator HATCH, if he would be agreeable to that. I see him nodding in the affirmative.

Let me come back to Sharp, and I think this discussion may be useful, if someone can provide us with some information.

Justice Scalia talked about the vertical price is not illegal per se, unless it includes some agreement on price or

price levels. And, as my distinguished colleague knows, in the Toys 'R' Us case, a district court found no evidence of conspiracy to set prices at some level, citing the Sharp doctrine, even though there was evidence that the defendant sought to maintain a keystone price, which was known throughout the clothing industry as double the wholesale price. My question is: should the interpretation of Sharp in Toys 'R' Us not be changed, can we find the appropriate language to overturn it without creating more problems than solutions?

Mr. HATCH. Let me try to answer. I am not as familiar with that case. But judges can differ on various sets of facts. What little I recall about that is that there was a difference on the facts themselves.

If what the Senator is raising is correct—and I presume it is, knowing my friend from Pennsylvania—then that does raise an issue that is serious. I am not arguing that every case will come out the way the Senator from Pennsylvania, or I would decide it, reasonable people can differ. But terminated dealers are able to get a jury today. Let me say that in the Sharp case, Sharp addresses the question that even when an agreement to terminate a price-cutting dealer is shown, what must that agreement include before it is subjected to the per se rule, rather than being subjected to the rule of reason? Sharp says, basically, that you have to have an agreement or prices at some level. I do not see where that is a difficult standard to use.

Mr. SPECTER. But the problem is that it is interpreted by the courts not only in Toys 'R' Us, but in other cases. And when you talk about a keystone level, which is known in the industry as twice the wholesale price, the language of Sharp, which asks for some specific price or price level, is interpreted to eliminate plaintiff's day in court, where as a realistic matter, the price fixing has been established.

That is the problem I see. These cases just go too far. But it is very difficult when you start, legislatively, to change in case law. The history of the common law for centuries has been that these cases are built one on top of another, with extremely careful analysis by the courts. It may not always be right. We may not always agree, but when we seek the legislative change, we have to be very cautious. I know the Senator from Utah agrees with me on that point.

Mr. HATCH. I am going to review that Toys 'R' Us case. Let me just say this: Even if that is so, this particular bill clearly overreaches, and I think that is why both the Senator and I are against the bill.

In Sharp, the court said there was enough evidence to find a price agreement. The case was reversed because of the erroneous jury instruction.

Let me read that case the Senator is referring to, and I will work with the distinguished Senator to try and resolve in the future some of these problems. I have to say today, if we pass this particular bill that the distinguished Senator from Ohio is advocating, and we vote for cloture today and somehow or another that bill passes, we are talking about putting a tremendous dent in consumer rights in this country.

Mr. SPECTER. I ask this question: When we talk about cloture—this is an important point—why should we require the supermajority? On the current bill, S. 429, and the Brown amendment, my intention is to vote against it, unless we can solve the problems which deal with Monsanto and Sharp.

We are not dealing with freedom of speech, we are dealing with the commercial issue. There will be no more time for more debate, if cloture is invoked. Senator HATCH and I and Senator THURMOND are the only Senators on the floor. If we need more time to debate, I think we ought to take it. On the structure of requiring a 60-vote majority, I just have a problem, and I think it is worth a brief discussion because people may not understand when we talk about cloture, requiring 60 votes. And I intend, as I said earlier, to vote in favor of cloture, to let the Senate work its will in a majority context. I would be interested in my distinguished colleagues' reaction to that.

Mr. HATCH. Mr. President, I think the very fact that the Senator is raising these issues is going to be observed by the courts of this country, because he has a reputation in the law that cannot be ignored.

On the other hand, we have not been able to come up with a resolution of those issues thus far, during at least three Congresses, and I am not sure we can on the floor. I think by going ahead and invoking cloture, it seems to me what we are going to do is allow the passage of this bill, which is very difficult to understand. Some of our colleagues are voting for it because it has been promoted as a consumer bill when, in fact, it is anticonsumer. There is a lot of pressure by certain discounting retailers—not the majority, but certain of them—who have been very active for them to vote this way.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPECTER. I thank my colleague, and I thank the Chair.

Mr. THURMOND addressed the Chair. The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, the Brown amendment, in essence, does no more than shuffle words around. The basic problem with the amendment and with the Metzenbaum bill is that it fails to recognize that the primary fact which must be established in order to show a vertical price-fixing violation

under the Sherman Act, is the existence of an agreement to fix prices. The necessity to show that an agreement has been entered into, and that that agreement fixes prices, is the most basic fact in this whole debate, and it is continually ignored by those who have drafted this legislation and those who urge its adoption. As Mr. Rill has stated, "This amendment, while making cosmetic changes, would still permit findings of conspiracy and price fixing where no one has conspired and prices have not been fixed." There cannot be a vertical price-fixing violation under the Sherman Act unless there is an vertical agreement to fix prices. Both the Metzenbaum bill, and the Brown amendment, eliminate that requirement.

My distinguished colleague from Alabama, Senator HEFLIN, put it best the other day when he gave an example from criminal law to illustrate the point. Suppose I am found at the scene of a murder. On the ground is the victim, and next to the victim, is the weapon. Based on that evidence, am I guilty of murder? Of course not. My presence at the scene may be highly probative, but clearly more evidence than simply my presence would be required before I could be found guilty of murder.

The same is the case with establishing a price-fixing conspiracy. A complaint by a dealer about another dealer's pricing, even followed by termination, even if the termination were the major cause, may be probative of whether there is a price-fixing agreement, but standing alone, it simply is not enough. That is what Monsanto held, and that is why the Metzenbaum bill, and the Brown amendment, no matter what words they use, do not work. In both cases, the proposed legislation ignores the requirement of proving an agreement, and allows a jury to infer a conspiracy to fix prices based on inconclusive evidence.

Mr. President, S. 429 was defeated by the Judiciary Committee by a vote of 8 to 6. This is the third time this legislation has been before the Judiciary Committee, and each time, there have been fewer and fewer votes in support. Several years ago, it was reported favorably by voice vote. The second time, it narrowly won approval by a vote of 7 to 6. This last time, it was defeated. It goes without saying, Mr. President, that the more my distinguished colleagues study this bill, the more they understand that it is not sound antitrust legislation, and should not be enacted.

Again, I remind Senators that the head of the Antitrust Division in the Justice Department is strongly against this bill. And I have read his letter this afternoon. He is there enforcing antitrust and serving the people. He has no reason to do anything other than what is best for the consumer. That is why

he is in the Antitrust Division. He takes the position this bill is unsound and should not pass.

The two Supreme Court cases which the Metzenbaum bill and the Brown amendment seek to overturn—the Monsanto and Sharp decisions—were both decided by overwhelming majorities. Monsanto was decided by a unanimous Court, with Justice White not participating. The decision in Sharp was 6 to 2, with Justice Kennedy not participating. Given these majorities, it does not appear that these decisions were the result of strong ideological differences as to antitrust law, the law of conspiracy, or the evidentiary requirements necessary to prove a conspiracy. On the contrary, the decisions are clear and straightforward on two issues: what kind of proof is necessary to prove a vertical price-fixing case; and, what kinds of agreements constitute vertical price-fixing agreements subject to the per se rule, rather than the rule of reason.

Mr. President, S. 429 and the Brown amendment will have a very real, and negative effect on American business. As I noted in my opening remarks on the motion to proceed to this legislation, S. 429 inhibits communication between manufacturers and their distributors, it interferes with the right of a manufacturer to unilaterally decide who will distribute its products, and it makes it difficult for manufacturers to require their distributors to provide product expertise and service.

Mr. President, this is very important because product expertise and service benefit the public. Unless the manufacturer can require the distributor to give proper service to the consumer, the consumer suffers, and that is the point that seems to be overlooked by people favoring this bill.

American business thrives on the free flow of information between manufacturers and consumers. Such communication informs manufacturers about consumer needs with respect to existing products, and provides insight into unmet consumer needs for future products. Both bills under consideration chill this communication by making communications between a retailer and a manufacturer the operative vehicle for presuming that the sender and the recipient were engaged in a price-fixing conspiracy. It thus weakens American business by unnecessarily creating fear that innocent and laudable behavior will subsequently be misconstrued in a court of law and exposed to costly treble damage penalties. An American business beset with such concerns is ill-equipped to compete in the global marketplace against foreign competitors.

Mr. President, these bills also interfere with the long established freedom of a manufacturer to decide unilaterally whether to distribute its product through a given dealer. This right is an

essential part of our free enterprise system, and has a solid foundation in settled antitrust law. S. 429 and the Brown amendment allow an inference—I repeat, an inference—of an illegal conspiracy where a manufacturer has done no more than exercise this right, subjecting the manufacturer to treble damages. Finally, product expertise and product service directly benefit consumers. Manufacturers should be able to terminate distributors who do not provide such benefits, and should be able to enter into procompetitive distributorships to guarantee them. These bills could make this illegal.

This is a very important point, Mr. President, because the manufacturer wants to see that his distributor gives good service and this bill is going to prohibit that.

Of overriding concern, Mr. President, is that these results will occur against a backdrop of little, if any, proof that there is a need for this legislation in order to preserve the ability of consumers to buy at the lowest possible price, or from discounters. On the contrary, the fact of the matter is, that notwithstanding the Monsanto and Sharp decisions, consumers have an almost unlimited amount of choice in the marketplace, and low priced, discount stores are thriving as never before, many at the expense of full service retailers.

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired.

Mr. THURMOND. I will quit, Mr. President. Thank you very much.

The time has expired now on both sides, I understand, until—

The PRESIDING OFFICER. There are approximately 13 minutes and some odd seconds remaining to the Senator from Ohio. The time between 4:30 and 6 will once again be equally divided between the Senator from South Carolina and the Senator from Ohio.

Mr. THURMOND. Mr. President, if my time is up I want to be sure when we come back at 4:30 we will have our proper time then. If there is no objection I can go on until Senator METZENBAUM comes back. As I understand it, that would be agreeable.

The PRESIDING OFFICER. Yes, it will take consent to do that if consent can be granted. Does the Senator so request?

Mr. THURMOND. Until Senator METZENBAUM comes in, or another person who wants to speak on his side comes in. If you notify me, I will immediately stop so they can take the floor.

The PRESIDING OFFICER. Without objection, the Chair will recognize the Senator from South Carolina under those terms.

The Senator from South Carolina is recognized.

Mr. THURMOND. Thank you, Mr. President.

In its 30th annual survey of the discount industry, published in June 1990, Discount Merchandiser, a discount trade publication, noted that dollar volume for the discount industry for the 1989 calendar year reached over \$160 billion. This was a new record, and represented an increase of \$13.1 billion, or 8.8 percent, over the previous year. The publication also noted that "the state of the industry as measured by the barometer of dollars and cents reveals a strong potential for continued overall growth." The effect of the discount industry on other retailers was also cited. "In one way or another, other retailers cannot help but measure their pricing standards against those of the discounters. * * * One retail expert's survey shows that 49 percent of the items consumers buy are price-slashed at their department store. The influence of discounting is like the Big Bang. The effect still continues."

In terms of sales, Wal-Mart and K mart, two leading discount companies, both reported annual sales in excess of \$30 billion. According to recent news accounts, Wal-Mart reported annual sales for 1990 of \$32.6 billion, while K mart reported annual sales of \$32.07 billion. Both numbers represent substantial increases over 1989 annual sales, which were reported by Discount Merchandiser to be \$20.9 billion and \$24.4 billion respectively. In other words, despite the Monsanto and Sharp decisions, Wal-Mart and other discount stores continue to experience explosive growth.

It has been said that if this bill passes, it will put the discounters out of business. The discounters are making more money every year, as shown by these statistics.

Mr. President, I would now like to spend a few minutes giving some background on S. 429, and describing the apparent reasons for its creation.

The original impetus for S. 429 was to overrule the Supreme Court's 1984 decision in *Monsanto versus Spray-Rite Service Corp.* In that decision, which, as I have already indicated, was decided by a unanimous vote, the Supreme Court held that a conspiracy to set vertical prices, in violation of section 1 of the Sherman Act, is not established by proof that a manufacturer terminated a distributor following, or even in response to, price complaints by other dealers. The Court held that, "[s]omething more than evidence of price complaints is needed. There must be evidence which tends to exclude the possibility that the manufacturer and non-terminated distributors were acting independently." The Court stressed that, "it is of considerable importance that independent action by the manufacturer, and concerted action on nonprice restrictions, be distinguished from price-fixing agreements, since under present law the latter are sub-

ject to per se treatment and treble damages."

The proponents of S. 429 have argued that the evidentiary standard established by Monsanto is so difficult, that it is virtually impossible for a dealer termination case to reach the jury. Such an argument simply has no validity. In Monsanto itself, the Court found more than enough evidence to support the existence of a price-fixing agreement and termination of Spray-Rite pursuant to the agreement.

Spray-Rite was an authorized distributor of Monsanto herbicides from 1957 to 1968. In 1968, after Monsanto declined to renew Spray-Rite's distributorship, Spray-Rite brought an action against Monsanto under section 1 of the Sherman Act claiming that it was terminated pursuant to a conspiracy between Monsanto and some of its distributors to fix the resale prices of Monsanto herbicides. The jury found for Spray-Rite and awarded \$3.5 million in damages before trebling. On appeal, the court of appeals affirmed, and stated that, "proof of termination following competitor complaints is sufficient to support an inference of concerted action."

The Supreme Court reversed the appellate holding, but found that Spray-Rite presented enough additional evidence to prove that it had been the victim of an illegal price fixing agreement. The Court found that there was direct evidence of resale price maintenance agreements from testimony by a Monsanto district manager that on at least two occasions after Spray-Rite was terminated, Monsanto advised price cutting distributors that they would not receive adequate supplies if they did not maintain the suggested resale prices. After one of the distributors still did not comply, its parent company was informed of the situation and the parent instructed its subsidiary to conform to the resale price. There was also a distributor newsletter, which the Court described as a "more ambiguous example", which stated that "every effort will be made to maintain a minimum market price level."

The Court also found that there was ample evidence to support an inference that Spray-Rite had been terminated pursuant to the price fixing agreements. In a meeting between Spray-Rite and Monsanto following the termination, one of the first things the Monsanto official referred to was the many complaints it had received concerning Spray-Rite's prices. In addition, there was evidence that Spray-Rite had never been informed of the alleged criteria which led to its termination, and that on several occasions from 1965 to 1966, Spray-Rite had been approached by Monsanto officials, informed of complaints from other distributors, and asked to maintain its prices. Finally, Spray-Rite testified

that Monsanto made explicit threats to terminate if Spray-Rite did not raise its prices.

Some claim that the language in Monsanto is ambiguous and has engendered considerable confusion in the lower courts concerning the application of evidentiary standards in vertical price fixing cases. Such is not the case, however. Monsanto clearly articulates the appropriate evidentiary standard applicable to dealer termination cases. If some lower courts have applied the Monsanto standards incorrectly in particular cases, the more appropriate way to correct the situation is through the judicial process, and not through legislation like S. 429, which is itself ambiguous and confusing.

Mr. President, if they want something corrected, they should do it through the courts and not through legislation, because that is not the proper channel.

In stark contrast to the fact that this legislation is not needed to clear up any confusing or ambiguous evidentiary standard in vertical price fixing cases, is the reality that S. 429 will wreak havoc with long established antitrust principles and will seriously undermine, if not effectively repeal, the longstanding Colgate doctrine and the law of conspiracy.

In *United States versus Colgate & Co.*, the Supreme Court made clear that,

In the absence of any purpose to create or maintain a monopoly, the [Sherman] act does not restrict the long recognized right of trader or manufacturer * * * freely to exercise his own independent discretion as to parties with whom he will deal.

In Monsanto, the Court underscored this point. In its effort to balance the right of a manufacturer to deal independently with whomever it wishes, and the right of a distributor to be free from illegal conspiracies, the Court stressed that,

There must be evidence which tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently.

Because S. 429 sanctions the use of ambiguous evidence to provide the existence of a conspiracy, the line between independent and concerted activity will be unavoidably blurred, and independent, lawful activity will inevitably be condemned.

S. 429 also undermines a long list of antitrust and other cases dealing with conspiracy. In *American Tobacco Co. versus United States*, the Court defined a conspiracy as "a unity of purpose or a common design and understanding, or meeting of minds in an unlawful arrangement." The conspiracy can be proven either through an explicit agreement or an implicit understanding, but in any event it is necessary to prove that there was a "meeting of minds in an unlawful arrangement." S. 429 allows a jury to infer a conspiracy

based on evidence which falls far short of the American Tobacco standard, and seriously jeopardizes the traditional law of conspiracy.

The following example is a good illustration of the difficulty which S. 429 presents. Suppose a small manufacturer of a high technology product, I will call it the "M Modem," sells this modem both to a full-service retailer and to a discounter. Suppose also, that the full service retailer has taken a real interest in selling the M Modem and provides valuable services in connection with the resale of such product. The discounter, on the other hand, sells a variety of modems competitive with the M Modem, and has little interest in pushing the M Modem, providing only limited services in connection with the sale of such product. The full service retailer eventually comes to the manufacturer and states that, while he would like to continue selling the M Modem, he may not be able to do so because he is continually undercut by the discounter, who is free riding on his services. Facing the possibility that it will lose the full service retailer as an extremely valuable dealer if it continues selling to the discounter, the manufacturer decides to terminate the discounter. No prices have been fixed, and no agreement has been entered into. Yet, since the conversation with the full service retailer could be viewed as an implied request to terminate the discounter, which was the major cause of the discounter's termination, the manufacturer could be found under S. 429 to have engaged in per se unlawful resale price fixing.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will stand in recess until the hour of 4:30 p.m.

Thereupon, at 3:01 p.m., the Senate recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. FORD].

CONSUMER PROTECTION AGAINST PRICE-FIXING ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending business is the Brown amendment No. 90. The Senator from Alabama.

Mr. HEFLIN. How long does the Senator from Iowa wish to speak?

Mr. GRASSLEY. I think I told the Senator from South Carolina that it would take me about 18 to 20 minutes.

Mr. HEFLIN. I think I can get through in 5.

Mr. GRASSLEY. I thank the Senator.

Mr. HEFLIN. Mr. President, this issue is very complicated with lan-

guage, with matters pertaining to Supreme Court decisions, with language like per se rule, like the rule of reason, like the issue pertaining to maximum price and minimum price, and a lot of different language that gets confusing and is complicated to the average person. But when you get down to it, this bill really is about circumstantial evidence.

Most people know something about circumstantial evidence. They have heard about the fact that maybe somebody is seen close to a cookie jar. Sometimes, on circumstantial evidence, I think of a homicide case where there is a deceased body, there is a gun close to the deceased body and the accused is somewhere in the vicinity, maybe 100 yards. None of us would say that that is enough evidence to charge a man, or that is enough evidence to go to a jury.

Basically, the Supreme Court in Monsanto in regards to this matter says there has to be more than just a complaint and a termination of a retailer's relationship with his distributor or manufacturer. The Supreme Court might say in a case involving a homicide that you have to show the fingerprints of the accused on the gun before you could charge a person or you could go to the jury.

Basically, we are talking about circumstantial evidence that is necessary to charge or to go to a jury or to withstand a summary judgment or to withstand a judgment notwithstanding the verdict, or a directed verdict, or other things of that nature.

Now, what the Supreme Court in the Monsanto case said, basically, was that there had to be additional evidence other than just the complaint and the termination. If we just have the complaint and termination, there could be many reasons why the termination occurred. The retailer who got terminated might be lazy. He might have his service department operating very ineffectively, and so on.

And so really the question is whether or not you are going to require certain evidentiary standards pertaining to circumstantial evidence to be efficient to bring a case and to allow the case to go to the jury.

To me, when we look at this matter, it is confused with consumer rights and everything else. But it really comes down to what degree of proof is necessary to go to a jury. That is what this bill is about. This bill would open the floodgates and you would not have to have sufficient proof, in my judgment, from a legal basis to justify bringing the lawsuit or any submission to the jury.

Cases over the years have been pretty much the same. Monsanto does not reverse anything. There is a Colgate case that goes back earlier and Monsanto follows that case. We are getting into an area where we attempt to define and

micromanage the courts on matters pertaining to the quantum of proof, the sufficiency of evidence. That is best left to the courts.

If a person does not understand this, then where does he think we ought to be as the Senate and the Congress trying to say what exactly is the degree of circumstantial evidence, whether there ought to be fingerprints also found on the gun or whether or not there ought to be other evidence which would connect the accused with the crime. That is basically what we are talking about in this instance.

If there ever were consumer judges, they are Justice Marshall and Justice Brennan, who voted for the Monsanto case. They also voted for the Sharp case. I do not think you would say those Justices would be anticonsumer.

We are standing in the same position; two very liberal, proconsumer jurists have already looked at this and come to the position that there ought to be some additional circumstantial evidence before a case goes to the jury.

That is what I think it is about.

I further note that at the outset of this debate the proponents of this bill were only able to get the initial votes to invoke cloture on the motion to proceed by stating their willingness to accept the pending amendment. I find that this amendment makes no improvements to this legislation and even creates some affirmative harm. I will be addressing some of the specifics of that amendment later in this speech, but I want to first spend some time discussing why there is no need for any legislation at all.

The rationale behind this bill is that the U.S. Supreme Court has made a mistake in two of its opinions in how to interpret the antitrust laws. These cases, namely the Monsanto and Sharp opinions, are good law and do not warrant this undeserved attention by the U.S. Congress.

The Monsanto opinion was a decision of a unanimous Supreme Court. Joining with the majority in outlining the evidentiary standards necessary for a vertical price-fixing case to reach a jury were Justices Brennan and Marshall. As I have previously noted, these distinguished jurists have never been known as having anticonsumer orientation to say the least. However, they agreed with the majority in outlining these antitrust standards when one business brings a lawsuit against another business. The view of the Court balanced the various competing interests, took into account the historical development of the antitrust laws, and articulated a proper and workable standard for establishing when a vertical price-fixing case should reach a jury.

In reaching its decision in Monsanto the Court recognized that, "There must be direct or circumstantial evidence that reasonably tends to prove

that the manufacturer and others had a conscious commitment to a common scheme designed to achieve an unlawful objective." In practical terms, the Court was saying that merely the fact that there exists a retailer who was making complaints to a distributor and the fact that the distributor later terminated a competing retailer, does not make for a violation of the antitrust law without some evidence to the fact that there was an illegal conspiracy between the complaining retailer and the distributor to cut out the competition.

In addition to the Monsanto opinion, this legislation seeks to overturn the Supreme Court's 6-2 decision in the Sharp case. Again ruling with the majority in this case were Justices Brennan and Marshall. The Sharp decision is a case where the Supreme Court has provided guidance to the lower courts as to the proper threshold burdens necessary to show that an activity is per se illegal under the antitrust laws. The Court noted that in order to use this very high standard there must have been some evidence of an agreement as to price or price levels between the parties who are being accused of an antitrust violation, to support a finding that there was such an agreement as a prerequisite for submission to the jury. This opinion again shows the necessary balancing of competing business interests which was recognized by the Court.

Besides the wisdom and the overwhelming majorities which ruled in favor of these opinions, there is another reason why this legislation should not be enacted.

The entire field of business communications, which this legislation seeks to effect, has undergone significant changes and developments over the years. To enact this legislation will have the inevitable effect of chilling business communications thereby harm resulting improvements designed to help both consumers and business.

Before concluding, I want to briefly discuss the proposed amendment. I call it an amendment because to call it a compromise would simply be wrong. This amendment is not a compromise with the administration who have already indicated they will veto this bill. This amendment is not a compromise with the business community who are the very parties which both bring antitrust lawsuits and who are forced to defend antitrust lawsuits. Further, after hearing the reluctant views of the proponents of the underlying bill trying to muster the willpower to agree to any changes, I suggest that this may not even be much of a compromise in their minds.

I know that Senators BROWN and SPECTER have devoted substantial time and attention to this proposal, however it still falls short. The evidentiary standards laid out in this amendment regarding the Monsanto case, still fall

short of the Supreme Court's recognition that there must be some proof, either circumstantial or direct, of an actual agreement to cut out competition before an antitrust lawsuit can be proven. The language of this amendment speaks in terms of "implied acquiescence" or "impliedly threatening" in order to show a vertical price-fixing agreement. However, what those standards fail to achieve is establishing an evidentiary standard which will continue to mandate a showing of concerted action between the parties alleged to have entered an illegal price-fixing agreement, I appreciate the efforts to which my colleagues have gone, but I must still argue that their standard still falls short of the mark.

I want to conclude my remarks by reminding my colleagues of the age-old adage which clearly applies to this bill—if it ain't broke, don't fix it. The antitrust laws are not broken and don't need to be fixed.

I urge my colleagues to join with me in defeating this legislation.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. THURMOND. Mr. President, I yield 20 minutes to the able Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 20 minutes.

Mr. GRASSLEY. Mr. President, the history of this legislation is very interesting and this history may also suggest a compromise solution, one which will protect retail competition without the danger of transforming every dealer termination into a search for treble damages and also for attorneys fees.

Back in the 100th Congress, the Senator from Ohio [Mr. METZENBAUM], the Senator from Arizona [Mr. DECONCINI] and myself, and even a few others, worked very hard to produce a bill then that was numbered S. 430, and the title at that time was the Retail Competition Enforcement Act. This bill had an important, albeit modest, goal to codify the per se rule against vertical price fixing and to change the quantum proof needed to be offered by a terminated dealer/plaintiff to survive a manufacturer/defendant motion for summary judgment.

I was pleased to work on and cosponsor that compromise bill. That bill enjoyed wide support among discount retailers, and consumers. It even had the support of the manufacturers and the business community. We had a consensus. Obviously, that is a far cry from where we are today.

We were on our way to passage and enactment back in the 100th Congress when the Supreme Court Sharp decision came down. This case held that a decision by a manufacturer to terminate a discounter will be judged under the rule of reason unless there is some kind of an understanding on price.

The Supreme Court opinion in that Sharp case did not specify what evidence is required, but it is noteworthy that the opinion affirmed a fifth circuit decision that found it sufficient for liability if the manufacturer and the surviving dealer, and I quote, "expressly or impliedly agree to set the price at some level though not a specific one." That is really all that Sharp stands for, though it is sometimes hard to recall given all the harsh rhetoric that we hear about the end of discounting in America.

But, Mr. President, the sky is not falling. Drive down the street and you will see discounters flourishing everywhere, and if you have the facts to show an illegal price conspiracy, a discounter can still win a vertical price-fixing case.

It is simply an exaggeration to say that a plaintiff cannot today win a dealer termination case. What is true is that without some evidence of an understanding on resale prices or price levels, a dealer termination is not appropriate for per se treatment.

After Sharp, a terminated plaintiff need not show an ironclad agreement to set prices or even a price range. The illegal agreement can instead be implied by the facts uncovered during discovery. Indeed, the same evidence which shows the illegal conspiracy to terminate a dealer can also be used to show the agreement on price or price levels.

Thus Sharp does not require proof of two separate agreements as is often alleged. Sharp can be overcome in the appropriate case. In fact, as long as a plaintiff can get to a jury that jury may still find a conspiracy. This is why I continue to believe that the Monsanto case is the only one necessary or appropriate for legislative modification.

Mr. President, I would like to explain that and why. You see, denying that price was a motive for a termination, and denying that there was an agreement on price levels—usually those two go hand in hand—the manufacturer will claim to act on his own, or for legitimate nonprice reasons like maintaining service levels. The terminated dealer on the other hand will argue that the real motive was an agreement to fix or maintain prices. The jury that decides that the manufacturer is not telling the truth about the stated nonprice reasons probably will also believe the other testimony or will not believe the other testimony that it did not intend to set a price range.

So, Mr. President, I am much more comfortable leaving this question up to the jury than I am with the U.S. Senate deciding this question for the jury in advance.

I might also suggest that Sharp did not upset the established rule that agreements to maintain or stabilize

prices as well as to set them are per se illegal. Thus terminated dealers can still win resale price maintenance cases but to do so they must be diligent in their search for evidence of price concerns. They must uncover evidence that the stated nonprice reasons for the termination are mere pretext.

Mr. President, I might mention here, and do this parenthetically, that the views of the Senator from Ohio [Mr. METZENBAUM] in the committee report seem to support what I just said. He writes at page 21 that "When a competitor is eliminated pursuant to a vertical agreement solely because of its pricing policies, the impact on competition and consumer welfare is clear."

I emphasize the word "solely" because this is consistent with the uncovering of pretext evidence that I just mentioned. Unfortunately, the statutory language of the Senator from Ohio as well as the language of the pending amendment do not speak in the language of solely or sole causes. Rather, it is much more ambiguous. It not only changes the evidentiary rule laid out in *Monsanto*, a move I continue to want to support, but its overruling of *Sharp* turns virtually every dealer termination into a spin of the antitrust wheel of treble damage liability. This I cannot support.

As I have stated before, I am troubled by certain post-*Sharp* cases such as the *Jeanery* case and the *Toys 'R' Us* case raised by the Senator from Pennsylvania and others. In fact, I spoke out against these two cases 2 years ago in the committee report on this very bill. If I could be sure we were simply voting to change the result in these cases, I would support S. 429, or the pending amendment, but we are not doing that here.

I say of course we are not. Rather we are making a major as well as controversial change in the law that will simply catch too many blameless, unwary suppliers and dealers in the treble damages web.

The amendment before us blurs the careful distinction drawn in the *Colgate* case between unlawful concerted activities and legitimate unilateral conduct by manufacturers or suppliers. I hope my colleagues were listening to the senior Senator from Utah when he very clearly made this point, because he is right on the mark with this key point.

The *Colgate* doctrine that a manufacturer is free to announce real sale prices or contract terms and enforce adherence to those prices or terms by terminating noncompliant distributors or dealers or by refusing to deal with distributors or dealers who violate those prices or terms is almost as venerable as the per se rule itself. This rule dates all the way back to the year 1919, and I see no reason why we should weaken it.

A manufacturer's decision to terminate or refuse to continue to supply a distributor because the manufacturer independently concludes that the distributor's pricing or other behavior does not meet the manufacturer's objectives has never been a per se violation of the antitrust laws unless it is the product of an illegal conspiracy to fix prices.

In contrast, an expressed or implied agreement between a manufacturer and his dealers or distributors to fix resale prices or price levels has long been considered a per se violation of the Sherman Act. This is the real holding in *Sharp*, and as such it is not terribly remarkable. Perhaps that is why Justice Scalia's 6 to 2 opinion for the Court was embraced by both so-called conservatives and liberals.

This is simply not a case where ideology matters.

Mr. President, let me illustrate, then, my concern about the blurring of the line between unilateral and concerted conduct with some real world examples.

In the real world of retailing, manufacturers necessarily have to rely on information from their distributor networks to help ensure that other dealers comply with price and nonprice contractual requirements. A rival full-price retailer may often complain to a manufacturer—the complaint may be about a lot of things, and some legitimate—for example, that another retailer is not living up to the terms of the contract and, thus, is undercutting the competitor's retail price. What if the manufacturer acts independently or unilaterally to terminate the non-complying retailer? The sponsors of this amendment try to assure us that this action is protected by *Colgate* and specifically by section 4 of this amendment.

But what if the complaining retailer—perhaps one unskilled in antitrust hairsplitting—utters a smoking gun phrase during a communication, suggesting that the manufacturer simply take care of the discounter, or says something that may be benign but is later interpreted as being some sort of ultimatum? Here the pending amendment says that if the retailer is subsequently terminated, he will automatically win treble damages, as well as attorney fees.

Mr. President, how about this scenario: What if, alternatively, a full-price retailer, knowing he is in competition with discounters, asks his manufacturer for an exclusive sales territory instead? And what if the manufacturer agrees, resulting in the termination of the supply to the discounter?

Well, Mr. President, as I read the pending amendment, this is permissible under the bill, because new subsection 8(a)(1)(D) seeks to protect vertical territorial restraints—even where

they are motivated by a discounter's pricing policies.

So what has this amendment done? It has unwittingly encouraged the spread of exclusive territory arrangements as a subterfuge to reduce price competition. This is hardly a proconsumer development in the evolution of this legislation.

Indeed, a particularly devastating byproduct to enactment of this amendment might well be a rise in vertical integration by manufacturers—company stores, if you will. These stores will lack the independence and creative enterprise that now is so typical among small business retailers. This would be a terrible development for consumers, as well as for small businesses. But it is a real solution for wary manufacturers.

Do you want to risk this bad, long-term result, simply to change the result in a couple of cases? I do not think it is worth the risk to consumer choice or to small business.

Mr. President, as these examples show—and there are dozens more I could show that I might mention to this body—this amendment will bring on potentially massive liability for those not familiar with antitrust nuances. We ought not to intentionally create a trap for the unwary, or impose treble damages as a result of some kind of word game, and we are in that sort of a game.

Confusion, ambiguity, obfuscation are, I realize, good for the profits of the antitrust bar, both plaintiffs, as well as defense. But I sincerely doubt that it is a good development for people trying to make good business judgments. And I know that it is not a good development for America's consumers, who will ultimately, at the end of the line, pay the tab for all of the litigation fun and games that I think are involved in this legislation, if we do not dramatically change it.

I yield the floor.

THE PRESIDING OFFICER. For the information of Senators, the Senator from South Carolina has 21 minutes; the Senator from Ohio has 45 minutes.

Mr. METZENBAUM. Mr. President, I yield 7 minutes to the Senator from Washington.

Mr. GORTON. Mr. President, in 1911, the U.S. Supreme Court determined that vertical price fixing—agreements among different sellers along the distribution chain to maintain prices—is a per se, or automatic, violation of Federal antitrust laws. The benefits of that decision to consumers are obvious. It encourages price competition—the heart of a free market economy.

In the last decade, however, the per se rule has come under attack by both the executive and judicial branches of the Federal Government. The Department of Justice shifted from its former position and actively worked fundamentally to alter or overturn the per

se rule. Congress repeatedly has responded by prohibiting the Department of Justice from spending funds to advance that position. At the same time, however, the Supreme Court has restricted the application of the per se rule to the degree that this once-powerful legal doctrine has little meaning today.

It is time to reaffirm our commitment to the American consumer by adopting legislation once again effectively to outlaw vertical price fixing.

S. 429 will codify and strengthen the principles underlying the original per se rule. It will clarify that Federal antitrust laws prohibit not only manufacturers and distributors from mandating prices to retailers, but also prohibit a powerful retailer from dictating to whom its suppliers may sell. In today's highly competitive market, manufacturers increasingly are being pressured by full-price retailers to terminate or limit sales of competing product lines to discounters.

Full-service retailers and discount warehouses fill different free market niches. Each should be permitted to operate without interference from the other. In a nation whose greatest strength is diversity, manufacturers have learned that one size does not fit all. The same lessons hold true for the distribution industry as well.

In the past two decades, the manufacturing sector of our economy has undergone a tremendous and positive change. In the face of increased competition from home and abroad, American manufacturers are being forced to tailor their products to the ever-changing demands of consumers. The buying public knows what it wants to buy and the price it is willing to pay. Manufacturers and advertising agencies no longer can shape the tastes of the American consumer to fit the commodities offered. As a result, each of us is able to purchase a broader range of better goods at more competitive prices.

In a similar fashion, the American consumer is more value-conscious than in the past. The high-flying 1980's—a time when nothing was too good and no price was too high—are over. The 1990's are characterized by a far more pragmatic attitude, which, for many Americans, is necessitated by their starting families in a slowing economy. Recent financial pressures have been compounded in many families and communities by the conflict in the Middle East and by military cutbacks.

This value consciousness cuts across all economic, social and geographic lines. A perfect example is Costco, a Washington-based chain of discount warehouses, a form of business that has seen steady growth in recent years. It is not uncommon to see brand-new Cadillacs, Mercedes, and BMW's parked next to battered and rusted hulks barely able to run. Businessmen clad in fresh suits and ties roam the aisles

with painters, mechanics, and janitors wearing telltale signs of their professions. These customers and others are willing to sacrifice a degree of service, setting and other amenities in return for lower prices.

Discount warehouses do not appeal to everyone for all purposes, of course. You get only what you pay for. Most people still prefer at some time or another the comfort and convenience of shopping at full-service retail stores—and are perfectly willing to pay the additional expense. As a result of the increased competition from discount warehouses, catalog showrooms and other retailers, however, the quality of service at many stores has improved markedly. I find that gratifying.

Just as domestic manufacturers consistently have called for trade barriers to protect them from value-priced imports, full-service retailers likewise demand the right contractually to eliminate their lower priced competitors. The principles are the same; only the players have changed.

During my 12 years as attorney general for the State of Washington, one of my principal responsibilities was to protect the public against anticompetitive practices. That was a protective and vital part of that job. Fair competition is the life and hope of the free market society. It clearly has spurred modern industry to provide better goods and services and better value for your money.

By taking choice out of the hands of the American consumer, vertical price fixing drains the buying power primarily from lower- and middle-income families and senior citizens on fixed budgets. In these times when every penny counts—and when does it not—the needs and wishes of the consumer should be paramount. That interest is best served by the passage of S. 429.

The PRESIDING OFFICER. Who yields time?

The Senator from Ohio.

Mr. METZENBAUM. I yield to the Senator from New Hampshire 15 minutes.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from New Hampshire is recognized.

Mr. RUDMAN. I thank my friend from Ohio and thank the Chair.

Mr. President, first let's just comment on the excellent presentation by the distinguished Senator from Washington [Mr. GORTON]. I think he hit quite clearly the legal questions facing us today.

Mr. President, I really wonder why this has become such a contentious issue. It has taught me once again that powerful lobbies representing a very narrow base of America have enormous clout in the U.S. Congress.

The only people that seem to be opposed to this are those manufacturing companies and some huge conventional retail distributors that kind of like

things the way they are. Since the decisions in *Monsanto* and *Sharp*, I guess if I were in their shoes I would like things the way they are.

But the American consumer, the small business man and woman, people like the American Association of Retired Persons, the National Council of Senior Citizens, the Consumers Union—which I would add parenthetically rarely endorses legislation—and many other groups, including 46 of the 50 State attorneys general, have endorsed this legislation.

Let me just spend a few moments in pointing out in the simplest of terms why this legislation is good for the consumer and why it is not the complex legal issue it has been made out to be on this floor.

This is not a very complicated issue. Let me start by clearing up what I guess is a popular misconception. Universally adopted unilateral price fixing is legal in America. Many people do not understand that. Under the present law, if a manufacturer says "I manufacture shoes and they are wonderful shoes; if you wish to sell those shoes you must get \$175 a pair and if you do not sell them for \$175 then I will not let you sell my shoes" and everybody is held to that standard, that is legal.

There is much confusion here. I have heard statements here on the floor by people who evidently do not understand that. That is fine.

Further, there are all sorts of standards which can be set, standards as to advertising; service, if it is a service product; certainly stocking of inventories; if the shoe manufacturers say you have to carry 100 dozen of each pair in three colors, that is OK.

What the Sherman Act never allowed was vertical agreements on pricing, and it comes about like this.

Let us take that same shoe manufacturer who has this policy and he is selling his shoes around the country, but the fact is that a number of people are not observing his suggested retail price and they are selling these shoes for, let us say, \$140 a pair which is, of course, as the Senator from Washington pointed out, very good for people trying to save money and raising families. They would like to buy good products, name brand products, at minimal prices.

Let us assume the manufacturer says: "I am selling a lot of shoes. Since I am getting my price for the shoes, I do not care if these discounters out here are selling this pair for \$35 less."

Now comes along a huge department store and it says to that manufacturer, "In my area of the country, John Smith, down the street, is selling the shoes for \$140, and I am selling 20,000 pair a year, and unless you enforce that against John Smith, I am going to stop selling your product." And the manufacturer brings pressure on John Smith who says: "I have lower overhead; I have a different class of client-

tele. I like selling your shoes. People come and buy them by the hundreds. I want to sell them at \$140."

The manufacturer says, "Unless you raise it to \$175 I am going to take it away from you." That is the only reason. There is in fact a conspiracy between the manufacturer and the large retailer to prevent that from happening and it is carried out and it is terminated. That, until Monsanto and Sharp cases, was resale price maintenance and against the law.

Today it is not.

It is very interesting that the Monsanto case and the Sharp case changed what the antitrust bar believed to be the law up until that time, roughly 50 years.

I would say to my colleagues on this side of the aisle, with all due respect to my friend from Ohio, that the theory of antitrust came under a great Republican President, Theodore Roosevelt, who believed in free markets, in free competition, in the rights of small businesses, and the rights of the American consumers. Somehow I say to friends on this side of the aisle, we have been a bit corrupted lately when one looks at the rollcall vote. It seems to me if anybody in this Chamber ought to support it, it ought to be Republicans who sit on my side of the aisle.

The Senator from Ohio made a very interesting point the other day, and it is worth repeating. It is one I only know of in general terms, but he talked about it specifically, and it is in the May 6 CONGRESSIONAL RECORD. Let me just read verbatim what the Senator from Ohio [Mr. METZENBAUM] said about the Belk case, which is just a case in point and really wipes away all of this fancy legal rhetoric.

I enjoy flights of fancy legal rhetoric. My friend from Washington was a former State attorney general. The occupant of the Chair, the distinguished Senator from Connecticut [Mr. LIEBERMAN] was attorney general of his State and, as you know, I was attorney general of mine. We all enjoy flights of fancy legal rhetoric. But that is a great way to confuse and to confound. This is not very confusing, and the Senator from Ohio fixed on a case which just hits on point. Let me read you what he said on the floor a few days ago.

It was a case involving Garment District, Inc. versus Belk Stores, Belk being a large conventional retailer, Garment being a discounter. Here is the quote:

Take, for example, the case of Garment District, Inc. versus Belk Stores Services, Inc., decided in 1936, in which the manufacturer received repeated claims from Belk, its full-price retailer, about Garment, a competing discount retailer. The court found that Belk, in fact, pressured the manufacturer "in order to eliminate a discount competitor," and that Garment was "terminated because of the pressure exerted by Belk."

This is a classic Sherman antitrust case.

There was even a letter from the manufacturer to Belk—talking about smoking guns, which the Senator from Iowa was talking about a few moments ago in opposing this bill—there was even a letter from the manufacturer to Belk acknowledging the manufacturer's decision to terminate and thanking Belk for "bringing this problem to my attention," according to the words of the letter.

The court, relying on Monsanto, held this case should not go to a jury and upheld the directed verdict for the defendant.

It is hard to see how the court could prevent the jury from considering this case. But that is a classic example of how lower courts are interpreting Monsanto.

What did the Monsanto case say? I have read it a number of times. I have talked to learned people who read it and I will make a statement as to what I believe it means. I think there is much support for what I am about to say.

It helped in the case that the plaintiff had to virtually have a written agreement to fix prices to avoid summary dismissal—in layman's terms, in order to get to the jury. Even to get to the jury you had to have a written agreement or some strong indication, a recording, documentary evidence, whatever.

This is insurmountable for anyone who has ever tried any kind of a case. It is not a standard we have in the criminal law or in any other part of the civil law I am aware of, but that is what they said in Monsanto and it has been almost impossible to win a case under that standard.

Let us go on to the next case. That was a case on standards. Let us talk about Business Electronics Corp. versus Sharp Electronics Corp.

In that case, the court held that unless an agreement, even if one is found, specifically mentions certain price levels, no per se price-fixing restraint can be found. The decision makes no sense. It allows people to conspire all they want to so long as they do not write it down on paper.

So what we have done with this legislation is that we looked at Monsanto and we looked at Sharp, and we tried to put the law back where it was for 50 years. Now we have gone a step beyond that. There have been allegations made by the opponents of this—the administration; the Justice Department—that somehow we are creating a presumption of a conspiracy. Well, I do not think we did that.

But Senator BROWN of Colorado came to Senator METZENBAUM and to this Senator and said: "I think we can clarify this to make the evidentiary standards even tighter to make sure that that could not be conceived of by any-

one." I believe I am correct, I say to my friend from Ohio, that we have accepted that and that is part of the amendment that we would offer; is that correct?

Mr. METZENBAUM. We have indicated that we are prepared to accept it. There has been some objection to it, but we are prepared to accept it after the cloture vote.

Mr. RUDMAN. So after the cloture vote, if we are successful, it would be our intention to incorporate the Brown amendment which makes the bill crystal clear, if it was not already.

So that really is what this is all about. This is about saying to American consumers that we will give you the opportunity to buy brand-name products, quality products, many American-made products, which I think is important, at the lowest price that a retailer believes he can sell them to you and still make a profit.

That is what this is all about. That is why the Consumers Union, the AARP, and the others have endorsed this legislation.

Finally, Mr. President, let me just deal with a few items of mythology. I would say that the position paper I read from the Justice Department, I will classify politely as mythology. It lays forth a number of myths which this legislation definitely can rebut on its face. Let me just go through about three or four of them.

Myth No. 1: They have said that S. 429 could also render certain nonprice distribution agreements per se illegal, even though such agreements should be considered, instead, under the antitrust "rule of reason." (Statement of Position, May 2, 1991).

Mr. President, they know and we know on the plain face of this bill that S. 429 does not affect nonprice agreements in any way. The administration has made a statement about a section of the bill which makes illegal an agreement to "set, change, or maintain the resale price" of a product, "whether or not a specific price or price level is agreed upon."

Obviously, this section refers to price restraints, not to nonprice restraints, and it is crystal clear. How can anyone seriously argue the proposition that price-fixing conspiracies are acceptable as long as the conspirators do not write down a specific price?

Myth No. 2: Manufacturers rely on feedback from their distributors to supply the goods and services that consumers desire and that S. 429 could hinder this important exchange of information. (Thornburgh letter, April 30, 1991).

Well, Mr. President and my colleagues, that, on its face, is absurd. The only thing under this legislation that manufacturers and distributors could not talk about is the prices being charged by competitors. Period. And

they know that at the Justice Department.

Myth No. 3: They claim in their position paper that the bill could do great harm in cases alleging unlawful resale price maintenance agreements by allowing a presumption of conspiracy from evidence that is equally consistent with unilateral decisionmaking.

All S. 429 will do is to permit a plaintiff to present to a jury circumstantial or, if you wish, inferential evidence from which criminal activity can be inferred.

The Justice Department and the U.S. attorneys around the country do this every day of the week in courts all over this country, as to State prosecutors and State attorneys general.

Mr. Rill testified—Mr. Rill, incidentally, is the head of the Antitrust Division in Justice—he said:

The varying facts attending business conduct must drive the conclusion as to whether an agreement legitimately may be inferred on the basis of circumstantial evidence. No one fact is determinative.

We agree. But under the Justice Department position, the jury would never get to hear the evidence.

The same rules of evidence ought to apply for businesses engaging in anti-trust conspiracies as exist for individual Americans who participate in garden-variety conspiracies in criminal and civil cases.

Mr. President, let me end where I started. This is not a very complex matter. There is an old saying amongst lawyers that I am sure the distinguished occupant of the Chair is familiar with. It goes something like this:

If you don't have the facts, pound the law. If you don't have the law, pound the facts. If you have neither, pound the table.

What we have been hearing for the last day around here is a lot of table pounding. There is nothing in this legislation that will penalize a manufacturer who legitimately wants to make sure that his product is being properly sold at a price that he wishes to maintain so long as he does not engage in a conspiracy with a third party to the detriment of the American consumer.

That is what this bill is all about. It is no more complicated than that. I hope the Senate will vote cloture, and I thank the Chair.

Mr. METZENBAUM. Mr. President, will the Senator from New Hampshire yield for a question?

Mr. RUDMAN. I am pleased to yield.

Mr. METZENBAUM. The Senator from New Hampshire spoke about the fact that President Roosevelt had been a Republican leader with respect to the whole issue of antitrust enforcement. Was he aware of the fact that John Sherman, of the Sherman antitrust law, was also a Republican?

Mr. RUDMAN. I thank my friend from Ohio for reminding me of that. I would only say the heritage of my party is strong in the area of consumer

rights, and I am delighted that the other side has now joined us.

Mr. METZENBAUM. Mr. President, I yield 8 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York [Mr. D'AMATO] is recognized.

Mr. D'AMATO. Mr. President, let me ask a question. How many of us would be willing to go to our constituents and say that he or she would like to see our constituents pay higher prices for goods or services? I doubt if there would be very many of us. But in effect, that is what some of our colleagues are suggesting by opposing this legislation.

This bill grants protection to the buying public by guaranteeing that they will be given the opportunity to buy products at competitively based prices. Unfortunately, there currently exists the ability on the part of unscrupulous manufacturers and retailers to implicitly and, yes, to some extent, explicitly set prices on goods and services.

Every business should be allowed to determine with whom they do business. However, when the obvious and apparent motive behind discontinuation of one's business relationship is due to anticompetitive pricing, it is of concern to Congress.

In two key decisions—the 1984 Monsanto versus Spray Rite and the 1988 Sharp versus Business Electronics—the Supreme Court severely increased the evidentiary burdens for antitrust suits. In Monsanto, the Court ruled that a complaining discounter or retailer must show direct evidence that a manufacturer and another retailer had conspicuously decided to maintain a certain price level.

Under the Sharp decision, the Court went one further by saying that an agreement between a retailer and a supplier to terminate the contract of another retailer would be per se illegal only if it could be proven that a specific price was set between the two.

Mr. President, that is absolutely and totally impossible in most cases, even when there has been a conspiracy. That kind of burden of evidentiary proof makes it almost impossible to prove where there has been price fixing. And increasingly, the opportunity exists to pressure retailers to either fall into line or have their product yanked out from under them. Why are the companies engaging in such practices? Who are these companies? Well, more and more it seems it is our friends, the Japanese.

Many believe that as the Japanese do more business in the United States, they have been picking up on the practice of retail price maintenance. However, what most Americans do not know is that price maintenance is almost a way of life in Japan. And they

are starting to export their brand of it here too.

As the Japanese become intertwined with our economy, American firms, eager to do business with successful Japanese companies are met with a rude awakening—the Japanese really do not want to do business with you. Why? Because many Japanese business operations revolve extensively around other Japanese businesses through a system of interlocking shareholders and directors. The net result of such domination exerts substantial influence over everything from supply to sales. This method of operation is known in Japan as keiretsu. We have another name for it. We call it cartels—which have been illegal in this country for over 100 years. The end result of this practice is that American firms have very little opportunity to compete effectively with Japanese businesses—even if the American firm can do it for less.

In the United States, there is growing concern that keiretsu is starting to occur in America at Japanese-owned plants. This is one Japanese export that we certainly do not need. The companies either rule out American suppliers altogether, or give them so much business that they become too reliant on the Japanese company. In the latter case, the company eventually can dictate terms—including prices—to the American firm—and they will submit because their business is overwhelmingly tied into the Japanese company.

T. Boone Pickens learned the hard way that you can not buck the Japanese cartel and compete in Japan. Toyota taught him the rules of the road. The secret to the Japanese economic miracle is simple—lock Americans out of Japanese markets while eliminating competitors in the United States. One result—during the last 2 years Japan exported more than \$11 billion in auto parts while allowing only 640 million dollars' worth of United States parts into Japan.

At the retail level, many Japanese companies have set in place suggested retail prices. While suggesting a retail price for a product is not illegal, these prices are usually backed up with a threat of product withdrawal if a retailer does not agree to sell at the stated level. This was alleged in the recent Nintendo settlement.

Prior to that settlement, the FTC charged that Nintendo deliberately set a minimum price for its game board while threatening any retailer with discontinuation if they did not follow Nintendo's pricing. If you are a retailer, and the maker of the world's most popular game tells you to either shape up or ship out, you have a major decision to make. Do I silently acquiesce and continue to make money, or do I report it and lose a highly profitable Nintendo product?

Some complained and loud enough that the Federal Trade Commission and various States decided to investigate. They found a gross violation of antitrust law and have forced Nintendo to offer up to \$25 million in rebates.

This is not the first Japanese company to agree to settlements. In March of this year, Mitsubishi paid a \$8 million settlement for overcharging on 250,000 television sets sold in the United States. In 1989, Panasonic settled for \$16 million for price fixing of audio and stereo products, and in 1986, Minolta settled for \$7 million for a dispute involving two camera lines.

It would be amazing to note that these companies probably did not feel that what they were doing was wrong. Indeed, under current law, it would be hard to prove. But, as the electronics industry in our Nation moves toward total market domination by Japan, what is to stop them from entering into collusive agreements between not only their retailers but with one another as well? I do not want to say that it is only Japanese companies engaging in retail price maintenance, but recent experience has brought focus to how pervasive price fixing could become without steps to combat it.

What the issue before us boils down to is simple fair play. Do we allow the opportunity for any discount retailer to have access to a product, or do we continue to turn a blind eye as companies increasingly stipulate what price a certain commodity will command? We need commonsense legislation that says to anyone considering price fixing that it is not going to be that easy. This bill before us does just that.

The American consumer will continue to suffer if prices soar unchecked due not to market sources, but instead, to the malicious greed of collusive retailers and manufacturers. Indeed, according to the Federal Trade Commission, vertical price fixing forces consumers to pay an additional 10 to 23 percent. We have an opportunity to stop this inequity with the passage of this legislation.

THE PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 10 minutes to the able Senator from Missouri.

THE PRESIDING OFFICER. The Senator from Missouri [Mr. BOND] is recognized for 10 minutes.

Mr. BOND. Mr. President, I thank the distinguished Senator from South Carolina.

Mr. President, I have come to the floor today to speak in opposition to S. 429, a bill which carries the extremely misleading title "Consumer Protection Against Price Fixing Act of 1991." In fact, this bill will do little or nothing to protect consumers against price fixing. It is worth noting that price fixing is illegal under existing law. There is

no defense to it. And it carries a penalty of triple damages.

I might note the examples cited here on the floor by my colleague from New York are instances where price fixing has been found to exist and where the remedies have been applied. The Monsanto case, which is often discussed, was a case in which an improper agreement was found.

What this bill would do simply is decrease communication between manufacturers and their suppliers. It will cause an explosion of antitrust cases before the courts. For that reason I think a more appropriate and better title for the bill would be The Lawyers Relief Act of 1991.

I apologize to my colleagues for not having been able to be present on Monday when we debated the motion to proceed on the bill, but pressing business in my State kept me away from Washington. I would, however, take a moment to discuss the procedure under which this bill has come before us today. This is the third time in the 4½ years I have been in the Senate that this bill or one substantially similar to it—has come before this body. Each time in the past we have properly elected not to pass it.

This year the bill has come to us after being rejected on a sound 8 to 6 vote by the Judiciary Committee. I am not a great Senate historian or scholar of Senate procedure and rules like many of my more senior colleagues in this body, but it seems pretty clear to me that the committee process was established to weed out the good from the bad—to save the Senate from wasting valuable time on misguided proposals.

This bill before us today was soundly rejected by the members of the Judiciary Committee and it is before us today solely due to an agreement by a few Members of the last Congress. It is inconceivable to me that this body should have to spend its precious time debating a bill that did not even have the support to get out of committee, solely because it was pushed out by agreements within the committee.

We have a tremendous amount of important work to do this year. We have before us major proposals on parental leave, civil rights and campaign finance, not to mention the appropriations bills and major authorizations that we have yet to address. I express my concern over the fact that we are wasting the time of 99 Senators today discussing a bill that should never have made it to the floor. I hope we can dispose of it quickly by sustaining the continued discussion of it and not invoking cloture.

As several of my colleagues have already discussed, this bill seeks to do three things. First, it would overturn the Supreme Court's unanimous decision in Monsanto versus Spray-Rite Service Corp. Second, it would over-

turn the Court's decision in Business Electronics Corp. versus Sharp Electronics Corp. And third, it would codify and most likely expand the per se rule of illegality for vertical price fixing. The impact of these changes would be negative for consumers, negative for American business and negative for our economy as a whole.

Let me focus my remarks on the impact of overturning Monsanto. In the Monsanto case, Monsanto refused to renew its distribution agreement with Spray-Rite, a wholesale distributor of agricultural chemicals and herbicides. Spray-Rite brought suit in Federal district court charging that Monsanto had conspired with some of its other distributors to fix the price of Monsanto's products, and that Monsanto had terminated its contract with Spray-Rite in furtherance of the conspiracy and did in fact terminate. The Supreme Court found that there was sufficient evidence that Monsanto had conspired to fix prices and, therefore, ruled in favor of Spray-Rite, awarding the company \$10.5 million in damages. The Court, however, went on to point out the important distinction between concerted action to set prices, which is, of course, per se unlawful, and action on nonprice restrictions which is judged by the rule of reason. So the Court drew a very careful distinction between an agreement on price and agreements on other areas of distribution.

The Court said that permitting a price-fixing agreement to be inferred from the existence of complaints from other distributors, or even from the fact that termination came about in response to complaints, could deter or penalize perfectly legitimate conduct. Therefore, the Court said, the correct standard to use in these cases is that there must be evidence that tends to exclude the possibility that the manufacturer and the nonterminated distributors were acting independently. There must be more than simply evidence of complaints from a competing dealer, and a subsequent termination of the dealer about whom the complaint was made. Simply stated, for there to be an illegal price fixing, per se illegal conspiracy, there must be an agreement, not just a complaint from a dealer.

The proponents of this bill argue that the standard set forth by the Court is too harsh and that it must, therefore, be overturned.

They would erect a standard that if a plaintiff can produce sufficient evidence from which a trier of the fact can reasonably conclude that a price-related communication was the major cause of a termination of another dealer, then the plaintiff would be entitled to have the trier of fact consider whether the supplier and the complaining dealer engaged in a vertical price-fixing conspiracy.

The language of the bill muddles this issue even further by stating that the competing dealer need only make an implied request or demand to the supplier regarding the terminated dealer, a very broad umbrella to come under.

As one who spent some time in the practice of antitrust law, I assure my colleagues, in my view, the proposed standard will open the floodgates of litigation. The impact on many companies, especially manufacturers who sell their products through dealers, would be enormous. It is a fact of business that competing dealers will complain about each other's business practices: A competitor is not providing adequate service, is not advertising property, is selling outside its distribution area, for example.

I cannot imagine how many such complaints a large manufacturer might have from a nationwide network of dealers. Companies that immediately come to mind are huge: Ford, Chrysler, IBM, Xerox, for example. However, the companies that would be most affected by this legislation are the smaller manufacturers who do a major part, if not all, of their business through dealers.

These dealers are locked in fierce competition, as they should be. That is how the system works and that is what makes it work so well. It is simply common sense that in the regular course of business some of the fiercely competing dealers are going to complain to the manufacturer. It is also common sense that in the regular course of business a manufacturer is going to terminate some dealers for one reason or another; perhaps because the dealer is not doing a proper job of display. Certainly, until this legislation has been presented, there is no reason to think that they could not do so.

I will turn briefly to the underlying rationale for the bill; that unless we pass the bill the discount industry will be forced out of business. Mr. President, I am a person who shops at full-price retail stores and I shop at discount stores a lot. Stores like Wal-Mart are essential to residents of small towns like my hometown. Throughout our State, many people shop in those discount stores. They want to be able to get the prices available there. I think they should have that.

But it is essential for use to understand that we are not debating whether we want a discount industry in this country or not. We have one. It is a good thing. We are not debating whether or not we want our constituents to save \$20 billion per year. They do, and we want them to. But what we are debating is whether or not we want to ease the standards of evidence in antitrust cases and flood the courts with unworthy litigation in the name of antitrust.

The discount industry is healthy. Since the Supreme Court's 1984 Monsanto decision, the bill's proponents would have us understand that the decision spelled the end of the discount industry. We have now had 7 years to test it. There is no question that the discount industry has prospered. Earlier this year, Wal-Mart became the largest retailer in the country. Its sales have grown over the past 10 years from \$2.4 billion to \$32.6 billion. K mart has also similar expanding sales.

According to Discount Merchandiser magazine, volume for the entire discount industry in 1989, the last year for which figures were available, was \$160 billion, a new record, an 8.8-percent increase over the previous year. That sounds to me like an industry that is healthy and growing.

The clout that discount stores have in the marketplace and their ability to attract suppliers can be illustrated by a few items that have appeared in the press recently. For example, a November 12, 1990, story in *Forbes* notes that Burlington Coat Factory, a discount chain, stocks goods from 1,000 coat manufacturers and notes that "manufacturers are more eager than ever to do business" with Burlington. In another article in *Discount Merchandiser*, the company's chairman is quoted as saying he has no problems getting merchandise from manufacturers. In fact he says, "they are knocking on our doors."

I would simply say to my colleagues that these are not the words and numbers you see from a failing industry. And let me just add again that I am extremely pleased to see that because I believe a healthy discount industry is important not only to the consumers in my State, but to our economy as a whole.

In conclusion, I simply urge my colleagues to consider the facts on this issue, not just the rhetoric. We all are in favor of consumers—we are all consumers ourselves, as is everyone of our constituents. But this bill is not a consumers bill, it is a lawyers bill. And I feel confident that if you asked any of the people in your State, the majority would say they do not want to see us passing bills to increase lawsuits.

I urge my colleagues to reject this misguided bill and not support cloture and allow the Senate to move on to more pressing and responsible matters.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 4 minutes to the Senator from Wisconsin.

Mr. KOHL. Thank you, Mr. President, I want to briefly explain why I support the legislation introduced by Senator METZENBAUM, why I endorse the substitute offered by Senator BROWN and why I believe it is crucial that we invoke cloture.

Some of you know that I was a retailer before I came to the Senate. My family owned a chain of supermarkets and department stores in the Midwest, and I was the CEO. Our business started with a single grocery store and grew to more than a hundred food and department store outlets.

During this time, I learned that price competition is the backbone of our retail economy. For business, it spurs innovation, development, growth, and profit. And for consumers, it creates a myriad of shopping options: Americans can find a wider selection of goods at lower prices than any other people in the world.

When I was in business, I saw this competition from both sides. As a retailer, I sometimes undersold my competitors. But sometimes they undersold me. I appreciated this competition then, and I still appreciate it—even when I buy a pair of reading glasses at Wal-Mart.

But I have also experienced firsthand the kind of pressure that some manufacturers exert to keep prices high. On several occasions, my own company lost lines of merchandise because we tried to sell at a price lower than what the manufacturer—and our rival retailers—wanted. The sad truth is that illegal price fixing does exist in the real world, and that recent legal developments may undermine our competitive balance.

First, the executive branch has been far too lax in enforcing Federal antitrust laws. For more than 75 years, resale price maintenance has been per se illegal—and for a simple reason: When a manufacturer conspires to require its distributors to charge a fixed price, it raises costs for consumers.

Yet despite this widely held view, the Justice Department has virtually abandoned public enforcement of the RPM prohibition. It has not brought a single vertical price-fixing case since 1980. Even more troubling, the Department actively intervened on behalf of a number of defendant-manufacturers charged with vertical price fixing.

I believe that we would not be debating this bill today if the Justice Department had moved vigorously to combat vertical price fixing. Instead, it has been comatose. And that, as much as anything else, has necessitated this legislation.

Second, because there is so little public enforcement of the RPM prohibition, we have to look more toward private efforts to combat price fixing. In *Monsanto*, the Supreme Court established a difficult evidentiary standard for what plaintiffs must show to have their RPM cases heard by a jury. And in *Sharp*, the Court said that it would find violations only where conspirators set a specific price level.

It has always been difficult to win antitrust cases that aren't automatic violations. But combined with these

decisions, unscrupulous manufacturers may have a green light to drop discounters—and violate the law.

Of course, the vast majority of suppliers has no interest in fixing prices. But this bill—particularly as Senator BROWN would amend it—would not allow manufacturers to be punished for their own unilateral pricing and marketing decisions. More than that, by making it easier to prove vertical price fixing, the measure makes it less likely that an honest producer will be caught between a rock and a hard place.

Mr. President, I do not suggest that this is a perfect piece of legislation. In the committee last year, I added an amendment to make the evidentiary standard clearer and less needlessly complex. But I do believe that S. 429—even as amended—will make a positive contribution to our economy and to our prosperity. And that we will not be doing our job unless we move to a debate on the merits.

I want to commend Senator METZENBAUM for his diligent work on behalf of this crucial legislation. I urge my colleagues to support it and to vote for cloture.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 5 minutes to the Senator from Colorado.

Mr. BROWN. Mr. President, I thank the distinguished Senator from Ohio. I appreciate this opportunity to share with this body my concerns about this measure.

Mr. President, upon the first review in the Judiciary Committee, a number of major concerns were raised about the issue. I, along with my colleagues, reviewed the bill. I joined in voting against this measure, and I also voted against bringing it to the floor.

Since that time, in working with the sponsors of the bill, they have agreed to accept the amendment. Should this motion of cloture be agreed to, they have agreed to accept the amendment we offer.

Mr. President, this amendment is really what we have to face. In looking at the concerns that were expressed about this, we contacted the major industry groups that were concerned, we contacted the administration through the Department of Justice, and we reviewed in detail every single concern they have. I, myself, came to public service after being in business and specifically being a corporate counsel for a Fortune 500 company. And being a businessman whose job it was to set up a national distributing network, I believe I have some understanding of the basic issues from the business side.

The amendment that will be considered by this body is not antibusiness. It has been described that way. But, Mr. President, let me assure my colleagues that that is not the case. We have addressed every major concern. There has

been discussion of the Monsanto case. The language that is in the amendment is basically a codification of the rules of Monsanto.

Let me repeat that. This does not destroy the Monsanto case. It is basically a codification. If there are concerns that this does indeed destroy it, I hope those people will come forward and be specific about it. We have researched it, looked at it, and reviewed the cases. The fact is, this is basically a codification.

Second, with regard to Sharp, does it change Sharp? Yes, it does. Let me suggest how it changes Sharp. It addresses specifically the Toys 'R' Us case. That is the change in this bill. I hope the Members of this body who look at the details of the Sharp decision, who review it, will come to us and tell us what is wrong in this measure. I believe every Member of this body who will review the details of the Toys 'R' Us case will reveal the sales discounters who are saving people money, who are competing. I believe they will come and say this is a wise change. It is not a frivolous change. It is a small change, but it is a change that I believe is very much in the spirit of competition.

Mr. President, I think many Members who are going to vote on this cloture motion are concerned that somehow we might do harm to legitimate business interests. As one who has some background in this area, let me assure you that is not the case. What is more important, I believe it is particularly valuable to a competitive enterprise system that this measure pass.

It is not just that we have dealt fairly with the issues. It is not just that it promotes competition. I think it stands at the fiber and the fabric of why America is a key competitor in this world. If you look at our competitiveness in manufacturing, and that is normally the way we judge how competitive America is, we found that many countries have emulated our great success, and their level of competitiveness, efficiency, and work productivity are approaching that level of America.

But there is an area where this Nation stands head and shoulders above any competitor in the world. That, interestingly, is an area that is dramatically larger than manufacturing. That is in the distribution sector, in the commercial sector. Our country is dramatically more efficient.

Let me suggest to you why. I believe it is because this country has been concerned about encouraging and stimulating competition. While other countries have believed in cartels, other countries have allowed monopolistic practices, America has said competition is the way we want to go. It shows through in a shining light. This country is the most productive, the most efficient in its retailing and distributing

sector of any nation on Earth. It comes directly and distinctly from our commitment to competition.

To sum it up, Mr. President, the fact is this measure as amended is a small step but it is a step forward in promoting competition. It is not destructive to business interests. I believe it is responsible legislation.

When people come to us and say the way to deal with an issue is to simply kill it, that our responsibilities are as legislators not to deal with an issue but to stonewall it, I believe we have a responsibility to look into that issue. I believe the reason taxpayers pay us to come here is to examine those issues and try to come up with the best rules and legislation we can.

The real issue on which we will vote is whether or not we want to stonewall this issue rather than deal with it. I hope this body will speak loudly and clearly that we want to deal with this issue.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 4 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. COCHRAN].

Mr. COCHRAN. Mr. President, I thank the distinguished senior Republican member of the Judiciary Committee for yielding this time to me.

Mr. President, I think it is important for us to keep in perspective the vote we will be casting in a few minutes. This is not a vote, as I understand it, on the merits of the bill, necessarily. It is a vote on a cloture motion, a vote to cut off debate.

I am going to vote against cutting off debate because I believe this issue is so complex and so subject to misconstruction and misunderstanding that the Senate ought not rush to pass it.

First of all, the Judiciary Committee, after hearing testimony and reviewing this issue for the last few years, is very closely divided on the issue as to whether or not this bill is appropriate for the Senate to pass. A majority of the committee has voted against passing this bill.

Given the fact constituencies are confused as to the exact reason for pushing the legislation, I am suggesting, too, that even as to some Members of Congress and Senate there is confusion about the effects of this bill. I have received cards and letters from constituents, phone calls from retailers, urging me to vote one way or the other on this bill and citing reasons which are irrelevant to the actual purpose of this legislation.

This legislation is aimed at a standard of proof. This legislation tries to amend in effect the burden of going forward with certain kinds of evidence in order to establish that illegal price fix-

ing has occurred in a relationship between a manufacturer and a retailer.

I do not know of any more complicated part of the law than antitrust, Mr. President. It seems to me the Senate's interest as an institution would be well served to more carefully and fully consider these issues.

As an example, one person called and said, "I do not want you to vote for this bill because, if you do, manufacturers are going to get to tell me what to charge for a product."

That is not what is at issue. That is not either legalized or prohibited in this legislation. We are talking about situations which involve nonprice agreements just as well as price agreements between manufacturers and suppliers and retailers.

For example, there is one electronics manufacturer in my State that wrote me when this issue was first before the Senate several years ago explaining to me the problem this would put him in as a manufacturer of electronic equipment; if he could not require the dealer to provide some service and information to customers, he was going to be serving those consumers in a very poor way. Part of his sales depend upon the followup and the service provided by the retailer. And so part of this requirement for being able to sell his equipment is that this service is provided. That is an issue, Mr. President, which could be interpreted adversely to my constituent if this bill is passed. That is just an example, and I hope the Senate will carefully consider the others as reasons to vote against this cloture motion.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I believe I have 8 minutes remaining. I yielding 3. I had 11.

I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator has approximately 6½ minutes remaining.

Mr. THURMOND. What is that?

The PRESIDING OFFICER. The Senator has 6½ minutes remaining.

Mr. THURMOND. That is right, 7 minutes.

Mr. President, today I received another letter from Mr. James F. Rill,

Assistant Attorney General, who is the chief of the Antitrust Division. This is the man who protects the consumers in this country. This is the man who prevents combinations and who sees that we have fair trade. I want to read this letter:

You have requested a brief summary of antitrust law regarding agreements that set minimum resale prices. The law in this area is clear. A manufacturer may not agree with its dealers as to the minimum prices at which goods will be resold. Such agreements are per se unlawful; No proof beyond the agreement itself need be offered. For example, if a maker of clothing and a department store or other retail outlet agreed that the manufacturer's goods could be sold at no less than a certain price, the per se rule would apply.

In other words, be illegal.

An agreement setting minimum resale prices need not be in writing in order to be held unlawful. Such an agreement may be found on the basis of a variety of evidence. For example, in the 1984 Monsanto case, which upheld a finding of a resale price maintenance agreement, there was evidence that the manufacturer had approached its dealers with the advice that they would not receive new supplies if they did not maintain prices and had complained to the parent company of a distributor, which then informed the manufacturer that it would charge the suggested price. Monsanto and other cases demonstrate that plaintiffs with sufficient evidence of actual agreements that set minimum resale prices can succeed under existing antitrust law.

As is the case with antitrust and other law generally, no one factual formula exists for finding or inferring an unlawful resale price maintenance agreement. Rather, all of the direct and circumstantial evidence is put in context and sound evidentiary legal principles are then applied. When those circumstances reveal the existence of an actual agreement that sets minimum resale prices or price levels, regardless of how formulated or how or whether explicitly expressed, an antitrust violation has occurred.

In other words, Mr. Rill is looking after the consumers of this country. He is making sure that we have competition. I want to be sure that was clear.

Mr. President, I would like to conclude my remarks by repeating a point I made in my opening statement, which, in my view, is so important that it bears repetition. The antitrust laws,

and the Sherman Act in particular, work well because they have been drafted broadly, rather than as a list of proscribed activities. The authors of the Sherman Act intended to be a general statute, to be amplified as necessary through judicial reasoning, and by experience over time. Senator Sherman himself, remarked that, "It is difficult to define in legal language the precise line between lawful and unlawful combinations. This must be left for the courts to determine in each particular case."

Statutory rules phrased in terms of specific practices, rather than in terms of competitive purpose or effect, lack the flexibility needed for optimum antitrust enforcement. Sound antitrust rules are simply not amenable to fixed, detailed, articulation. Not every court decision is well conceived, and even some decisions that are correct when issued, appear later to be based on weak findings and logic. The common law process can correct this. Legislation along the lines of S. 429 raises the specter of far more serious problems, which would be far more difficult to correct.

Mr. President, I urge my colleagues, in considering how to vote on both the Metzenbaum bill and the Brown amendment, to carefully consider the impact of S. 429, especially the harm it does to American business and to the antitrust laws, and to weigh this harm against the failure by the proponents to show any legitimate need for this legislation. Clearly, both bills should be soundly defeated. I urge my colleagues to vote no on the motion to invoke cloture.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, my understanding is the Senator from Colorado wishes to insert some material in the RECORD. I yield to him such time as necessary to do that not to exceed a minute.

Mr. BROWN. Mr. President, I ask unanimous consent to insert in the RECORD a side-by-side analysis of our amendment.

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

SIDE-BY-SIDE ANALYSIS

S. 429's core problems

Core aspects of the compromise amendment

Page 3, lines 5-6. The references to "implied requests or demands" or "threats to discontinue an existing business arrangement" are overbroad. Thousands of such "implied" requests or threats are made in the business community everyday. For example, a communication about a non-price vertical restraint, e.g., an implied termination threat concerning invasion of an exclusive territory, could well form the basis of a price fixing conspiracy case under this bill.

Page 3, lines 5-6: This change ensures that only express or reasonably implied requests or demands will be considered under this bill.

SIDE-BY-SIDE ANALYSIS—Continued

S. 429's core problems

Core aspects of the compromise amendment

At the same time, many requests or demands can be reasonably inferred from the tenor of the request or demand. For example, a retailer may simply complain to a manufacturer about a discounter and then state something like, "It's him or me, you decide.", reasonably implying but not expressly stating that he was requesting the manufacturer to terminate the discounter. Accordingly, we deleted the reference to "threats" and instead referred to "express or reasonably implied" requests or demands. The term "reasonable" is intended to be an objective test, based on all the circumstances of the communication.

In stark contrast to well-settled principles of antitrust law and the law of conspiracy, the bill requires no showing at the summary judgment stage of the lawsuit that the manufacturer and the full price retailer conspired to fix prices. Rather, the bill specifies only that the conspiracy must be proven at trial. Thus, a manufacturer could conceivably have to defend at trial charges of vertical price fixing without the discounter ever having had to establish any conspiracy whatsoever.

Page 3, line 12 to Page 4, line 8: This new section fulfills the key antitrust requirement that there be some evidence of agreement with the discounter's request or demand, or purposeful concerted activity on the manufacturer's part. It codifies several post-Monsanto cases which found such evidence sufficient to survive summary judgment, and overrules those post-Monsanto cases which found such evidence insufficient to survive summary judgment.

This new language further allows the discounter to survive summary judgment by showing evidence that the manufacturer had threatened others with termination or had exhorted dealers to avoid price competition or had invited dealer complaints about price. These coercive tactics demonstrate that the manufacturer was acting in a purposeful manner and are thus indirect evidence of agreement or conspiracy. This alternative requirement is derived from examples of circumstantial evidence of conspiracy found in last year's House Report, H.R. Rep. No. 101-438 at p. 35 (Table of Illustrative Circumstantial Evidence).

A further provision, subparagraph (D), makes it clear that this alternative showing of evidence of other coercive tactics cannot be met by evidence that the manufacturer was terminating others as part of a decision to alter its distribution policy by adopting exclusive distributor outlets or vertical location, customer or territorial clauses. Such unilateral activity, protected by the Colgate Doctrine, simply does not demonstrate the type of purposeful illegal activity suggestive of a price-fixing conspiracy.

Page 4, lines 9-12: This addition makes explicit that the court must consider evidence in rebuttal that the manufacturer terminated the discounter for actual, bona fide non-price reasons such as providing poor customer services, inadequate warranties or dirty showrooms. The use of the phrase "actual, bona fide" is designed to address concerns that a non-price justification not be pretextual. A showing by the manufacturer of actual, bona fide non-price reasons will be sufficient to disprove that the request or demand was the "major cause" of the termination or refusal to continue to supply. Upon such a showing, summary judgment should be granted.

Page 5, lines 6-10: This addition would explicitly adopt a rule of reason standard for maximum, vertical price-fixing agreements. The current common law treatment of maximum resale price agreements as per se, illegal has been roundly criticized by scholars ranging from Judge Robert Bork to Georgetown Law School Professor Robert Pitofsky. Maximum resale price agreements can prevent price gouging by retailers and allow the benefits of price discounts and reductions by manufacturers to be passed on to consumers without diversion or undue windfall to middlemen. Thus, this change is a completely pro-consumer provision which will directly benefit consumers by ensuring that they receive the discounted prices manufacturers want to offer them.

Page 5, lines 13-16: These changes delete the phrase, "because of that purchaser's pricing policies", and instead incorporate the same standard of "major cause" present in paragraph (a) of new Section 8. The new language also refers to "discount pricing" as a more precise term than the somewhat amorphous reference to "pricing policies" contained in the current version of the bill.

Page 5, lines 13-16: The phrase, "because of that purchaser's pricing policies", is vague and ambiguous. Moreover, courts historically have had difficulty defining what standard Congress intends when it uses "because of" language. The phrase "pricing policies" is also vague and ambiguous.

SIDE-BY-SIDE ANALYSIS—Continued

S. 429's core problems

Core aspects of the compromise amendment

Page 6, lines 1-2: Section 5 of the bill leaves unclear whether all forms of vertical non-price restraints, or only those non-price restraints mentioned in that section, are to be subject to rule of reason analysis.

Page 6, lines 1-2: Opponents of the bill have criticized this provision in the current bill because, by limiting the rule of reason standard to vertical location clauses or vertical territorial restraints, it implies that the bill will alter application of the rule of reason standard to other non-price vertical restraints. Because certain non-price vertical restraints sometimes fall under the *per se* standard, e.g., tie-in arrangements, a blanket statement to the effect that the rule of reason standard should apply to all non-price vertical restraints would undermine those court decisions. Consequently, a phrase has been added to Section 5 stating that nothing in this bill shall affect "the existing state of law with respect to other types of non-price vertical restraints. Thus, this addition makes clear that this bill is not intended to undermine present case law concerning application of the rule of reason standard in certain types of vertical non-price restraints.

SECTION-BY-SECTION ANALYSIS OF PROPOSED CHANGES TO S. 429

(1) Page 3, line 2. The word "sufficient" is both redundant and confusing as it is part of language defining what constitutes "sufficient evidence" necessary to survive pretrial dismissal. The word is therefore deleted.

(2) Page 3, lines 5-6. As presently worded, the bill's references to "implied requests or demands" or "threats to discontinue an existing business arrangement" are far too overboard. There are literally thousands of such "implied" requests or threats made in the business community every day. For example, a communication about a non-price vertical restraint, e.g., a communication concerning invasion of an exclusive territory, could, under this bill, form the basis of a price fixing conspiracy case. At the same time, many requests or demands can be reasonably inferred from the tenor of the request or demand. For example, a retailer may simply complain to a manufacturer about a discounter and then state something like "it's him or me, you decide," reasonably implying but not expressly stating that he was requesting the manufacturer to terminate the discounter. Accordingly, we deleted the reference to "threats" and instead referred to "express or reasonably implied" requests or demands. The term "reasonable" is intended to be an objective test, based on all the circumstances of the communication.

(3) From Page 3, line 12 to Page 4, line 8. This new section is designed to fulfill the requirement which is key to this area of anti-trust law that there be some evidence of agreement with the complaining retailer's request or demand or purposeful concerted activity on the part of the defendant. This prong requires evidence either that the defendant have indicated express or implied acquiescence to the request or demand or that the defendant have threatened others with termination if they did not maintain resale prices (or threatened the claimant in addition to the actual termination at issue).

In effect, this section is designed to codify several post-Monsanto cases which found such evidence sufficient to survive summary judgment. See *Helicopter Support Systems, Inc. v. Hughes Helicopter, Inc.*, 818 F.2d 1530, 1535-36 (11th Cir. 1987) (evidence that manufacturer notified the complaining dealer that "corrective action has been taken" and requested that the dealer notify it of any further problems, when combined with the dealer's "thank you," met the Monsanto standard); *McCabe's Furniture, Inc. v. La-Z-Boy Chair Co.*, 798 F.2d 323, 328 (8th Cir. 1986), cert. denied, 486 U.S. 1005 (1988) (evidence that manufacturer had reported to dealer that "the problem had been taken care of" suffi-

cient to meet Monsanto standard). It is also designed to overrule those post-Monsanto decisions which found such evidence insufficient to survive summary judgment. See *The Jeanery, Inc. v. James Jeans, Inc.*, 849 F.2d 1148, 1158 (9th Cir. 1988) (manufacturer said he would "take care of things" when presented with dealer's complaints about plaintiff's price-cutting).

As an alternative to evidence of acquiescence, the new language further allows plaintiff to survive summary judgment by showing evidence that the defendant had threatened others with termination or had exhorted dealers to avoid price competition or had invited dealer complaints about price. These coercive tactics demonstrate that the defendant was acting in a purposeful fashion and are thus indirect evidence of agreement, combination or conspiracy. This alternative requirement is derived from examples of circumstantial evidence found in last year's House Report, H.R. Rep. No. 101-438 at p. 35 (Table of Illustrative Circumstantial Evidence).

A further provision, subparagraph (D), makes it clear that this alternative showing of evidence of other coercive tactics by the defendant cannot be met by evidence that the manufacturer was terminating others as part of a decision to alter its distribution policy by adopting exclusive distributor outlets or vertical location, customer or territorial clauses. Such unilateral actions taken pursuant to a policy, lawful under *United States v. Colgate & Co.*, 250 U.S. 300 (1919), simply does not demonstrate the type of purposeful illegal activity suggestive of a price-fixing conspiracy, combination or agreement.

(4) Page 4, lines 9-12. This addition makes explicit that the court must consider evidence in rebuttal that the manufacturer terminated the plaintiff for actual, bona fide non-price business reasons such as providing poor customer services, inadequate warranties or dirty showrooms. The use of the phrase "actual, bona fide" is designed to address concerns that a non-price justification not be pretextual. A showing by the defendant of actual, bona fide non-price reasons will be sufficient to disprove that the request or demand was the "major cause" of the termination or refusal to continue to supply such that the defendant should be granted summary judgment.

(5) Page 4, lines 20-21; Page 5, line 12. The first addition is merely technical and is designed to parallel the provision on page 2 of the bill that this Act is meant to apply to actions brought by the United States or by a State attorney general as well as actions brought by private parties and the Federal Trade Commission. A second change is also

technical and is meant only to parallel paragraph(a)'s language regarding refusals to supply that it only applies to refusals to continue to supply the claimant.

(6) Page 5, lines 6-10. This addition would explicitly adopt a rule of reason standard for maximum vertical price-fixing arrangements. The Supreme Court decision in *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), which held that maximum price-fixing agreements are *per se* illegal, has been roundly criticized by scholars ranging from Judge Robert Bork to Georgetown Law School Professor Robert Pitofsky. Maximum resale price agreements can prevent price gouging by retailers and allow the benefits of price discounts and reductions by manufacturers to be passed on to consumers without diversion or undue windfall to middlemen. Indeed, without maximum price restrictions, there is no way manufacturers can assure that consumers are receiving the discounts they wish to offer them. This change is thus a completely pro-consumer provision which will directly benefit consumers by ensuring that they receive the discounted prices manufacturers want to offer them.

(7) Page 5, lines 13-16. These changes delete the phrase "because of that purchaser's pricing policies" and instead incorporate the same standard of "major cause" present in paragraph (a) of new Section 8. Courts have had some difficulty in defining what standard Congress intends when it uses "because of" language. For example, Title VII's phrase "because of race . . ." left the Supreme Court in considerable disagreement as to what standard of proof that phrase implied. See *Price Waterhouse v. Hopkins*, 109 S. Ct. 1775, 1785-1786 (1989). Thus, we felt it important to explicitly set forth in a standard of causation in the bill itself. As far as the best standard of causation to use, cases before Sharp had split over plaintiff's ultimate burden at trial as to whether the agreement concerned price and was thus *per se* illegal. In *Cernuto, Inc. v. United Cabinet Corp.*, 595 F.2d 164, 170 (3d Cir. 1979), the Third Circuit had opined in dicta that the plaintiff had to show that the manufacturer was solely motivated by price factors in terminating the plaintiff. *Zidell Explorations, Inc. v. Conval Int'l. Ltd.*, 719 F.2d 1465, 1471 (9th Cir. 1983), disagreed with this standard and instead held that the *per se* rule would only apply to cases in which the supplier's primary motivation for its decision to terminate a retailer was price. Because "major cause" is the standard set forth in paragraph (a) for showing that the request or demand led to the termination, that standard was used here as well.

The new language also refers to "discount pricing" as a more precise term than the somewhat amorphous reference to "pricing

policies" contained in the current version of the bill.

(8) Page 6, lines 1-2. Opponents of the bill have criticized this provision because, by limiting the rule of reason standard to vertical location clauses or vertical territorial restraints, it implies that the bill will alter application of the rule of reason standard to other non-price vertical restraints. Because certain non-price vertical restraints sometimes fall under the *per se* standard, for example "tie-in" arrangements, a blanket statement to the effect that the rule of reason standard should apply to all non-price vertical restraints would undermine those court decisions. Consequently, a phrase has been added to Section 5 stating that nothing in this Act shall affect "the existing state of law with respect to other types of non-price vertical restraints" therefore making clear that this Act is not intended to undermine present case law on application of the rule of reason standard in certain types of vertical non-price restraints.

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

The PRESIDING OFFICER. The Chair advises the Senator that the time of the quorum call will be charged to the Senator from Ohio unless he asks unanimous consent to do otherwise.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the quorum call be charged equally to both sides.

Mr. THURMOND. Mr. President, I object to that.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. Mr. President, are we in a quorum call? We are not.

The PRESIDING OFFICER. Who yields time?

The Chair advises the managers of the bill that if no one yields time, the time will be charged equally to both sides.

Mr. THURMOND. Mr. President, I object to charging any time to us for a quorum.

The PRESIDING OFFICER. Objection is noted. The Senator's objection is noted.

Mr. METZENBAUM. Mr. President, is it not the fact that, notwithstanding the fact it is noted, the time will be charged to each of the parties respectively?

The PRESIDING OFFICER. The Senator from Ohio is correct.

Mr. THURMOND. Mr. President, how much time do I have? And I yielded myself 5 minutes and reserved the rest. How much did I have before I yielded 5 minutes? I understood I had 8 or 7 minutes.

The PRESIDING OFFICER. The Parliamentarian advises the Chair that the Senator had 7 minutes remaining. He used 6 minutes. So the Senator has 1 minute remaining.

Mr. THURMOND. He should have called to my hand in 5 minutes. I told him I yielded myself 5 minutes. He did not call my hand on it. That is his responsibility.

Mr. METZENBAUM. Mr. President, if the Senator from South Carolina needs an additional minute, he may have it off my time.

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

Mr. THURMOND. Mr. President, I will just take about a minute then.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. THURMOND. Mr. President, in closing, I just want to say this, that this bill will reverse two Supreme Court decisions. The United States Members of the Supreme Court certainly thought they were doing, I think, what is best for the people of this country. I do not think they would have handed down those decisions if they had not thought so.

The bill is not about protecting consumers from resale price fixing. The resale price fixing is clearly illegal under the Sherman Act. The Attorney General of the United States who is to protect the consumers of this country, who is to present and who is to see that the law is enforced, is against this bill. He has written a strong decision here against it. The man in charge of the antitrust division, is chief of the Antitrust Division in the Justice Department, is against this bill. He thinks it is against consumers.

This idea about it will save consumers a lot of money—these experts are the Attorney General and the antitrust law chief who say that this is not in the best interests of the consumers.

I want to say that a lot of the institutions here are against it. The American Textile Manufacturers Institute is against it. The National Association of Manufacturers is against it. The Chamber of Commerce is against it. The American Paper Institute is against it. A wide array of antitrust experts are against it. The American Bar Association is against it. All of these organizations are interested in the consumer.

Mr. President, I just want to say that in my opinion President Bush would not permit his Government to foster a law and advocate a law that is against the consumers of this country. I have more confidence in President Bush than to feel he would do that. I have more confidence in the people of his administration than to feel he would do that.

Mr. President, I hope that this bill will be defeated and that cloture will not be voted.

Mr. LAUTENBERG. Mr. President, I rise to express my strong support of this legislation, which would provide important protections for consumers who shop at discount stores.

The fundamental goal of this bill, Mr. President, is straightforward: It's designed to protect competition. Its purpose is to ensure that prices for goods are set by a competitive free market, not by price-fixing conspirators.

Mr. President, over the past several years, consumers have benefited from a growing number of discount retailers. These stores sell a variety of brand name products at prices that are often far below those of standard retail outlets. The savings are particularly important for the elderly and others who must survive on limited or fixed incomes.

Mr. President, the continued availability of a broad selection of consumer goods at discount prices is threatened by vertical price fixing. Typically, vertical price fixing occurs when a higher priced distributor is facing unwanted competition from another distributor offering the same merchandise at lower prices. Instead of competing with the discounter by lowering prices, improving service, or through other legitimate means, the higher priced retailer then pressures the manufacturer to eliminate the competition, either by forcing the discounter to raise prices, or terminating the discounter altogether. Since the higher priced retailer is often larger and more important to the manufacturer than the discounter, the manufacturer agrees.

The result of these anticompetitive agreements is that the discounter is denied a fair chance to compete and consumers are denied the benefits of that price competition.

Terminated discounters now find themselves in a very difficult position. Proving the existence of a vertical price-fixing conspiracy is not easy. Direct evidence is often unavailable. In addition, the courts have established difficult standards for plaintiffs to overcome.

For example, under current judicially created standards, as interpreted by many legal experts, a plaintiff must not only establish an agreement to restrict price competition, but an agreement to set a specific price. Thus, if a manufacturer terminates the contract of a discounter because of a demand to do so from a competing retailer that is based on concern about the discounter's lower prices, but no specific fixed price was agreed upon, the terminated discounter may have little practical recourse.

This bill would change these evidentiary standards in a manner designed to provide more fairness to discounters and other plaintiffs who seek to establish the existence of a vertical price-fixing conspiracy.

Mr. President, I appreciate that some in the business community believe that this legislation could lead to excessive litigation. I believe this is unlikely.

For example, some argue that this bill would subject manufacturers to liability if they terminate a contract with a retailer for legitimate business reasons, such as the retailer's poor service record or inappropriate displays of a product.

As a former businessman, I believe strongly that a manufacturer should have the right to terminate distributors for such legitimate business reasons. This is particularly important in the case of high technology products that require expert, quality service.

I, therefore, want to emphasize that this bill does not impede the ability of manufacturers to terminate dealers for legitimate business reasons. So long as manufacturers act in a unilateral, lawful manner, they would remain free to terminate discounters. The bill effectively proscribes only one basis for termination: vertical price fixing.

I commend Senator METZENBAUM for his leadership on this legislation, and urge my colleagues to support the bill.

Mr. BIDEN. Mr. President, I rise in support of S. 429, the Consumer Protection Against Price-Fixing Act of 1991.

I am a cosponsor of S. 429, and I have been a strong proponent of its enactment since it was first introduced. I stand behind the legislation for one principle reason: I believe in free and open competition—and that means competition at every level of the product distribution chain.

I believe that price competition at the retail level among brand products and between brand products leads to the greatest number of choices and the lowest possible prices for consumers.

Retailers should be able to compete with one another openly and aggressively—without undue or unfair impediments imposed by manufacturers and suppliers.

S. 429 is an important clarification of antitrust law in the area of vertical price-fixing conspiracies. This clarification is necessary because of two recent Supreme Court decisions.

First, in 1984, the Court ruled in the Monsanto case that a discounter who was terminated in response to price-related complaints by a competitor dealer must present evidence that tends to exclude the possibility that the manufacturer had acted independently in order to avoid early dismissal of his case—in order to avoid what the lawyers call summary judgment.

In my view, this requirement is too severe. Under S. 429, a plaintiff will need only to show that complaints about his pricing policies were the major cause of his termination. He will not have to prove a negative, if you will, by showing that the manufacturer did not act independently. I believe that this is a necessary and appropriate clarification of the law.

Second, the bill would overturn the Sharp decision. There, the Supreme Court said that a plaintiff must show that conspiring parties had agreed on a price or price level for the relevant goods in order for the agreement to be per se illegal.

As a result of this ruling, discounting retailers who are terminated for their pricing policies have found it almost

impossible to prove a vertical price-fixing conspiracy. I believe that the Sharp decision is a radical departure from prior resale price maintenance case law, and that it should be overturned.

Finally, the bill restates—plainly and unequivocally—that vertical price fixing is per se illegal under the antitrust laws. In codifying this absolute prohibition, Congress will make clear that efforts to qualify or dilute the per se rule are contrary to sound antitrust policy.

I want to commend Senator METZENBAUM and Senator BROWN for their efforts at developing compromise language that will result, hopefully, in Senate passage of this proconsumer bill. Senator BROWN's amendment imposes a tougher evidentiary standard on plaintiffs than that proposed by the original bill. Nonetheless, Senator METZENBAUM has indicated he will accept the Brown amendment in the interest of compromise. It is important we work together to find a proconsumer approach that a consensus will support, and I am pleased to see this compromise before us.

Now what do the opponents of this bill say?

They argue that competition solely on the manufacturing level is ultimately better for the consumer than competition on both the manufacturing and the retail level. They also say that the bill will constrain manufacturers in how they choose to market their products.

But as the bill makes amply clear, that would only be true under the legislation if the manufacturer chooses to market his product by restraining price competition between competing dealers. I believe that preventing that type of behavior by manufacturers is wise antitrust policy.

If a manufacturer acts to prevent price competition, he should be subject to the antitrust laws, and he should be subject to the per se standard. On the other hand, if a manufacturer chooses to change his marketing or distribution strategy for reasons other than restraining price competition, he should be able to. And the bill allows for exactly that.

Let me read from the Judiciary Committee's report, page 19, footnote 3:

"In cases where there were multiple causes for a termination or refusal to supply, a court need not find that the threat or demand to curtail or eliminate price competition was the sole cause of the termination or refusal to supply. The court would have to find that the request, demand or threat was the major cause.

Major causation would not automatically be established simply because a threat or demand was a link in a chain of events that led to termination or a refusal to supply. Where the weight of the evidence shows that other deficiencies by the dealer, such as maintaining a dirty showroom or failure to provide service were the reason for the termination or refusal to supply, a trier of fact could not

conclude reasonably that "major" causation existed and the bill would not apply."

Opponents of the bill overreach when they claim that the bill would force manufacturers to allow dealers to sell their goods on whatever terms the dealer chooses.

What they really want is free reign by manufacturers to terminate discounters for their pricing policies. That may be good for some manufacturers, but it is not good for any consumer.

In closing, I believe—and consumers believe—that this bill is about fostering free and open competition among retailers. I commend Senator METZENBAUM for his diligence and hard work over the years in pursuit of this legislation, and I urge my colleagues to support it.

Mr. LIEBERMAN. Mr. President, I rise today in support of S. 429, the Consumer Protection Against Price-Fixing Act of 1991. I hope today we can bring to a close a battle that has been raging since 1988, when the Supreme Court decided the case of Business Electronics Corp. versus Sharp Electronics Corp. I fought that ruling at that time as one of 42 State attorneys general to oppose the position taken by the Supreme Court in Sharp. I believe that today we should heed the advice of 48 attorneys general, representing 46 States, the District of Columbia, and the Virgin Islands, and pass S. 429.

S. 429 is a good bill, Mr. President, not just because it is proconsumer—or prodiscounter—but because it is procompetition. This bill makes clear that the antitrust laws outlaw price fixing in any form, whether the price fixing is practiced between competitors or between a distributor and its retailers. Price fixing in any form stifles competition. By artificially raising prices, price fixing not only robs consumers, but it also removes the rod of vigorous price competition that spurs firms to become more efficient.

Some have argued that vertical price fixing—price fixing by a manufacturer trying to impose higher resale prices on retailers—is proconsumer because it encourages better customer service. I submit this argument is just plain wrong. The best way for a manufacturer to get a retailer to deliver better customer service is to put it in the contract.

Manufacturers or upstream distributors can and do require certain types of displays, point of sale information, or warranties. S. 429 preserves the ability to impose nonprice standards in a dealership agreement: What S. 429 bars is vertical price fixing.

Of course, if the only issue was whether vertical price fixing should be declared illegal, we would not be here today debating S. 429. The real issue is not whether vertical price fixing should be illegal—it is under current antitrust law—or, to quote New York

Attorney General Bob Abrams, "whether or not illegal vertical price-fixing exists: its endemic." As General Abrams aptly put it, "The real issue is whether or not antitrust enforcers have the tools to find and prosecute these conspiracies." Under current law, as former FTC Commissioner Terry Calvani has said, a corporate officer would have to have "an IQ two points lower than a carrot" to be caught price fixing. S. 429 clears the prosecutorial road of judge-made obstacles that stymie State law enforcement efforts.

If this were an omnibus crime bill and we were presented with an amendment to strengthen criminal law enforcement—antitrust violations are crimes—supported by the attorneys general of 46 of 50 States, we would no doubt be falling all over ourselves to enact that measure. We would do so with good reason: Our State attorneys general know from experience what artificial barriers stand in the way of effective law enforcement.

Mr. President, the time has come for this body to stand up for tough law enforcement in this area of vertical price fixing.

We can do so by promptly passing S. 429. I urge my colleagues to support S. 429.

Mr. BRADLEY. Mr. President, I rise today in support of legislation to ensure that customers get clothes, toys, and other goods at fair prices and that stores will be free to set prices and discounts. The ability to set prices in response to consumer needs is a cornerstone of the free market and America's antitrust laws. I am also a supporter of the compromise which was reached to accommodate some of the concerns that were raised about this legislation.

Some retailers have been able to stop manufacturers from selling their products to discount stores by threatening not to sell the manufacturer's products in their full price stores. This practice is clearly counter to the intent of laws protecting consumers from price fixing, and this legislation clarifies the standards under which the courts can prevent firms from unfairly setting prices.

For example, in the 1984 Monsanto case, the Court found that although there was adequate evidence in this case that a supplier had illegally terminated the plaintiff—a discounter—at the request of a competing dealer, the case raised questions about the standards of evidence that a plaintiff must submit to reach a jury trial.

In 1975, Congress made changes in the fair trade laws that ended the practice of setting minimum prices for consumer goods. The discount stores that now flourish around the country and have saved consumers billions of dollars were the direct result of these changes.

Mr. President, opponents of this measure have said that it will damage

the ability of manufacturers to offer warranties and service contracts. In fact, it only offers consumers a choice between full service and lower prices. I do not believe that this choice should be made for consumers—either by the Government or by manufacturers and high-priced retailers.

I was an original cosponsor of last year's legislation, and was proud to cosponsor S. 429. I commend my colleagues on the Judiciary Committee for their hard work on this important issue and I urge all my colleagues to give this legislation their support.

Mr. SHELBY. Mr. President, I rise today in support of S. 429, the Consumer Protection Against Price-Fixing Act of 1991—a bill to benefit American consumers by encouraging the widest possible selection of goods and services at the lowest prices. This legislation is expected to save American consumers \$20 billion a year, and it does so without raising taxes or increasing the Federal deficit.

Simply stated, S. 429 would restore the 80-year-old principle that resale price maintenance agreements are a restraint of trade and are automatically unlawful. An example of a resale price maintenance agreement is a binding understanding between a manufacturer and retailers requiring the retailers not to sell the manufacturer's goods below a specified price. These agreements reduce competition and increase the cost of goods and services to American consumers by forcing discounters out of the marketplace.

In the landmark case, *Dr. Miles Medical Co. v. John D. Parks & Sons Co.*, 220 U.S. 373 (1911), the Supreme Court held that resale price maintenance agreements are per se illegal under the Sherman Antitrust Act. Recent Supreme Court decisions, however, have threatened the holding in *Miles*. Two major cases, *Monsanto Co. v. Spray-Rite Corp.*, 465 U.S. 752 (1984), and *Business Electronics Corp. v. Sharp Electronics Corp.*, 108 S. Ct. 1515 (1988), have narrowed the circumstances in which a court or jury can find resale price fixing.

In the Monsanto case, the per se rule was not overturned; however, the Court held that there must be evidence that "tends to exclude" the possibility that the supplier acted independently. In other words, there must be direct or circumstantial evidence that tends to prove that a supplier and a nonterminated dealer had a conscious commitment to terminate a competing dealer to curtail price competition.

Before Monsanto, a plaintiff had to show only one level of price fixing. For example, manufacturer Motorola, and retailer Hecht Co., agree to terminate a business relationship with discounter Kmart. Monsanto held that "something more" than the one level of price fixing must be shown; however, Monsanto did not say what the "something more" should be, and left this issue un-

resolved. Consequently, lower courts have problems applying the correct standards of proof in vertical price fixing cases.

The Sharp case followed Monsanto and decided what the "something more" was. The "something more" was that the plaintiff discounter had to show the existence of a second level after showing the first level of price fixing where the manufacturer and the retailer agree to terminate a discounter to curtail competition.

The second level basically consists of discussions between a manufacturer and a retailer to effect a specific price or price level. If neither price nor price level is discussed, Sharp's holding would preclude a discounter from prevailing in a vertical price-fixing case.

For example, retailer Hecht Co. says to manufacturer Motorola that discounter Kmart is selling too cheaply and hurting his business. Retailer Hecht Co. tells manufacturer Motorola to stop selling to discounter Kmart. Retailer Hecht Co. has 20 stores and discounter Kmart has only two. The manufacturer subsequently terminates the discounter. Sharp would hold that the discounter's termination was not per se illegal because no price or price level was discussed.

The Sharp decision was even more detrimental than Monsanto because the Supreme Court modified the per se rule. In Sharp, the Court ruled that in order to find a per se illegal price-fixing agreement, that must be a second agreement on a specific price or price level to be charged by the remaining retailer following termination of the discounter.

Sharp was the precedent for *Toys 'R' Us, Inc. v. R.H. Macy & Co., Inc.*, (S.D.N.Y. 1990). In this case, two children's swimwear manufacturers terminated their account with Kids 'R' Us, a subsidiary of Toys 'R' Us, that sells discount children's clothing. Macy's had pressured the manufacturers to terminate the account, so it could continue to sell the identical swimwear at a much higher price. The court ruled against Toys 'R' Us because there was no showing of a second agreement setting prices or price levels as required by Sharp.

Monsanto and Sharp effectively stifle competition and increase the price of brand-name consumer goods. Discounters are driven from the marketplace and have little recourse against suppliers and remaining dealers who have conspired against them for selling cheaply. The real losers however, are the low- and middle-income Americans and those on fixed incomes who depend on discount stores to help them make ends meet.

Congress must intervene again to keep competition in the marketplace. I say again because this is not a new issue for Congress. In 1975, Congress repealed the fair trade laws which al-

lowed States to permit retail price maintenance. Two Department of Justice studies in 1969 and 1975 respectively, documented the harm caused to consumers by vertical price fixing. In the first study, Justice Department data indicated that consumers would save \$1.2 billion a year if fair trade laws were eliminated. The second study estimated that prices of consumer goods in States allowing vertical price fixing were 18 to 25 percent higher than in States prohibiting the practice.

Congress must continue to work to protect consumer welfare by ensuring vigorous price competition in the marketplace with passage of S. 429. The bill has three components. First, it would codify the well-established principle that resale price-fixing agreements are per se unlawful. Second, it would clarify the evidentiary standard for jury consideration of certain vertical price fixing cases. Specifically, the bill would require a plaintiff to show that:

A dealer made a request, demand or threat to a manufacturer that the supplier take steps to curtail or eliminate price competition;

Because of such request, demand or threat, the supplier terminated or refused to continue to supply goods to a competitor of the dealer; and

The request, demand or threat is the major cause of termination or refusal to continue to supply.

Finally, the bill would make clear that an agreement between a manufacturer and a retailer to terminate another retailer in order to eliminate price competition is illegal, whether or not a specific price or price level is agreed upon. This would overrule the Sharp decision.

S. 429 does not affect a manufacturer's unilateral action to terminate a dealer who is violating the terms of the contract. For example, if the terms of a contract between a manufacturer and a dealer call for a full showing of an item and the dealer fails to display the item, the manufacturer has the right to terminate the relationship.

Additionally, S. 429 does not affect agreements between manufacturers and retailers that do not involve price, such as service and warranty agreements. Thus, under the proposed legislation, manufacturers may still terminate a relationship with a retailer who does not live up to a service or warranty agreement.

S. 429 has been endorsed by so many groups who are concerned about the welfare of consumers—groups that believe consumers should have the opportunity to choose where they shop. I am especially pleased that S. 429 has been endorsed almost unanimously by the National Association of Attorneys General. Forty-eight of the fifty attorneys general have endorsed the legislation. This support is significant since the members of this group are charged with enforcing the laws of their States.

Attorneys general must be sensitive to the concerns of consumers regarding the decline in the activity of discount retail stores and the resulting increase in prices. The attorneys general believe that the courts have gone too far in protecting the rights of manufacturers versus the rights of consumers. They want Congress to enact legislation to restore aggressive price competition to the marketplace.

Mr. President, I think that we have allowed our colleagues from the Chicago school to hold up this legislation for too long. We know that although higher prices may ensure better service, many American citizens with middle and low incomes cannot pay the higher prices for the luxury of more service. These hardworking individuals still want to be able to purchase goods and services.

We also know that manufacturers and dealers are still entering into resale price maintenance agreements. Just last month, the Federal Trade Commission [FTC] announced that Nintendo of America Inc., the giant of the video-game market and producers of Super Mario Brothers I & II, Teenage Mutant Ninja Turtles, and Ducktales to name a few, had entered into an agreement with some dealers and intimidated others to set minimum prices for the company's consoles. Now you understand why the Nintendo game pack cost \$99.95 everywhere you went whether you were shopping at Toys 'R' Us, Kiddie City, Kay Bee Toys, or Juvenile Sales. It is also interesting to note that the case against Nintendo is only the second retail price-fixing case brought by the FTC in a decade.

I urge you to support this proconsumer legislation because more competition is always better than less competition. During this period of fiscal austerity, people should have the opportunity to get the most for their money. I also urge you to support this legislation because it should increase consumer confidence in our economy which is so badly needed to lessen the impact of the deepening recession in which we find ourselves.

Mr. ROTH. Mr. President, we have been debating resale price maintenance for 5 years in this body. While it appears to me that antitrust law could be improved to address certain problems facing discounters, S. 429, like its predecessors, fails to be an appropriate remedy.

Antitrust law is statutory law, not constitutional law. In enacting the Sherman Act in 1890 and the Clayton Act in 1914 with later amendments, Congress created a skeleton which has been fleshed out by scores of court decisions. Since these decisions are cases of statutory construction, it is well within our powers to do whatever is necessary to correct any errors in antitrust policy.

S. 429 raises the question of what kind of rule should govern a product's chain of distribution. In 1911 the Supreme Court held in *Dr. Miles* that it is a per se antitrust violation for a supplier of goods and the recipient of goods to agree on the resale price at which the recipient sells his goods. In 1977 the Court held in *GTE Sylvania* that the supplier has greater freedom regarding nonprice vertical restraints. Nonprice vertical restraints are to be judged under a rule of reason, that is, all relevant factors are to be taken into account in determining whether the restraint is anticompetitive.

What the Supreme Court did in *GTE Sylvania* is to create a rebuttable presumption that a manufacturer in serious competition with other manufacturers can be trusted to take necessary and creative steps to maximize its own profits. Normally, this means offering the best products and the lowest prices.

In contrast to the treatment accorded vertical restraints, the Supreme Court has always frowned on horizontal restraints; that is, anticompetitive conduct of one competitor directed at another in the same level of distribution. The difficult question is what should be the law in a mixed vertical-horizontal situation when competitor A tries to use a common supplier to inflict harm on competitor B.

Since the law has—correctly, I believe—treated horizontal restraints harshly and vertical restraints more generously, what should be the rule? Recent decisions by the Federal courts, including the Supreme Court, have sought to protect the manufacturer's and supplier's right to regulate distribution of their products. This result, in legal terms, is consonant with the statutory requirement—rather difficult in this context—that there be an agreement between competitor A and the common supplier to restrain the trade of competitor B.

In the *Sharp Electronics* case, decided in May 1988, by the Supreme Court, competitor A was annoyed with the discounting practices of competitor B. So A went to the common supplier of A and B and threatened to quit distributing the common product unless B was terminated. The supplier, of course, had chosen both A and B to distribute its products. But now it was being economically coerced into dropping one of its two chosen dealers. When it dropped B, B sued, alleging an agreement between A and the supplier to fix prices in violation of *Dr. Miles*.

B found the Supreme Court unresponsive. The Supreme Court did not believe that the facts presented fit with the allegation of vertical price fixing. I must say that I agree. I can well understand why B—the discounter—felt aggrieved. But I equally understand why the supplier should not be held liable, except in a situation

where he has clearly agreed to fix prices in violation of Dr. Miles.

The problem is that the current state of antitrust law focuses attention on which of two victims should bear the loss. While it is right to defend the supplier against liability in such situations, it is wrong to leave the other victim without a remedy.

Fortunately, as I said earlier, antitrust law is not constitutional law. Congress has a free hand to set the law straight.

S. 429, however, is not the answer for several reasons. First, it tries to place the onus of liability on the supplier—generally, an innocent victim. Second, it is expressly crafted to allow the jury to infer an agreement to fix prices in violation of Dr. Miles when the facts are merely that the supplier reasonably reacted to economic coercion. While a discussion of the fine points of S. 429 could get fairly arcane, it appears that S. 429 seeks to circumvent the statutory requirement for an agreement by allowing natural jury prejudices, inherent in any situation where a local discounter sues a large out-of-State manufacturer, to overcome the lack of agreement.

In short, S. 429 uses the wrong means to achieve the wrong end. Yet, it seems well-intentioned. If, in fact, there are retailers who are trying to undercut discount retailers' ability to compete and who have the market power to use economic coercion against a common manufacturer or supplier, Congress should act. But the discounter should be protected not by imposing liability on the coerced party but by imposing liability against the wrongdoer and only the wrongdoer.

The wrongdoer is, in effect, interfering with an advantageous economic relationship enjoyed equally by the discounter and the manufacturer or supplier. The wrongdoer, in seeking to cause the termination of the discounter, is depriving the manufacturer/supplier of its choice to use the discounter to market its products. Once this is recognized, it is clear that S. 429 would work a grave injustice.

In lieu of S. 429, antitrust law should be amended to create a new cause of action to allow the terminated discounter to recover against the competing retailer that caused the termination. When the termination—or failure to renew a contractual relationship—would not have occurred but for the threats or coercion of X, then X should be liable in treble damages to the terminated discounter.

S. 429 has two distinct problems. It is too weak a remedy from the discounter's viewpoint. It is too strong a remedy from the suppliers' viewpoint.

From the viewpoint of the discounters, the problem today is trying to fit the facts into a theory that generally doesn't work. In fact, terminations are generally unilateral. Section 1 of the

Sherman Act, however, requires concerted action to establish a violation. S. 429 does not eliminate this requirement. It does not, by its terms, change substantive law. But there can be no effective remedy unless such a change is made. My proposal would do away with the requirement to prove concerted action or an agreement. In my opinion, you will not be able to provide effective relief for discounters until you face the reality that unilateral coercion by a competing retailer with market power followed by a unilateral decision by the supplier to terminate is difficult to equate with an agreement by the two parties to fix prices.

What S. 429 says is when the law doesn't work, let's make sure that the jury gets to decide the issue, since juries do not stop for legal niceties. The problem with providing juries with the opportunity to bend the law is that while juries may appreciate the wrong done to the discounter, they may be less understanding and less informed about the manufacturer or supplier that is the defendant in the case before them.

Present antitrust law accords such defendants the right to select and the right to terminate their dealers. This tenet of antitrust law is, in my opinion, correct. It is not only good antitrust law but a principle of economic liberty whose stamp is specially American.

In its misguided attempt to help discounters, S. 429 throws its dragnet over good and bad alike. If the defendant is a wrongdoer, S. 429 provides some remedy. If the defendant has done no wrong, S. 429 still provides a sanction. And that, of course, is the problem. It would ensnare the manufacturer or supplier that is unilaterally—not in concert—exercising its right to pick and choose its retailers.

In truth, manufacturers and suppliers that choose discounters to market their goods have little reason to terminate discounters because they are discounters. It is those in competition with discounters who wish to charge higher prices that have an interest in having discounters terminated. The culprit is not so likely to be the manufacturer or supplier that wants to have discounters sell its goods as it is the competitor-retailer that buys so much from the manufacturer or supplier that it can threaten to terminate itself unless the discounter is terminated.

In short, if we can trust our economic instincts, the troublemaker is not likely to be the manufacturer or supplier or even the mom-and-pop retailer. It is likely to be the big high-priced retailer who has market power and thus some control over the manufacturer and supplier.

S. 429 would allow suit to be brought against the competing retailer, it is true. But the plaintiff is still required to prove that the retailer and supplier

agreed to fix prices and that, as a result of that agreement, the discounter was terminated. In contrast, my proposal would require the plaintiff to prove only what probably happened: that a high-priced retailer with market power coerced the supplier to terminate the discounter.

In addition, my proposal would have the merit of absolving the manufacturer and supplier from liability where the only fault was being coerced by a high-priced retailer with market power. S. 429, in contrast, would subject such manufacturer or supplier to the hazards of jury sentiment, allowing juries to infer vertical price fixing conspiracies from evidence of coercion to terminate. As I said before, S. 429 would, in practice, interfere with the recognized right of manufacturers and suppliers to pick and choose their retailers.

My proposal, unlike S. 429, would not necessarily cause terminations to decline. My proposal would honor the teaching of GTE Sylvania by allowing the manufacturer/supplier to regulate the marketing of its products. Where a retailer fails to satisfy marketing requirements of the manufacturer/supplier, termination could ensue without fear of treble-damage reprisal. And that's how it should be. But if the termination is not the idea of the manufacturer/supplier but of a competing retailer, it would not offend GTE Sylvania to impose liability on such retailer, and it would allow the terminated party to recover against a wrongdoer rather than against a victim.

I commend this proposal to the attention of my colleagues. I believe that it would provide the appropriate resolution to this 5-year-long debate. This has been a lengthy and vigorous debate because both sides share the truth. Discounters may need statutory help. But S. 429 is not the answer. Nor is S. 429 with the Brown amendment, which merely fine-tunes the underlying bill.

I recognize that significant changes in antitrust law do not occur without the most thorough deliberation, discussion, and debate. It would be foolish for me to offer my proposal and ask for a vote today. That's not how antitrust statutes are written. I would hope that both sides would give this proposal some thought. It may be a basis on which the champions of discounters and the defenders of Colgate and GTE Sylvania can come together. I, myself, am partial to both sides.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Ohio has 2 minutes remaining.

Mr. METZENBAUM. Mr. President, has the Senator from South Carolina used up all his time?

The PRESIDING OFFICER. The Senator from South Carolina has used all of his time.

Mr. METZENBAUM. Mr. President, I yield back the remainder of my time.

CLOTURE MOTION

The PRESIDING OFFICER. All time has been yielded back.

If there is no objection, the hour of 6 p.m. having arrived, under the previous order, the clerk will now report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 429, a bill to amend the Sherman Act regarding retail competition:

Herb Kohl, D.K. Inouye, J. Lieberman, Carl Levin, Claiborne Pell, Paul Simon, Alan Cranston, Bob Graham, Chuck Robb, Howard Metzenbaum, Bill Bradley, Tom Harkin, J.J. Exon, Slade Gorton, Warren B. Rudman, Alfonse D'Amato.

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 S. 429, a bill to amend the Sherman Act regarding retail competition, 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 Arkansas [Mr. PRYOR] is absent because of illness.

The yeas and nays resulted—yeas 63, nays 35, as follows:

[Rollcall Vote No. 54 Leg.]

YEAS—63

Adams	Domenici	Lieberman
Akaka	Exon	Metzenbaum
Baucus	Ford	Mitchell
Bentsen	Fowler	Moynihan
Biden	Glenn	Murkowski
Bingaman	Gore	Nunn
Bradley	Gorton	Pell
Breaux	Graham	Reid
Brown	Harkin	Riegle
Bryan	Hatfield	Robb
Bumpers	Hollings	Rockefeller
Burdick	Inouye	Rudman
Byrd	Jeffords	Sanford
Chafee	Kassebaum	Sarbanes
Cohen	Kennedy	Sasser
Conrad	Kerrey	Shelby
Cranston	Kerry	Simon
D'Amato	Kohl	Specter
Daschle	Lautenberg	Warner
DeConcini	Leahy	Wellstone
Dodd	Levin	Wirth

NAYS—35

Bond	Cochran	Dole
Boren	Craig	Durenberger
Burns	Danforth	Garn
Coats	Dixon	Gramm

Grassley
Hatch
Heflin
Helms
Johnston
Kasten
Lott
Lugar

Mack
McCain
McConnell
Mikulski
Nickles
Packwood
Pressler
Roth

Seymour
Simpson
Smith
Stevens
Symms
Thurmond
Wallop

NOT VOTING—1

Pryor

The PRESIDING OFFICER (Mr. KOHL). On this vote, the yeas are 63, the nays are 35. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order, the Senator from South Carolina [Mr. THURMOND] is recognized to offer an amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

Mr. MITCHELL. Mr. President, if I might have the attention of the distinguished Senator from South Carolina, the former chairman of the Judiciary Committee, and the Republican leader? And, if I might through the Chair inquire, in view of the current status of this measure, whether the chairman and the leader anticipate that we might be able to complete action on this bill tomorrow, in timely fashion? And, if that is the case, then it would be my intention not to have any further action on the measure this evening.

Mr. DOLE. If the leader will yield, I have spoken with the distinguished Senator from South Carolina. He can speak for himself. It is my understanding that we probably can finish this at a fairly early time tomorrow. But I am certain the Senator from South Carolina could state whatever he thinks can be done.

Mr. THURMOND. Mr. President, I think it is clear how the Senate stands, and I do not want to put the Members in a position of having to wait here another day or two. I think it can be finished tomorrow.

Mr. MITCHELL. Mr. President, I thank my colleagues.

Mr. THURMOND. If the leader wishes to take it up early, if some of them want to get away, I think it is all right.

Mr. MITCHELL. I thank my colleagues very much, and the distinguished leader.

Accordingly, there will be no further rollcall votes this evening and we will return to this measure tomorrow in the expectation, based upon these assurances, that we will complete action on the measure tomorrow. And I will, dur-

ing the morning tomorrow, be meeting with the distinguished Republican leader to consult on what measures the Senate will consider following disposition of this matter and the schedule for the next several days. And I hope to have an announcement in that regard sometime later during the day tomorrow.

May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MITCHELL. Mr. President, I would like to remind Members of the Senate that at 10:30 tomorrow morning, the newly appointed Senator from Pennsylvania, HARRIS WOFFORD, will be sworn in here in the Senate Chamber. I encourage as many of my colleagues as can do so to be present for that proceeding. It is my hope that we will, either shortly before that or shortly after, depending upon the convenience of the managers, be back on the bill and as previously stated be able to complete action during the day tomorrow.

Mr. President, I want to yield to the distinguished Republican leader to make certain he has no further comment?

Mr. DOLE. No.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I now ask unanimous consent there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair recognizes the Senator from Iowa.

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 1013 and S. 1014 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. I thank the Chair.

(The remarks of Mr. PELL pertaining to the introduction of S. 1016 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

YOUNG WRITER BRINGS HONOR TO MONTANA

Mr. BAUCUS. Mr. President, the beauty and bounty of Montana's blue ribbon trout streams have attracted people from around the world to try their hand at catching the wily trout. Indeed, people have come by wader and by boat, by torn up sneakers and by the latest in fishing apparel by L.L. Bean, to stalk the trout in Montana's rivers, high mountain streams, and lakes.

Few people understand the call of the trout or why so many Montanans would endure scorching dry heat, mosquitoes, and deer flies while floating or standing in a river for hours, rarely

breaking concentration—all for the sake of catching a fish.

It is a hard thing to explain to these uninitiated onlookers. But the draw is real.

I first learned to appreciate the rigors and skill of fishing as a boy growing up on my folks' ranch near Helena, MT. Though I seemed to catch precious few fish with my boyhood lures, I nevertheless caught the allure of fishing.

And in the time since then, I have recognized a few things—not the least of which is that the miles of line cast for trout over the years in such rivers as the Madison, Rock Creek, and the Big Hole are inversely proportional to the lengthy yarns spun about the fish that got away.

Indeed, I have never really quite been able to figure out why so many fish get away.

Well, Mr. President, during this past recess, a story by Seth Bloom provided me with at least part of the answer. Seth is a third grade writer in Corvallis, MT, who recently won the 1990-91 National Young Writer's Contest for his insightful story about how the rainbow trout got its rainbow.

According to Seth's account, the rainbow trout did not always have a rainbow. In fact, it used to get away from the otter because it was ugly and gray and hard to see beneath the water. It was the otter who devised a plan to make the fish more visible by sewing part of a rainbow down both sides. Unfortunately for the otter, however, the newly outfitted rainbow trout was still too fast to catch.

But at least I know now why I had a difficult time catching the ugly gray trout I could not see.

Mr. President, I encourage you and all my colleagues to read Seth's award-winning story about the rainbow trout. Montana has enjoyed a rich literary tradition marked by authors like A.B. Guthrie, Norman Maclean, and Dorothy Johnson. And even the tall tales and anecdotes of Charlie Russell.

I hope that aspiring young writers like Seth will carry on this tradition of Montana stories and folklore with the same expertise and vigor of the authors before them.

I ask unanimous consent that the full text of Seth Bloom's story be printed in the RECORD along with the articles about his accomplishment, which appeared in the Ravalli Republic on April 12 and the Bitterroot View on April 13.

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

HOW THE RAINBOW TROUT GOT ITS RAINBOW

(By Seth Bloom)

Once the rainbow trout was only an ugly gray trout. This was back in the days when rainbows touched the earth at both ends and each end had a pot of gold. Not one pot was bigger than the other.

The otter loved to eat fish and the trout was so camouflaged he was hard to catch. The otter hated this. The trout didn't like his appearance either. He wanted a bright colorful coat like his cousin the salmon. The otter knew this so he tried to think of a way to get the fish brighter and easier to catch.

After a while he thought of a plan. He called the trout over to his house for tea. As they were talking the otter told the trout that he thought there was a way to get him a new coat. After the otter had explained part of his plan, the trout agreed. Just then it started raining.

"We won't have to wait very long now," said the trout.

Soon it stopped raining. A brilliant rainbow appeared in the east.

"Well, come on," said the otter. "This is what we were waiting for."

They headed for the nearest end of the rainbow.

When they got there they found a pot of gold.

The otter said, "You can have this pot. I will take the other one."

Then the fish took a scissors and climbed a tree right by the rainbow. He cut off as much of the rainbow as he could.

Then they went to the other end of the rainbow. The otter took the second pot of gold and gave the fish some scissors and a ladder.

"Now you climb up and cut off some more of the rainbow while I hold the ladder," he said to the trout.

The fish did as the otter told him. Then they went home.

All that night the fish sewed the pieces of rainbow into a very well-fitting suit.

The next day he went to show the otter.

The otter said, "Those are fine clothes. Why don't you take the scraps and make some more for your friends. I don't need one myself." So the trout did.

This was what the otter's plan had been. He had planned to make all the gray fish brightly colored. When he did they would be easier to see and catch.

But it didn't quite work the way he had planned because the trout moved fast and looked like rays of sunlight on the water. And the trout were no easier to catch than before.

[From the Ravalli Republic, Apr. 12, 1991]

CORVALLIS WRITER WINS NATIONAL RECOGNITION

Corvallis third grader, Seth Bloom, is the only Montana winner among the 100 finalists in the 1990-91 Young Writer's Contest sponsored by the Ronald McDonald Children's Charities.

In recognition of this award, Bloom and other contestant winners will have their original poems, stories and essays published in the 1991 Rainbow Collection. In addition, each winner's entry also will appear in *America On My Mind*, a publication to be produced by Falcon Press of Helena, and each winner's school will receive a \$250 cash prize donated by McDonald charities and Falcon Press.

"Congratulations to Seth Bloom. This is quite an honor and we are pleased to have Montana represented by such a creative piece of writing," said Montana Governor Stan Stephens after receiving notification from the Young Writer's Contest Foundation. Another Corvallis student, Kasey Smith, was included in last year's publication. She was a second grader at the time. Bloom commented that the Corvallis Class of 2,000 is already making an impact.

Bloom's story, "How the Rainbow Trout Got Its Rainbow," involves an otter who wants to eat a fish. The fish overhears the otter's plan and cuts down a piece of rainbow to disguise itself.

A panel of literary specialist selected the winning compositions from 18,000 poems, essays and short stories submitted by students from all 50 states and U.S. territories; and from Department of Defense and American community schools abroad.

[From the Bitterroot View, Apr. 13, 1991]

HAMILTON YOUNGSTER WINS YOUNG WRITER'S CONTEST

HELENA.—Fourth-grade student-author Seth Bloom of Hamilton has been selected as a winner in the 1990-1991 Young Writer's Contest, Gov. Stan Stephens has announced.

Bloom's story, "How the Rainbow Trout Got Its Rainbow," is among about a hundred original writings by students from around the world that were selected.

In recognition of this award, Bloom and the others will have their poems, stories and essays published in the 1991 Rainbow Collection, an anthology of writings by contest winners, which is financed by the McDonald Children's Charities.

In addition, each winner's entry also will appear in *American on My Mind*, a publication to be produced by Falcon Press of Helena. Each winner's school will receive a \$250 cash prize.

"Congratulations to Seth Bloom. This is quite an honor and we are pleased to have Montana represented by such a creative piece of writing," Stephens said.

The Young Writers contest attracted 18,000 entries from students in all 50 states, the District of Columbia, Guam, Puerto Rico, Mexico, Nigeria and from Americans attending Department of Defense and American Community schools around the world.

Bloom is the son of Dr. Marshall and Tonia Bloom of Hamilton.

Montana's 1989-90 Young Writer's Contest winner also was from the Bitterroot Valley. That was Kasey Smith of Corvallis.

NATIONAL NURSES WEEK

Mr. BYRD. Mr. President, this week, Americans are celebrating "National Nurses Week." National Nurses Week is a time to pay special recognition to the Nation's 2 million registered nurses—men and women—who care for Americans every day by providing high quality, cost-effective care.

Mr. President, in conjunction with the 1991 celebration of National Nurses Week, the American Nurses Association, and the State Nurses Associations sponsored a nationwide "search for excellence" on behalf of the nursing profession. In my State of West Virginia, Jane Trail, head nurse of the hemodialysis unit at the Veterans Affairs Medical Center in Beckley, WV, was chosen as the "Search for Excellence" winner by the West Virginia Nurses Association. Among her many accomplishments, Miss Trail was instrumental in establishing the renal clinic at the Beckley VA Medical Center. This outstanding woman is to be congratulated for the skilled and compassionate care given to her patients,

who must deal with the restrictions and lifestyle changes of renal failure.

In the days before hospitals, modern-day prescriptions, and patient monitors, nurses administered to the sick by watching at their bedside, dressing their wounds, and soothing patients' fevers. Those early-day nurses did not wear white uniforms, and neither do all the nurses of today. Today's nurse is very much dedicated to the health care needs of all Americans. Today's nurses serve in hospitals and hospices, military services, and veterans institutions, community clinics, and patient homes. They open independent practices and they work in schools and industry.

Today, because of nursing research, patient care has significantly improved. And today's nurse educators ensure that tomorrow's practitioners understand and implement both the science and the art of high-quality nursing practice.

This year, the theme for National Nurses Week is "Nurses Care for America." The nursing profession is an integral part of America's health care system and can be counted on to help us recuperate from illness or injury, help us cope and live with conditions that arise from trauma or disease, and help us prevent illnesses and maintain our good health. Nurses, indeed, care for America.

In this time of rising health-care costs and reductions in health-care services, the demand for nursing services is greater than ever before. The nursing profession has been a strong supporter of efforts to improve access to health-care services and enhance the quality of the Nation's health. We in Congress look forward to working with the nursing profession as we try to improve the Nation's health-care system.

During National Nurses Week, I hope that Americans everywhere will take the time to acknowledge the efforts of our Nation's nurses by participating in the many celebrations planned by the American Nurses Association throughout the country.

FOOD SALES TO THE SOVIET UNION

Mr. EXON. Mr. President, I rise to address the appropriate response to the Soviet request for grain credit.

The Soviet Union is a critical market for American farmers. Our Nation learned a valuable lesson in the 1970's when it found that using food as a weapon was a counterproductive measure which did not foster reform in the Soviet Union and unfairly punished the American farmer.

America can not afford to make the same mistake again.

Chaos in the Soviet Union, famine in the Soviet Union, unrest in the Soviet Union does not advance the forces of reform.

Former Minister Eduard Shevardnadze, who I met with about a month ago, warned that out of chaos could come the forces of dictatorship.

Given the economic situation in the Soviet Union, I understand the President's concerns about the credit worthiness of the Soviet Union. This difficulty is by no means insurmountable.

Last week, I sent the President a letter outlining my proposal for a "food for oil" arrangement between the U.S. and the U.S.S.R. I raised this proposal with the Soviet Ministers of Oil and Gas and Agriculture and received a warm response.

In short, barter is the key to opening the door to the Soviet market. It is the only realistic means to overcome the Soviet Union's lack of hard currency. In the short term, food credit could be secured with future Soviet oil production or for that matter, any other valuable commodity such as gold, minerals or metals. Over the long term, I believe a food for oil agreement between the U.S. and the U.S.S.R. makes a great deal of sense.

Mr. President I ask unanimous consent that the text of my letter to the President be printed in the RECORD. The letter gives more detail to my proposal and is self-explanatory.

I urge my colleagues to support an appropriate grain credit resolution and give serious consideration to supporting a long-term food for oil arrangement with the Soviet Union.

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

U.S. SENATE,
Washington, DC, May 1, 1991.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: I read yesterday with great interest your comments about granting agriculture credits to the Soviet Union and that nation's credit worthiness. I ask that you give serious consideration to an idea which may provide the answer to your present dilemma. Simply put, the idea is food for oil.

As you well know, the Soviet Union represents a significant export market for America's food producers. The potential loss of this important market would have a devastating effect on American grain prices.

Having recently visited the Soviet Union, I understand your concerns about that nation's economic situation. The Soviet transition to a market economy has been an unsteady journey of half steps toward reform. In spite of several recent poor economic decisions, the Soviet Union remains a nation rich in natural resources.

You know that I have been a long time advocate of barter and countertrade as a means to expand U.S. exports. Barter and countertrade (the exchange of goods for goods) and other nontraditional means of finance can facilitate trade where there is a shortage of hard currency. The United States Congress went on record in support of using barter and countertrade to expand exports when it approved legislation I offered as part of the 1988 trade bill to create the Office of Barter in the United States Department of Commerce.

On September 12, and November 30, 1990, I wrote to you about investigating a "food for oil" arrangement with the Soviet Union. When I was in the Soviet Union, I explained this concept to Mr. Leonid Filmanov, the Soviet Minister of Oil and Gas and Mr. Vyacheslav Chernov, the Soviet Minister of Agriculture. They were most receptive to the idea.

The Soviet Union holds the world's largest reserves of oil. The United States has a great supply of food and agriculture products and a need to diversify its supply of oil. In the new world order, these strengths and needs should be paired to advance the interests of both nations.

In the immediate term, new loans to the Soviet Union could be secured with future oil production. Over the long term, I urge your administration to explore an agreement with the Soviet Union which would facilitate the exchange of energy production technology and U.S. food for oil.

I have enclosed for your consideration transcriptions of the notes from my meetings with the Soviet Prime Minister of Oil and Gas and the Soviet Minister of Agriculture. Given your background in the oil and gas industry, I am certain that you will see that there are great energy resources in the Soviet Union which are untapped and in many cases simply wasted. I am convinced that a bit of creative thinking and yankee ingenuity can unlock the value of these and other resources to secure additional American food sales as well as a more productive relationship between our two nations.

Hunger in the Soviet Union is a real possibility. Several reports indicate that there will be poor harvest in the Soviet Union this year. Given the tension I observed in the Soviet Union, food shortages could unleash a series of reactions and emotions within the Soviet Union which could further undermine the road to reform. As I have long said, a hungry bear is a very dangerous thing.

Over the long term, the Soviet market provides a rich opportunity for the American farmer. The development of this market now will provide dividends in the future. Given the drastic cuts in farm programs over the last several years, our nation can not afford to let an important export opportunity like this slip from our grasp.

I ask that you give careful consideration to this suggestion. Simply put, a food for oil arrangement makes sense. I welcome an opportunity to work with you on this very important matter.

Best wishes,
Cordially,

JIM EXON,
U.S. Senator.

OBSERVATIONS ON THE SOVIET UNION

Mr. EXON. Mr. President, last month, I was privileged to represent the Senate Armed Services Committee as part of an official delegation to the Soviet Union and Eastern Europe headed by the chairman of the Senate Intelligence Committee Senator BOREN. This is the second of my reports on that interesting and enlightening trip. My earlier report focused on Eastern Europe. Today, I would like to discuss the political situation in the Soviet Union.

Our delegation arrived in Moscow on March 27, the eve of a major showdown

between Soviet President Gorbachev and Russian President Boris Yeltsin. Upon arriving in Moscow, the delegation sensed a chilling tension in the air.

The current political landscape of the Soviet Union cannot be sketched in black and white terms. The situation is complex with several forces pulling at the political leadership of the nation. While the delegation was in Latvia, one of the Baltic Republics seeking freedom from the Soviet Union, we met Senator Mavriks Vulfsons, of the Latvian Parliament. He provided the delegation with a succinct summation of the nation's turmoil. When asked about Soviet politics, he prefaced his answers with the comment that "you must understand, this is the Soviet Union. Things are very complicated."

While the Gorbachev-Yeltsin controversy occupied center stage, it was obvious that there are several forces simultaneously at work in the Soviet Union including democratic forces, a restless labor movement, nationalist and secessionist movements, and the military industrial complex, the Communist Party and the Government bureaucracy all trying to define the new Soviet Union.

During our visit, political observers, including Eduard Shevardnadze, painted a portrait of President Gorbachev as that of a man alone. The Soviet President had alienated his early allies, the reformers and intellectuals and was in what appeared to be an uncomfortable alliance with the political hardliners, including the military and the KGB. The open question during our visit was whether Gorbachev was using this alliance as a means of survival or whether Gorbachev himself was being manipulated by the Soviet right wing.

Since 1919, the Communist Party and its ideology has been the glue that has held the vast Soviet Nation of diverse republics together. That glue is rapidly disintegrating. Communism has been discredited. The Soviet people have lost faith in the party. It presently appears that the Soviet Union lacks a coherent belief system. Unlike the new democracies of Eastern Europe where economic reforms have been real and dramatic, the movement from a command economy toward a market economy in the Soviet Union, has been thus far insufficient to engender the confidence, hope or support of the people. During the early phases of perestroika, the Soviet people were grateful to Gorbachev for glasnost. Today, the painful economic reforms have failed to convert the economy to efficiency and have turned the man on the street against Gorbachev. With the freedoms of glasnost citizens are able to voice their frustrations and they are.

With the exception of Boris Yeltsin, at this point, there appears to be no clear challenger or alternative to Gorbachev. The Communist Party pres-

ently has the advantage of organization and history. The delegation met with eloquent representatives of the reform movement including former Minister Shevardnadze, Leningrad Mayor Sobchak and representatives of the Baltic Republics. While both Shevardnadze and Sobchak have a commanding presence and a high level of respect, it is fair to say that the democratic alternative has not yet been organized. There is presently no coherent democratic platform, agenda, or leadership. Boris Yeltsin, the President of the Russian Republic, the Soviet Union's largest and most important republic is popular with the man on the street, but does not seem to be taken seriously by some of the reform leaders, intellectuals and United States analysts.

I believe that it would be a serious mistake, however, to underestimate Yeltsin's political skills. Upon our arrival to Moscow, Russian hardliners were preparing for a no-confidence vote to oust Yeltsin from the Russian Republic Presidency. Not only did Yeltsin prevent any such vote, he emerged from the Parliamentary session with enhanced powers to rule by decree until a new President is directly elected by the Russian people in June. It is widely expected that Boris Yeltsin will overwhelmingly win the popular vote. With a popular mandate from the Russian Republic, Yeltsin could gain a political authority superior to that of Gorbachev who serves with a vote of the Soviet Parliament. Most recently, Yeltsin was able to gain Republic control of the coal mines in Russia and there is speculation that similar transfers of authority from the center to the republics are forthcoming in other areas. While scholars are still examining the new all union treaty, early indications are that Yeltsin scored a significant breakthrough and is in part a testament to the political skills of both Yeltsin and Gorbachev.

While the new all union treaty may mark a cooling off period in the Gorbachev-Yeltsin drama, the tug of war between Gorbachev and Yeltsin is potentially dangerous. The delegation heard speculation that hardliners hope that each will politically destroy the other, leaving the military and party hierarchy to pick up the pieces and rule the Soviet Union with a much more repressive hand.

The vivid manifestation of the dangers of the Gorbachev-Yeltsin rivalry played out before the delegation's eyes on March 28 when Yeltsin forces organized a massive demonstration in central Moscow in defiance of a 3-week ban on demonstrations imposed by Gorbachev's central government. Part of the demonstration took place in front of the delegation's hotel.

On the evening of our arrival, Soviet authorities sealed off access to Red Square in anticipation of the Yeltsin

demonstration. Throughout the day, Soviet troops were deployed into central Moscow in what Eduard Shevardnadze described in a meeting with the delegation as the largest deployment of troops into Moscow since the Second World War. Throughout the day, the delegation observed truckloads of troops stationed throughout the city. The tension in the city was palpable.

Upon the completion of an afternoon meeting with the Minister of Atomic Energy, Christopher McLean of my staff and our interpreter were unable to return to our hotel by car. It was necessary to make our way through several concentric rings of Soviet troops to return to the hotel. The military forces secured the central city and were allowing people to leave but very few to enter. Thanks to our interpreter we were able to negotiate our way back to the area of the hotel.

When the demonstration commenced, police armed with plexiglass shields and night clubs stood as a three-sided barrier to the demonstrators. Military personnel and trucks were positioned behind the police. The police methodically closed their ranks and pushed the demonstrators out of the main square. Members of the delegation observed about six to eight individuals pulled out of the demonstration and roughed up by plain clothed authorities as the demonstrators were brought to yellow Moscow-style paddy wagons.

Surprisingly, both police and demonstrators exhibited a degree of restraint and discipline. As officers banged their clubs against their shields a growing thunder filled the snowy night air. With the sound, the police closed their ranks to push the demonstrators out of the square, onto the terrace of the Bolshoi Ballet and out of the area.

The massive show of military force to the Yeltsin demonstration represented perhaps a warning as well as a response to the banned demonstration. The deployment provided an illustration of the fears of dictatorship outlined for the delegation by former Foreign Minister Eduard Shevardnadze. Given the building tension prior to the demonstration, a miscalculation on either side could have been disastrous. Emotions were high and danger was in the air. Fortunately, tragedy was averted. As soon as the demonstration ended, the troops evaporated out of central Moscow. I observed caravans of troops rapidly exiting the city. By midnight, there was little evidence of the confrontation. The next day, business seemingly returned to normal. Red Square was open to visitors. Most troops had left the city and several of the officials we met with that day had observed a noticeable but perhaps temporary release of pressure.

The very fact that the demonstration took place in defiance of the Gorbachev

ban and in spite of the military presence, represented a strong show of force for Yeltsin and a testament to the level of frustration felt by many citizens.

ECONOMIC REFORM

The demonstration was in part a reflection of growing discontent with Soviet economic reforms which have been very painful to the average Soviet worker. The Communist system created a wage and price structure which bore no relation to reality. As long as the Communist system could remain closed and economically isolated between the central Soviet Union Government and its client states, the system could function and deliver basic necessities to the people.

The Soviet economy cannot remain closed in the modern world. The Communist economic system destroys individual initiative and creativity. The corruption of the Communist Party has engendered disdain from the Soviet citizenry and the glorious democratic revolutions in Eastern Europe, and Central America have disrupted the Communist international trading system.

The Soviet economy is on the edge of collapse. Reforms have been half measures which deliver only the painful half of the economic equation. The delegation arrived in the Soviet Union days before the imposition of massive price increases. We observed long lines in front of Soviet department stores as shoppers engaged in panic buying to beat the price increases. While the new prices will more closely resemble market prices, they were created by central planners and not market forces. To compensate workers for increased prices, supplementary pay packets were distributed to workers, although not enough to fully cover price increases. The price reform may marginally reduce the Soviet budget deficit. It is unlikely that absent more aggressive market reforms on the supply side and on private ownership rights that more goods will become available.

Unlike in Poland, Czechoslovakia, and Hungary, where economic reforms have been far more thorough, the reforms in the Soviet Union have not generated much faith among the people that there will be any long run benefits in exchange for short-term pain. Sooner or later, the Soviet Union must come to the realization that to be successful, the Soviet Union must forcefully address private ownership, freeing the factors of production from central planning on the supply and demand side and the convertibility of the Soviet currency.

UNITED STATES-SOVIET RELATIONSHIP

It is clear that President Gorbachev's political future ebbs and flows on a rapidly changing sea. While Gorbachev has been a leader who the United States has been able to work with,

American policy with regard to the Soviet Union should not be based solely on the political survival of one personality. Treaties, trade agreements, and exchange programs are between nations, not individual presidents. Our policy toward the Soviet Union should attempt to look beyond the horizon and beyond President Gorbachev. Our policies should also be cognizant of the political authority of Soviet Republics. In the future, it is clear that individual republics will come to wield more authority than the past.

As the representative of the Senate Armed Services Committee, I frequently raised my concern in meetings with Soviet political and government officials, including Aleksey Obuknov, the Deputy Foreign Minister that with the present glitch in the implementation of the Conventional Forces Europe [CFE] Treaty, the United States Senate will have difficulty placing its confidence in a START Treaty if it cannot have confidence in the CFE Treaty. I found United States Ambassador Matlock surprisingly optimistic about the chances of resolving CFE and START differences, and found the Soviets somewhat more fixed in their positions than portrayed by the United States Ambassador. In this regard, I believe that the delegation delivered an important and clear message to Soviet policymakers about the Senate's unease regarding the current complications on the CFE Treaty. Since our return, I have noticed some encouraging steps by the Soviets to resolve some of these concerns but believe that there is still a long journey toward a resolution to current difficulties over CFE and START.

America must continue to exercise caution in dealing with the Soviet Union and be certain that Soviet Government actions match the words of Soviet political leaders. President Reagan appropriately adopted as a motto for United States-Soviet military relations, "Trust but Verify." Overall, I was somewhat encouraged that from reformers and hardliners alike, there was no evidence of an interest in returning to the bad old days of the cold war.

America should make it clear that our Nation welcomes and supports the movement toward a free society and free market in the Soviet Union. It is in the interest of the United States, the Soviet Union, and the world that the United States/U.S.S.R. relationship continues to improve. Our delegation was encouraged at several stops, even from critics of President Gorbachev that regardless of who leads the Soviet Union that both the United States and the Soviet Union must continue to maintain good relations.

In this regard, positive political reforms within the Soviet Union certainly make the path toward even closer U.S./U.S.S.R. relations much

smoother. I am pleased to report that there was surprisingly frank and seemingly accurate reporting of the demonstration witnessed by the delegation on the English service of Radio Moscow, an obvious new found religious freedom, and a previously unknown level of political debate within the Soviet Union. In addition, there is no doubt that the actions, or more accurately, the inactions of the Soviet Union during the liberation of Eastern Europe represented a turning point in world history. But just as Soviet restraint in Eastern Europe made better relations with the West possible, the Soviets must be made to understand if they return to oppression in dealing with the Baltics those warming relations could just as rapidly cool.

The Soviet Union is undergoing a profound identity crisis. The nation is attempting to transform its society, political system and economy simultaneously. In many regards, the very act of transformation represents an ideological victory for the values which America and the free world hold dear. After visiting the Soviet Union, I expect that the road to a reformed Soviet Union will be filled with bumps, twists and turns. I must report that I was pleased to hear Chairman Polozkov, of the Russian Communist Party, one of the recognized hardliners, tell our delegation that the party accepts a market economy as the final stage of reform. His caveat was that the reform must be gradual.

Since our return, there appears to be a new accommodation between Gorbachev and Yeltsin. In addition, the republics and the central government seem to be making progress in defining their relationship to each other under a new union treaty. Until this critical relationship and ownership rights throughout the Soviet Union are defined, full scale Western participation in the Soviet economy is unlikely. The present battle of laws between the central government and the republics makes it difficult, if not impossible, for business to risk investment or even know with whom in the Soviet Union to deal.

In conclusion Mr. President, it is a fascinating time. There is great hope that this time of transition can facilitate a more productive relationship between the United States and the Soviet Union. There is also a risk that the pains of transition within the Soviet Union, will resurrect a nostalgia for the old Communist order. America has provided a shining example for the Soviet Union and the world that the path to a better life is the path marked democracy and freedom.

Having discussed some of my observations about the political situation in the Soviet Union, I will describe in my next address areas where I believe that the United States and the Soviet Union can and should cooperate.

THE ROLE OF KGB CAPT. VIKTOR OREKHOV

Mr. MOYNIHAN. Mr. President, the Long Island Jewish World recently published a most remarkable article by Natan Shcharansky, the courageous Soviet Jewish dissident who now lives in Jerusalem. Mr. Shcharansky relates the crucial role of KGB Capt. Viktor Orekhov who risked his life to help warn the activists of plans to infiltrate their network and vitiate their campaign for religious freedom. This previously unidentified Soviet secret police officer was subsequently arrested and sent to prison for 8 years.

When a stunned Soviet Jewish leader asked Captain Orekhov why he helped them he replied "I am afraid my children will be ashamed of me." Certainly, Victor Orekhov's children, and all of us who value human freedom and integrity, have good reason to be proud of this brave man and his exceptional actions.

I ask unanimous consent that Natan Shcharansky's article about Victor Orekhov be printed in the RECORD at this time.

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

[From the Jewish World, Apr. 19-25, 1991]
EVEN IN THE KGB, THERE WAS AT LEAST ONE DISSIDENT

(By Natan Shcharansky)

JERUSALEM.—If you have followed the Soviet press during the glasnost years and watched the Communist empire fall apart, it is difficult to be surprised by anything. Looking through the Russian papers the other day, I wasn't expecting any surprises—but when I came across a picture of Victor Orekhov, accompanied by an interview, my heart jumped. It was hours before I could return to my routine. The man and his name have haunted me for 15 years.

I never saw KGB Capt. Viktor Orekhov, and until that day I could not even say for sure that he existed at all. Nonetheless, I thought about him more often than I did about many others whom I knew much better. Somewhere in the bottom of my heart, I had always hoped that Orekhov was a flesh-and-blood person, not merely a creation of the KGB's evil genius.

At the end of 1976, just as a new wave of KGB oppression began, Moscow refusenik Mark Morozov came to us with sensational news: a senior KGB officer, whose name he naturally could not reveal, had decided to inform us of future actions against dissidents. Our reaction was almost unanimous—we believed it was a KGB provocation. But information about future arrests and searches soon began to reach us, and the information proved correct.

Morozov arrived one night, in December 1976, at the house of Zionist leader Vladimir Slepak with a warning: during the next few hours, Slepak's house would be searched. The search took place, and continued for almost 24 hours. We Jewish activists were not inclined to hide our activities, so the KGB took hundreds of different documents, mainly copies of our public statements, from Slepak's house.

But they did not find our notes on material help to Jews in various cities, so the warning

saved tens, if not hundreds, of people from long, hard and potentially dangerous interrogations. Morozov's source continued to warn us of anticipated searches, and the leaders of the Moscow-Helsinki group, Yuri Orlov and Alexander Ginsburg, knew of their arrests in advance. Later, the same anonymous source revealed Orlov's sentence long before the trial began.

My turn came in March 1977. One night I received an urgent call from Morozov. My tails—the KGB men who followed me regularly, literally hanging on my shoulders in the last days before my arrest—came up to Morozov's apartment with me and remained by his door. Inside, Mark informed me that my arrest was imminent, and that a Jewish activist close to me was a KGB informer. He also said the KGB succeeded in taping a number of my conversations with foreign journalists by bugging my parka.

I left Morozov's house and grabbed a taxi. One of my tails came up to the driver and warned him: "We are from the criminal police, and we are following your car. Drive slowly and do not try to escape." This was clearly a new stage in KGB efforts to increase psychological pressure on me, and I decided Morozov's information was just part of the plan to frighten and demoralize me.

Several days later, however, an article appeared in the government-run *Izvestia*, signed by Sanya Lipavsky, a close comrade-in-arms of us refuseniks. Lipavsky, it turned out, was a longtime KGB informer: the article carried the gravest accusations against us. The article made it clear that we could not escape the worst. It also confirmed that, inside the great monolith that was the KGB, there was one person who dared try to help us.

Some years later, in prison, I met Mark Morozov. He told me the name of our KGB insider—Capt. Viktor Orekhov. In the year after my arrest, Orekhov continued to keep the dissidents informed, until he himself was taken into custody. Morozov was also arrested, and agreed to give testimony in return for an easy sentence in exile.

But Morozov violated the agreement by going public with his case. The KGB did not forgive him, and Mark was sentenced to eight years in prison. He was in poor health, and died in 1986 in the political prison at Chistopol. At the same time, we now know, Viktor Orekhov was finishing his own eight-year sentence in a special prison for former KGB and police officers. In the interview I saw, Orekhov, now in Moscow, told his interviewer his reasons for betraying the KGB and described in detail his methods of operation.

The KGB captains who interrogated us and sent us to prison have long ago become majors and colonels; the colonels have become generals. During the glasnost years, they have been actively involved in crafting a new party line, creating a new image for the KGB: "An institute of moderate and enlightened people who were always trying to neutralize the extremes of party bureaucrats." But the only KGB officer who dared to help us became what he inevitably had to become: a dissident himself.

Once, in response to Morozov's questions about why he helped us, Viktor Orekhov said, "I am afraid my children will be ashamed of me." Our world would greatly improve if all of us worried how our children would feel about us.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today

marks the 2,244th day that Terry Anderson has been held captive in Lebanon.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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.)

MESSAGES FROM THE HOUSE

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 12:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolutions:

S. 258. An act to correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990;

H.J. Res. 194. Joint resolution designating May 12, 1991, as "Infant Mortality Awareness Day"; and

H.J. Res. 214. Joint resolution recognizing the Astronauts Memorial at the John F. Kennedy Space Center as the national memorial to astronauts who die in the line of duty.

The enrolled bill S. 258 and House Joint Resolution 194 were subsequently signed by the Acting President pro tempore [Mr. SHELBY].

The enrolled joint resolution, H.J. Res. 214, was subsequently signed by the Vice President.

At 4:41 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 904. An act to direct the Secretary of the Interior to prepare a national historic landmark theme study on African American History; and

H.R. 1143. An act to authorize a study of nationally significant places in American labor history.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 904. An act to direct the Secretary of the Interior to prepare a national historic landmark theme study on African American History; to the Committee on Energy and Natural Resources.

H.R. 1143. An act to authorize a study of nationally significant places in American labor history; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following bill, received from the House of Representatives for concurrence on May 6, 1991, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1455. An act to authorize appropriations for fiscal year 1991 for intelligence activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 8, 1991, he had presented to the President of the United States the following enrolled bill:

S. 258. A bill to correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.

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-1074. A communication from the Deputy Associate Director for Collection and Disbursement of the Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1075. A communication from the Deputy Associate Director for Collection and Disbursement of the Department of Interior, transmitting, pursuant to law, a report on certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1076. A communication from the Deputy Associate Director for Collection and Disbursement of the Department of Interior, transmitting, pursuant to law, a report on certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1077. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on expenditures and enforcement actions during the fourth quarter of fiscal year 1990; to the Committee on Energy and Natural Resources.

EC-1078. A communication from the Chairman of the United States Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, the annual report for fiscal year 1990; to the Committee on Environment and Public Works.

EC-1079. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, copies of prospectuses; to the Committee on Environment and Public Works.

EC-1080. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report entitled "State Revolving Fund Interim Report to Congress"; to the Committee on Environment and Public Works.

EC-1081. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the fiscal year 1990 annual report; to the Committee on Environment and Public Works.

EC-1082. A communication from the Inspector General of the Department of the Interior, transmitting, pursuant to law, a copy of the audit report entitled "Accounting for Reimbursable Expenditures of the Environmental Protection Agency Superfund Money, Water Resources Division, U.S. Geological Survey"; to the Committee on Environment and Public Works.

EC-1083. A communication from the Inspector General of the Department of Interior, transmitting, pursuant to law, a final audit report entitled "Accounting for reimbursable Expenditures of Environmental Protection Agency Superfund Money for Fiscal Years 1987, 1988, and 1989, Bureau of Mines"; to the Committee on Environment and Public Works.

EC-1084. A communication from the Acting Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on abnormal occurrences at licensed nuclear facilities for the fourth calendar quarter of 1990; to the Committee on Environment and Public Works.

EC-1085. A communication from the President of the United States, transmitting, pursuant to law, reporting changes in the Generalized System of Preferences; to the Committee on Finance.

EC-1086. A communication from the Acting Chairman of the United States International Trade Commission, transmitting, pursuant to law, the sixty-fifty quarterly report on trade between the United States and the nonmarket economy countries; to the Committee on Finance.

EC-1087. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on a study to develop a strategy for quality review and assurance for the Medicare program; to the Committee on Finance.

EC-1088. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, certain certifications required under the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1990; to the Committee on Foreign Relations.

EC-1089. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the status of secondment with the United Nations by the Soviet Union and Soviet-bloc member nations for calendar year 1989; to the Committee on Foreign Relations.

EC-1090. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a certain report prepared by the Federal Bureau of Investigation; to the Committee on Foreign Relations.

EC-1091. A communication from the Acting Administrator of the Agency for International Development, transmitting, pursuant to law, a report on Women in Develop-

ment for Fiscal Year 1989 through Fiscal Year 1990; to the Committee on Foreign Relations.

EC-1092. A communication from the Director of the Information Security Oversight Office, transmitting, pursuant to law, the annual report of the Office for 1990; to the Committee on Governmental Affairs.

EC-1093. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1990; to the Committee on Governmental Affairs.

EC-1094. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office in March 1991; to the Committee on Governmental Affairs.

EC-1095. A communication from the Co-Chairman of the Franklin Delano Roosevelt Memorial Commission, pursuant to law, a report on the audit activities of the Commission for fiscal year 1990; to the Committee on Governmental Affairs.

EC-1096. A communication from the Special Counsel, United States Office of Special Counsel, transmitting a draft of proposed legislation to extend authorization of appropriations for the U.S. Office of Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

EC-1097. A communication from the Vice President of the Farm Credit Bank of Spokane (Human Resources and Planning), transmitting, pursuant to law, the annual report for calendar year 1989 for the Twelfth District Farm Credit Retirement Plan and Thrift Plan; to the Committee on Government Affairs.

EC-1098. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit—Congressional Award Foundation Financial Statements for 1989"; to the Committee on Governmental Affairs.

EC-1099. A communication from the Acting Secretary of the Postal Rate Commission, transmitting, pursuant to law, a revised page of a notice issued on March 28, 1991; to the Committee on Governmental Affairs.

EC-1100. A communication from the Chairman of the Board of the National Credit Union Administration, transmitting, pursuant to law, adjusted National Credit Union Administration pay schedules; to the Committee on Governmental Affairs.

EC-1101. A communication from the Assistant Secretary of Finance and Administration of the Smithsonian Institution, transmitting, pursuant to law, the annual pension reports of the Smithsonian Institution, the Woodrow Wilson International Center for Scholars, and Reading is Fundamental for calendar year 1989; to the Committee on Governmental Affairs.

EC-1102. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1990; to the Committee on Governmental Affairs.

EC-1103. A communication from the Attorney General of the United States, transmitting, pursuant to law, the annual report on the private counsel debt collection pilot project for fiscal year 1990; to the Committee on Governmental Affairs.

EC-1104. A communication from the Acting Assistant Secretary of the Interior (Policy, Management and Budget), transmitting, pur-

suant to law, the progress report on the Tribal Self-Governance Demonstration Project for the period October 1990 to March 1991; to the Select Committee on Indian Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-30. A concurrent resolution adopted by the Legislature of the State of North Dakota to the Committee on Appropriations.

"HOUSE CONCURRENT RESOLUTION NO. 3029

"Whereas, oil embargoes instituted by the organization of Petroleum Exporting Countries cartel during the mid 1970s held the entire industrialized world hostage to outrageous and predatory oil pricing; and

"Whereas, the recent invasion of Kuwait by Iraq has resulted in the disruption of world oil supplies, and the political instability of the Middle East has caused extreme volatility in world oil markets; and

"Whereas, the Food, Agriculture, Conservation, and Trade Act of 1990 falls far short of providing cost of production to the nation's agricultural producers; and

"Whereas, the market price for most major farm commodities is substantially below the cost of producing those commodities;

"Now, therefore, be it resolved by the House of Representatives of North Dakota, the Senate concurring therein:

"That the Fifty-second Legislative Assembly urges the President and the Congress of the United States to develop expeditiously a sound and comprehensive national energy policy utilizing renewable agricultural commodities, such as ethanol, in the production of energy and lubrication products; and

"Be it further resolved, that the Fifty-second legislative Assembly urges that the President request and that the Congress of the United States appropriate funds within the budgets of the Department of Defense and the Department of Agriculture to establish this sound and comprehensive energy program; and

"Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the Secretary of Energy, the Secretary of Defense, the Secretary of Agriculture, the Speaker and the majority and minority leaders of the United States House of Representatives, the President and the majority and minority leaders of the United States Senate, and each member of the North Dakota Congressional Delegation."

POM-31. A petition from a citizen of Concord, New Hampshire relative to cutting funds for the Special Prosecutor in the Iran Contra Affair; to the Committee on Appropriations.

POM-32. A resolution adopted by the Assembly of the State of New Jersey; to the Committee on Armed Services.

"ASSEMBLY RESOLUTION CALLING ON THE COMMISSION ON BASE REALIGNMENT AND CLOSURE TO DROP FROM ITS RECOMMENDATIONS THE PROPOSED SCALING DOWN OF MILITARY OPERATIONS AT FORT DIX

"Whereas, On Friday, April 12, 1991, the Secretary of Defense announced that as part of a national plan to consolidate military facilities, Fort Dix, in southern New Jersey, would lose all regular Army functions and maintain only facilities and staff necessary to support Reserve and National Guard training requirements; and

"Whereas, This scaling down of military operations at Fort Dix comes on the heels of a controversial 1988 base closing order, under which the facility is to lose its entire basic training mission and other Army Operations and the overall workforce is to be cut by 2,760 personnel by 1994; and

"Whereas, Under the latest proposal, the base would lose an additional 500 civilian jobs and 309 military positions by the 1997 fiscal year; and

"Whereas, The proposal also provides that excess facilities and land at Fort Dix will be sold and projects that implementation of the plan will save the Department of Defense \$16 million; and

"Whereas, The proposal is not in the best interests of our nation's defense because the ideal location of Fort Dix between New York and Philadelphia permits ease of access and departure for military personnel and the post has superior facilities, is contiguous with McGuire Air Force base and had a significant role in preparing men and material for victory in Operation 'Desert Storm'; and

"Whereas, It is obvious that the proposal does not take into account the serious negative economic impact that the downscaling will have on the south Jersey economy, especially, Ocean and Burlington counties; and

"Whereas, It is also obvious that the amount of money to be gained by selling off land at the facility is seriously overestimated, since the land is in an area of restricted development that is strictly regulated by the Pinelands Commission; and

"Whereas, Given these reasons, this House believes that the proposal to downscale Fort Dix should be dropped by the Commission on Base Realignment and Closure before it makes its recommendations on July 1st of this year and sends them to the President and the Congress for approval; now, therefore,

"Be it resolved by the General Assembly of the State of New Jersey:

"1. This House calls on the Commission on Base Realignment and Closure to drop from the recommendations it is to make to the President and the Congress the proposed scaling down of military operations at Fort Dix.

"2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be sent to each member of the Commission on Base Realignment and Closure, the Secretary of Defense, the presiding officers of each House of Congress and each member of Congress from New Jersey.

"STATEMENT

"This Assembly resolution calls on the Commission on Base Realignment and Closure to drop from the recommendations it is to make to the President and the Congress the proposed scaling down of military operations at Fort Dix.

"VETERANS

"Calls on Commission on Base Realignment and Closure to drop from its recommendations the proposed scaling down of military operations at Fort Dix."

POM-33. A concurrent resolution adopted by the Legislature of the State of Indiana; to the Committee on Armed Services;

"HOUSE CONCURRENT RESOLUTION 95

"Whereas, the liberation of Kuwait is complete and the forces of tyranny have been vanquished by the coalition troops of Operation Desert Storm; and

"Whereas, brave young men and women from throughout the State of Indiana an-

swered their country's call and proudly served with the forces of Operation Desert Shield and Operation Desert Storm; and

"Whereas, while representing their country in the Persian Gulf, these dedicated Hoosiers exemplified the values of duty, courage, and unselfish devotion to service in ways that have brought honor upon them and upon all Hoosiers; and

"Whereas, these returning heroes have been the voice by which America has told the world that oppression of the weak will be tolerated no more; and

"Whereas, all Hoosiers join the families, friends and neighbors of these fine troops in welcoming home these dedicated servants of liberty; and

"Whereas, although we celebrate victory, that celebration is muted by the grief felt by all Americans for the tragic loss of those fine heroes who, when called, unhesitatingly made the ultimate sacrifice for their country and for the cause of freedom and liberty; and

"Whereas, the nation will be forever indebted to those few who, in the call of duty, willingly gave so much for their country; and

"Whereas, on behalf of the people of the State of Indiana, the Indiana General Assembly pays special tribute to these servicemen who gave their lives and to their families and loved ones who remain: PFC Jeffrey D. Reel, U.S. Army, Vincennes; Lance Corporal Brian L. Lane, U.S. Marine Corps, Bedford; PFC Mark Miller, U.S. Army, Cannelton; Spc. Brian K. Simpson, U.S. Army, Anderson; Spc. James R. Miller, Jr., U.S. Army, Decatur; PFC David M. Wiczorek, U.S. Army, Indianapolis; Spc. Jeffrey A. Septimi, U.S. Navy, Ft. Wayne; and Chief Warrant Officer Michael F. Anderson, U.S. Army, Frankfort; and

"Whereas, the Indiana General Assembly also honors U.S.A.F. Lt. Colonel David W. Eberly from Brazil, Indiana, who was held by Iraq as a prisoner of war, for his courage and strength through that experience; and

"Whereas, it is most appropriate at this time of honoring our returning service men and women, to also recall and honor those service personnel who fought so valiantly in the Korean and Vietnam Wars, especially remembering those veterans who lost their lives in Southeast Asia and the POWs and MIAs still remaining there.

"Now, therefore, be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

"Section 1. That the Indiana General Assembly offers its gratitude and appreciation to the brave Hoosier veterans, especially the men and women of Operation Desert Storm and to the families and friends who stood behind these fine Americans.

"Section 2. That the Indiana General Assembly and all Hoosiers offer their deepest sympathy to the families and friends of those young men and women who gave their lives in the service of their country.

"Section 3. That the Indiana General Assembly offers its gratitude for the courage and leadership exemplified by Lt. Colonel Eberly while being held as prisoner of war.

"Section 4. That the Indiana General Assembly calls upon all Hoosiers to welcome home the troops of Operation Desert Shield and Operation Desert Storm with open arms and heartfelt thanks.

"Section 5. That certified copies of this Resolution be sent to the President of the United States, the United States Department of Defense, the presiding officer and the majority and minority leaders of both

houses of the Congress of the United States, to the Indiana members of the United States Congress, to the commanding officers of Grissom Air Force Base and Fort Benjamin Harrison, to the Adjutant General of the Indiana National Guard and the Indiana Reserves, and to the families of PFC Jeffrey D. Reel, Lance Cpl. Brian L. Lane, PFC Mark Miller, Spc. Brian K. Simpson, Spc. James R. Miller, Jr., PFC David M. Wiczorek, Spc. Jeffrey A. Septimi, and Chief Warrant Officer Michael F. Anderson."

POM-34. A resolution adopted by the Legislature of Rockland County, New York seeking to increase the Coast Guard presence in the Hudson River; to the Committee on Commerce, Science, and Transportation.

POM-35. A joint resolution adopted by the Legislature of the State of Montana Committee on Energy and Natural Resources.

"JOINT RESOLUTION

"Whereas national forest lands are a significant source of high-quality water and clean air upon which Montanans depend; and

"Whereas national forest lands provide natural splendor, wildlife habitat, scenic beauty, and recreational opportunity that all Montanans enjoy; and

"Whereas the economic stability of communities in western Montana is dependent upon a regular and stable supply of timber; and

"Whereas unsustainable rates of timber harvest affect other multiple uses of national forest lands and disrupt and destabilize dependent communities.

"Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana:

"That the Montana Legislature formally request that the United States Congress conduct hearings in Montana to evaluate whether forest practices in Montana are affecting other multiple uses of national forests, including clean water and air, and the scenic qualities of forest lands.

"Be it further resolved, That the United States Congress also conduct these hearings to determine whether national forest lands are being managed on a sustainable basis and that the forest practices on these lands maximize timber growth for sustained-yield production.

"Be it further resolved, That the Secretary of State send copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Montana Congressional Delegation."

POM-36. A resolution adopted by the House of Representatives of the Commonwealth of Puerto Rico; to the Committee on Energy and Natural Resources.

"RESOLUTION

"Whereas some members of the Armed Forces of the United States meet their military obligations even when this requires them to be separated from their minor children.

"Whereas some members of the Armed Forces of the United States who are separated from their minor children because of their military obligations are concerned about the welfare, care and stability of their minor children.

"Whereas military personnel have been deployed in the Persian Gulf conflict including spouses with minor children, which should be a reason for the Department of Defense to show concern in protecting the best interests of minor children of the members of the Armed Forces who are in this situation.

"Whereas the Persian Gulf war has caused anxiety and grief to thousands of families, but especially to those children who find themselves separated from their parents without knowing whether they will ever see them again.

"Whereas House bill 537 was introduced in the House of Representatives of the 102nd Congress of the United States on January 16, 1991, for the purpose of exempting one spouse of a married couple, or a single father or mother who have minor children, who are members of the Armed Forces, from being assigned to a region where there is an armed conflict or a region of imminent danger.

"Therefore: Be it resolved by the House of Representatives:

"Section 1.—To express the support and endorsement of this Legislative Body to House Bill 537, introduced in the House of Representatives of the 102nd Congress of the United States on January 16, 1991.

"Section 2.—To translate this Resolution into English and send a copy thereof to the Presidents of both bodies of the United States Congress, to the Members of Congress who introduced H.B. 537, to the President of the United States, and to the Secretary of Defense of the United States.

"Section 3.—To send a copy of this Resolution to the news media of the country for its diffusion."

POM-37. A resolution adopted by the House of Representatives of the Commonwealth of Puerto Rico; to the Committee on Energy and Natural Resources.

"RESOLUTION

"When the members of the Armed Forces of the United States retire for years of service and return to civilian life, one of the benefits granted by the Federal government is the health plan designated "Civilian Health and Medical Program of the Uniformed Services" known commonly for its acronym "CHAMPUS".

"Contrary to the general belief of the veterans retired years of service, the CHAMPUS program is not for an indefinite time. Its coverage concludes if, in civilian life, the retired soldiers become disabled thus requiring continuous medical care for more than two years or when they attain 65 years of age. As of these two events, they are only covered by "Medicare" thus reducing the benefits comprised in the CHAMPUS program and reducing the economy of the household by having to defray a portion for health care, which, in some cases is substantial and unaffordable by the veterans. Another problem is that program CHAMPUS does not cover the veterans when they become ill in foreign countries.

"This House of Representatives of the Commonwealth of Puerto Rico considers that the program CHAMPUS should be in effect indefinitely, in recognition to the services rendered by the veterans of the Armed Forces of the United States of America who have retired for years of service.

"Be it resolved by the House of Representatives of Puerto Rico:

"Section 1.—To request the President of the United States of America, the Secretary of Defense of the United States of America, the Secretary of Veterans' Affairs of the United States of America, the President of the Senate and the Speaker of the House of Representatives of the United States of America, the Chairpersons of the Committees on Veterans' Affairs of the Senate and the House of Representatives, Senator Daniel Inouye, Representative José Serrano and the Resident Commissioner of Puerto Rico in

Washington, to carry out the affirmative actions within their reach so that the veterans retired for years of service in the Armed Forces of the United States of America, be granted for indefinite time, the health benefits of the program Civilian Health and Medical Program of the Uniformed Services—"CHAMPUS" and that this program cover the soldiers retired for years of services when they become ill in any foreign country.

"Section 2.—A copy of this Resolution, translated into the English language, shall be delivered to each one of the officials mentioned in Section 1 of this Resolution.

"Section 3.—This Resolution shall take effect immediately after its approval."

POM-38. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Environment and Public Works:

"HOUSE JOINT RESOLUTION NO. 335

"Whereas, the recently enacted Clean Air Act Amendments of 1990 impose increasingly stringent emissions standards on transit buses; and

"Whereas, while it may be possible to meet the short-term bus emissions standards imposed by this legislation through use of so-called "clean diesel" technology, meeting the more stringent long-term standards will probably require the use of alternative fuels by transit buses; and

"Whereas, in order to use alternative fuels, it will be necessary for transit systems either to convert the engines of existing buses or purchase new vehicles designed and built specifically to be operated on alternative fuels; and

"Whereas, whatever the impact of this technological change on the environment and the health of the population, the transition from diesel-fueled transit buses will impose an additional and considerable financial burden on transit systems and the state and local governments upon which these transit systems depend; and

"Whereas, particularly in the cases of Northern Virginia and Hampton Roads, Virginia, much of the need for and ridership of mass transit systems are caused by the presence in these areas of high concentrations of federal, military and civilian agencies; and

"Whereas, in the coming year, Congress will be debating legislation to reauthorize the federal highway program—legislation whose passage is vital to every state in the nation and every sector of the economy; and

"Whereas, it is imperative that the final version of this reauthorization legislation continue major federal financial participation in highway and transportation programs throughout the country; and

"Whereas, it is equally indispensable that the federal government make a greater financial commitment specifically to dealing with worsening urban and suburban traffic congestion, rising need for and costs of mass transit operations, and the variety of costs borne by state and local governments as the result of federal mandates such as those contained in the Clean Air Act Amendments of 1990; now, therefore be it

"Resolved by the House of Delegates, the Senate concurring, That the United States Congress is hereby memorialized to approve legislation to reauthorize the federal highway program and provide for meaningful federal financial participation in the costs of converting and replacing transit buses in order to operate on alternative fuels; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this

resolution to the Speaker of the United States House of Representatives, the President of the Senate of the United States, and the members of the Virginia delegation to the United States Congress that they may be apprised of the sense of the General Assembly in this matter."

POM-39. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on Finance.

"JOINT RESOLUTION

"Whereas, persons who are elderly or disabled desire to continue to live in their homes and remain in close association with their own communities; and

"Whereas, persons who are elderly or disabled often are in need of long-term medical care services; and

"Whereas, many persons who are elderly or disabled and receiving long-term medical care services are located away from their homes and communities; and

"Whereas, Medicaid home and community services have shown that many elderly or disabled persons in need of long-term medical care services may remain in their homes and communities if provided the appropriate supportive services; and

"Whereas, Medicaid home and community services show that quality long-term medical care can be provided at a savings over institutionally based, long-term medical care; and

"Whereas, persons who are elderly or disabled continue to be placed into long-term medical care situations that are away from their homes and communities because of the limits on the availability of services through Medicaid home and community services; and

"Whereas, the Legislature finds that Medicaid home and community services can provide an excellent alternative model for future Medicaid-funded, long-term medical care services.

"Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana:

"(1) That it is the state's policy that persons who are elderly or disabled in need of long-term medical care be provided Medicaid services in their homes and communities whenever appropriate.

"(2) That the state, acting through the Department of Social and Rehabilitation Services, expand Medicaid home and community services to the extent permitted by the federal government.

"(3) That the Congress of the United States be advised that the Medicaid program as a whole should be made more flexible and cost-effective and that these objectives can be realized through further funding, development, and expansion of home and community services and by applying the principles of home and community services to the Medicaid program as a whole.

"(4) That copies of this resolution be sent by the Secretary of State to each member of the United States Congress."

POM-40. A resolution adopted by the House of Representatives of the State of Iowa; to the Committee on Finance:

"HOUSE RESOLUTION NO. 11

"Whereas, Iowa occupies a preeminent position as this nation's supplier of agricultural products which also significantly contributes to reducing the United States trade deficit; and

"Whereas, Iowa during the twentieth century has led the nation in hog production, producing 25 percent of all hogs in the United States and producing more hogs than the next two leading hog production states combined; and

"Whereas, the pork industry represents the single largest segment of Iowa's agriculture-based economy, generating more than \$3,000,000,000 in annual cash receipts from the marketing of hogs which has an economic impact of more than \$6,000,000,000; and

"Whereas, approximately 70,000 Iowans are employed in positions related to the pork industry; and

"Whereas, the United States and Canada have entered into a free trade agreement built upon principles honoring free market competition undistorted by governmental policies; and

"Whereas, subsidies paid to Canadian pork producers distort market forces by providing an unfair advantage to Canadian producers; and

"Whereas, the United States Department of Commerce and the International Trade Commission have ruled that government payments to Canadian pork producers are subsidies to both hog and pork product shipments which pose a threat of material injury to Iowa and United States pork producers; and

"Whereas, the binational panel authorized under the United States and Canada Free Trade Agreement to review the countervailing duty on pork products shipments restricted the facts allowed to be considered by the International Trade Commission in its recent ruling on the duty; and

"Whereas, this improper restriction has forced the International Trade Commission to rule that countervailing duties can no longer be imposed on Canadian pork product imports; and

"Whereas, the United States and Canada Free Trade Agreement authorizes the formation of an extraordinary challenge committee to review actions of the binational panel when the panel departs from a fundamental rule of procedure; and

"Whereas, the countervailing duty remains in place on live hog imports from Canada, and the excessive delay in the calculation of countervailing duties by the United States Department of Commerce greatly reduces the effectiveness of the duty in equalizing hog trade between the United States and Canada; now therefore,

"Be it resolved by the House of Representatives, That the United States trade representatives should use the extraordinary challenge provision of the United States and Canada Free Trade Agreement to correct the actions of the binational panel which forced the International Trade Commission to reverse its opinion on the countervailing duty imposed on subsidized Canadian pork products; and

"Be it further resolved, That the President of the United States, the United States Congress, and the United States Department of Commerce should review the entire binational panel process to ensure such panels do not in the future ignore fundamental principles underpinning the United States and Canada Free Trade Agreement; and

"Be it further resolved, That the President of the United States, the United States Congress, and the United States Department of Commerce review the process by which countervailing duty levels are calculated with the goal of reducing the delay between subsidy payments to Canadian producers and the imposition of corresponding duties at the United States and Canadian border; and

"Be it further resolved, That copies of this Resolution be sent by the Chief Clerk of the

House of Representatives to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Commerce, and to members of Iowa's congressional delegation."

POM-41. A concurrent resolution adopted by the Legislature of the State of Florida; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION NO. 501

"Whereas, the economic uncertainty of the 1980's and early 1990's has resulted in a loss of American jobs, a strain on the American family and a restructuring of many of America's industrial corporations; and

"Whereas, one of the leading factors in the creation of economic problems in the United States has been the encroachment of foreign goods and products into the American marketplace, coupled with trade barriers abroad which discourage American exports; and

"Whereas, at the present time foreign manufacturers have encroached upon American markets, producing a great percentage of our electronic equipment, including televisions, microwave ovens, telephone equipment and radios, a great percentage of shoes, bicycles, stuffed toys, and luggage, and a great number of automobiles; and

"Whereas, each manufactured product sold in the United States and produced abroad contributes both to our trade deficit and to the domestic loss of American jobs; and

"Whereas, the citizens of Florida and of the United States could have a positive effect upon this corrosive problem by refusing to purchase imported products; and

"Whereas, it is fitting and appropriate that the Legislature of the State of Florida support American manufacturers in their efforts to overcome foreign imported products and preserve American jobs, Now, Therefore,

"Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:

"That the Legislature of the State of Florida hereby declares the week of July 4th, 1991, as "Buy American Week" and urges all citizens of the State of Florida to participate by refraining from purchasing any imported goods during that week and instead urges them to purchase goods manufactured in the United States.

"Be it further resolved that copies of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress."

POM-42. A resolution adopted by the Senate of the State of Michigan; to the Committee on Finance:

"SENATE RESOLUTION NO. 87

"Whereas, Mortgage Revenue Bonds and the Low Income Housing Tax Credit are important to financing affordable housing in the state of Michigan. Through Mortgage Revenue Bonds, the Michigan State Housing Development Authority provides low-cost mortgage loans and home improvement loans to moderate-income working families and senior citizens. The Low Income Housing Tax Credit has proved to be essential in encouraging investment in affordable rental housing for low-income people and senior citizens; and

"Whereas, In Michigan, over 40,000 families with average incomes under \$22,000 have been able to purchase a home due to the availability of Mortgage Revenue Bonds. Moreover,

Mortgage Revenue Bonds have financed 19,000 home improvement loans for homeowners with average incomes of approximately \$11,000. These bonds have allowed individuals in every county of Michigan to buy or improve a home; and

"Whereas, Since 1987, more than 12,000 rental apartments have been constructed or maintained in Michigan because of Low Income Housing Tax Credits. These units were made available to families and senior citizens whose incomes were approximately half of the median income in the state; and

"Whereas, Due to the Omnibus Budget Reconciliation Act of 1990, Mortgage Revenue Bonds and the Low Income Housing Tax Credit cannot be used for housing after December 31, 1991. The members of this legislative body are deeply concerned by the potential loss of affordable financing for low and moderate income people, including our ever-increasing senior citizen population. Presently, legislation is pending in the United States Congress to extend the sunset on Mortgage Revenue Bonds and the Low Income Housing Tax Credit; S. 167 and H.R. 1067 would extend Mortgage Revenue Bonds and S. 308 and H.R. 413 would extend the Low Income Housing Tax Credit; now, therefore, be it

"Resolved by the Senate, That the members of this legislative body memorialize the Congress of the United States to pass legislation extending the sunset on Mortgage Revenue Bonds and the Low Income Housing Tax Credit; and be it further

"Resolved, That a copy of this legislation be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Michigan congressional delegation."

POM-43. A resolution adopted by the City Council of Sweetwater, Florida urging Congress to cease all aid to Jordan and other countries which supported Iraq during Operations Desert Shield and Desert Storm; to the Committee on Foreign Relations.

POM-44. A resolution adopted by the City Council of Sweetwater, Florida favoring the issuance of commemorative postage stamps honoring the forces which served during Operations Desert Shield and Desert Storm; to the Committee on Governmental Affairs.

POM-45. A resolution adopted by the Senate of the State of Michigan; to the Committee on Governmental Affairs.

"SENATE RESOLUTION NO. 74

"Whereas, Due to our victory in the Persian Gulf War and the awaited triumphant return of our brave and patriotic fighting men and women, there is a renewed and justified sense of pride sweeping across our nation. Indeed, we are feeling far different about our country and our military might than we have since the Vietnam War. While our citizens certainly deserve the right to enjoy our victory and to forget about the negative aspects of the Vietnam War, we can never forget about those we left behind in Southeast Asia; and

"Whereas Seventy-three Michigan citizens are still considered Missing in Action (MIA) or Prisoners of War (POW) from the Vietnam War. The families of these POW/MIAs have been suffering for decades, always wondering and never knowing about their loved one. It is time to renew our commitment to find our POW/MIAs; and

"Whereas, Presently before the United States Congress are two bills that can help our POW/MIAs and their families. H.R. 1147, The Truth Bill, would require the United

States government to make classified information available to the families of POW/MIAs. H.R. 1730, The Missing Service Personnel Act, would prohibit changing the status of a POW/MIA to Killed In Action (KIA) while there is still a possibility that the missing serviceman is a Prisoner of War; and

"Whereas, While these bills would greatly ease the burden of the families of POW/MIAs, only bringing them home will end their suffering. On behalf of the families of Michigan's seventy-three Vietnam POW/MIAs, we ask Congress to report on what has been done to locate our POW/MIAs, and to continue reporting until they are home. We also memorialize Congress to establish a Senate Select Committee to investigate the POW/MIA issue; now, therefore, be it

"Resolved, by the Senate, That we memorialize the Congress of the United States to report within sixty days to the Michigan Legislature what has been done to locate the seventy-three Michigan men still considered Prisoners of War or Missing in Action from the Vietnam War, followed by quarterly reports; and be it further

"Resolved, That we memorialize Congress to enact H.R. 1147, the Truth Bill, and H.R. 1730, The Missing Service Personnel Act, to help the families of POW/MIAs; and be it further

"Resolved, That we memorialize Congress to establish a Senate Select Committee to investigate the POW/MIA issue; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation."

POM-46. A resolution adopted by the Senate of the State of Michigan; to the Committee on Governmental Affairs:

"SENATE CONCURRENT RESOLUTION NO. 109

"Whereas, Due to our victory in the Persian Gulf War and the awaited triumphant return of our brave and patriotic fighting men and women, there is a renewed and justified sense of pride sweeping across our nation. Indeed, we are feeling far different about our country and our military might than we have since the Vietnam War. While our citizens certainly deserve the right to enjoy our victory and to forget about the negative aspects of the Vietnam War, we can never forget about those we left behind in Southeast Asia; and

"Whereas, Seventy-three Michigan citizens are still considered Missing in Action (MIA) or Prisoners of War (POW) from the Vietnam War. The families of these POW/MIAs have been suffering for decades, always wondering and never knowing about their loved one. It is time to renew our commitment to find our POW/MIAs; and

"Whereas, Presently before the United States Congress are two bills that can help our POW/MIAs and their families. H.R. 1147, The Truth Bill, would require the United States government to make classified information available to the families of POW/MIAs. H.R. 1730, The Missing Service Personnel Act, would prohibit changing the status of a POW/MIA to Killed in Action (KIA) while there is still a possibility that the missing serviceman is a Prisoner of War; and

"Whereas, While these bills would greatly ease the burden of the families of POW/MIAs, only bringing them home will end their suffering. On behalf of the families of Michigan's seventy-three Vietnam POW/MIAs, we ask Congress to report on what has been

done to locate our POW/MIAs, and to continue reporting until they are home. We also memorialize Congress to establish a Senate Select Committee to investigate the POW/MIA issue, now, therefore, be it

"Resolved by the Senate (the House of Representatives concurring), That we memorialize the Congress of the United States to report within sixty days to the Michigan Legislature what has been done to locate the seventy-three Michigan men still considered Prisoners of War or Missing in Action from the Vietnam War, followed by quarterly reports; and be it further

"Resolved, That we memorialize Congress to enact H.R. 1147, The Truth Bill, and H.R. 1730, The Missing Service Personnel Act, to help the families of POW/MIAs; and be it further

"Resolved, That we memorialize Congress to establish a Senate Select Committee to investigate the POW/MIA issue; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation."

POM-47. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Select Committee on Indian Affairs:

"HOUSE CONCURRENT RESOLUTION NO. 5009

"Whereas, Native American populations need to have their heritage and cultural background well represented in the state's libraries, especially Haskell Indian Junior College, a federal school; and

"Whereas, The 1990 Kansas Governor's conference on libraries and information services, in its Resolution No. 21, requested that an appropriate state legislative or executive committee be established to develop methods for state and local governments to assist Haskell Indian Junior College and to establish and maintain Haskell's ability to serve the special needs of Native American populations; and

"Whereas, The Library Services and Construction Act (20 USCA 351 et seq.) as well as the Higher Education Act (20 USCA 1001 et seq.) take into consideration the unique status of Haskell Indian Junior College: Now, therefore,

"Be it resolved by the House of Representatives of the State of Kansas The Senate concurring therein: that we petition the United States Congress to designate Haskell Indian Junior College as a major research reference library for Native American literature, records, and historical data; to fund it as such; and to authorize Haskell Indian Junior College to be an official repository for Native American literature, records, and historical data, with all the powers and responsibilities that are implied by the designation; and

"Be it further resolved: That the Archivist of the United States be encouraged to lend all assistance in the establishment of the repository; and

"Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, each member of the Kansas delegation in the United States Congress; and President Bob Martin, Haskell Indian Junior College, Lawrence, Kansas 66046."

POM-48. A resolution adopted by the Legislature of Rockland County, New York urg-

ing the Attorney General to drop his appeal in a certain case; to the Committee on the Judiciary.

POM-49. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on the Judiciary.

"JOINT RESOLUTION

"Whereas, although the right of free expression is part of the foundation of the United States Constitution, very carefully drawn limits on the expression in specific instances have long been recognized as a legitimate means of maintaining public safety and decency, as well as orderliness and the productive value of public debate; and

"Whereas, certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, the rights of expression, and the sacred values of others; and

"Whereas, there are symbols of our national soul, such as the Washington Monument, the United States Capitol, and memorials to our greatest leaders, that are the property of every American and are therefore worthy of protection from desecration and dishonor; and

"Whereas, the American flag, to this day, is the most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults and that remains the destination of millions of immigrants attracted by the universal power of American ideals; and

"Whereas, the law, as interpreted by the United States Supreme Court, no longer affords to the Stars and Strips that reverence, respect, and dignity befitting the banner of the most noble experiment of a nation-state; and

"Whereas, it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency.

"Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana:

"That the Legislature of the State of Montana respectfully petition the Congress of the United States to consider an amendment to the United States Constitution, for ratification by the states, specifying that Congress and the states have the power to prohibit the physical desecration of the flag of the United States.

Be it further resolved, that the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate, and each member of Montana's Congressional Delegation."

POM-50. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION NO. 1612

"Whereas, The United States Supreme Court has held that the burning of the American Flag is a protected form of free speech under the First Amendment of the United States Constitution; and

"Whereas, The American Flag has served as a rallying force for American fighting men and women from Yorktown to the Sanh and the Persian Gulf; and

"Whereas, Millions of Americans hold the American Flag in deep reverence, as evidenced by the fact that Flag desecration was prohibited by an act of Congress and by the laws of 48 of the 50 states; and

"Whereas, The American Flag symbolizes the ideas of liberty and equality and what

our nation is and what it values and further symbolizes the cherished constitutional rights Americans have fought and died for; and

"Whereas, Kansans strongly support, cherish and many proudly display the American Flag; and

"Whereas, Kansans have a long history of patriotism in support of the Constitution and the American Flag; and

"Whereas, In the early days of Statehood, Kansans were selective of a Constitution because of the slavery issue; and

"Whereas, Many Union Army veterans came to Kansas because of Kansas being a free state by popular vote prior to the Civil War; and

"Whereas, Kansans, in disproportionate numbers, have fought in the Spanish-American war, World War I, World War II, the Korean war and the Vietnam war. Kansas also sent critical units to the Persian Gulf in support of freedom; and

"Whereas, Kansans hold dear the right to effect peaceful change through political means, such as giving women the right to vote, an issue early decided in Kansas; and

"Whereas, Kansans are careful and deliberate people who possess a deep respect for human rights, freedom, the democratic process and our republican form of government with its built-in checks and balances; and

"Whereas, Kansans are deeply concerned and want Congress to protect the Constitution as well as our national symbols; and

"Whereas, Kansans have often taken a leadership role in working to preserve our form of government and the rights guaranteed to individuals therein; and

"Whereas, The framers of the Constitution created the First Amendment to discourage the oppression of the views expressed by unpopular minorities; and

"Whereas, No other American symbol has been as universally honored as the American Flag; and

"Whereas, Kansans find the desecration of the American Flag to be highly offensive; and

"Whereas, Kansans believe that the right to express displeasure with government is a cherished right protected by the First Amendment; however, the Flag represents the ideals and beliefs of the nation and Kansans believe that the desecration of the American Flag is an atrocious act which many feel should be prohibited; and

"Whereas, The Cross and other Religious Symbols represent the ultimate personal beliefs of members of many religious sects; and

"Whereas, Many citizens of this State regard the Cross or other Religious Symbols as sacred objects embodying a holy supreme being; and

"Whereas, The burning of a Cross or other Religious Symbols is often done to intimidate or harass members of racial, religious or ethnic minorities; and

"Whereas, The burning of Religious Symbols is abhorrent, whether intended as a display of disdain for others' religious beliefs or as an act of terrorism against American minority citizens, and should be prohibited; and

"Whereas, Several states have passed or are considering resolutions urging Congress to submit a constitutional amendment which would allow the Congress and States to punish as a crime desecration of the American Flag even though the controlling Supreme Court cases, *United States v. Eichman* and *Texas v. Johnson*, and the changes in the composition of the Supreme Court leave room for statutory approaches: Now, therefore,

"Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature expresses strong support for the American Flag and the Cross and other Religious Symbols and urges the Congress of the United States, if it finds that existing means of combating desecration of the Flag and the Cross and other Religious Symbols are inadequate, to carefully balance the desires of many to protect the American Flag and the Cross and other Religious Symbols from desecration against the important freedoms of speech and religion guaranteed by the Constitution; and to not sacrifice central First Amendment principles, and to preserve the values and basic constitutional rights that the American people have long fought for under the American Flag; and

"Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and all members of the congressional delegation from the State of Kansas."

POM-51. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on Labor and Human Resources:

"JOINT RESOLUTION

"Whereas, 37 million Americans are without health insurance coverage of any kind; and

"Whereas, costs of medical care are raising twice as fast as the rate of inflation; and

"Whereas, per capita health care costs in Montana are expected to increase from \$2,059 in 1990 to \$4,686 in 2000; and

"Whereas, 20% of all people in Montana have no health insurance, and an even larger percentage are underinsured; and

"Whereas, our current health care system in this country is a patchwork of private and government programs that are both expensive and inefficient, with 23 cents of every health care dollar spent for administration and bureaucracy; and

"Whereas, as health care costs raise, employers are less and less able to pay for health insurance for employees, resulting in negotiation deadlocks, strikes, and further restrictions on access to health insurance for America's working class citizens; and

"Whereas, the cost of employer health care raised by 18.6% in 1988 and by 20.4% in 1989; and

"Whereas, families are becoming impoverished paying for the costs of long-term care; and

"Whereas, prescription drug costs in the last decade have increased at more than triple the general rate of inflation; and

"Whereas, infant mortality rates are climbing in the United States, especially among poor people; and

"Whereas, poor people are being turned away from health care; and

"Whereas, preventable disease is on the rise in the United States, especially among the poor; and

"Whereas, preventable diseases, such as measles, mumps, rubella, whooping cough, and polio, are increasing among children because they lack access to medical care; and

"Whereas, the death rate from preventable causes is on the rise in the United States; and

"Whereas, a national health care program would provide quality, comprehensive health care to all citizens of the United States; and

"Whereas, all medically necessary services would be paid under a national health care program, eliminating the patchwork of ex-

isting private and government health care programs; and

"Whereas, under a national health care program, health care practitioners would maintain their private practice and patients would have the freedom to choose their own physician or hospital.

"Now therefore, be it resolved by the Senate and the House of Representatives of the State of Montana:

"That the Legislature of the State of Montana urge the United States Congress to enact legislation to provide a national health care program for all citizens of the United States.

"Be it further resolved, that Congress include in a national health care program:

"(1) a single-payer system for the payment of health care; and

"(2) coverage for basic health care, including long-term care.

"Be it further resolved, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of the Montana Congressional Delegation."

POM-52. A resolution adopted by the Board of Chosen Freeholders of the County of Monmouth, New Jersey urging the establishment of permanent medical care for a certain veteran and all combat wounded veterans; to the Committee on Veterans' Affairs.

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. SHELBY:

S. 1002. A bill to impose a criminal penalty for flight to avoid payment of arrearages in child support; to the Committee on the Judiciary.

By Mr. GLENN (for himself and Mr. SPECTER):

S. 1003. A bill to provide for appointment by the President, by and with the advice and consent of the Senate, of certain officials of the Central Intelligence Agency; to the Select Committee on Intelligence.

By Mr. HOLLINGS:

S. 1004. A bill to authorize a certificate of documentation for the vessel *Billfish*; to the Committee on Commerce, Science, and Transportation.

S. 1005. A bill to authorize a certificate of documentation for the vessel *Marsh Grass III*; to the Committee on Commerce, Science, and Transportation.

S. 1006. A bill to authorize a certificate of documentation for the vessel *Miss Lelia*; to the Committee on Commerce, Science, and Transportation.

By Mr. JOHNSTON (by request):

S. 1007. A bill to withdraw certain public lands in Eddy County, New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCONNELL:

S. 1008. A bill to require State agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Department of Justice; to the Committee on the Judiciary.

By Mr. COATS:

S. 1009. A bill to amend the Internal Revenue Code of 1986 to increase the amount of

the exemption for dependent children under age 18 to \$4,000, and for other purposes; to the Committee on Finance.

By Mr. INOUE (for himself, Mr. ADAMS, Mr. AKAKA, Mr. BOND, Mr. CRANSTON, and Ms. MIKULSKI):

S. 1010. A bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendants; to the Committee on Commerce, Science, and Transportation.

By Mr. KASTEN (for himself, Mr. BOND, Mr. JEFFORDS, Mr. KOHL, and Mr. DURENBERGER):

S. 1011. A bill to require the Secretary of Agriculture to make payments under the dairy export incentive program to promote the export of certain minimum quantities of nonfat dry milk and butter during fiscal year 1991, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BRYAN (for himself, Mr. HOLLINGS, Mr. DANFORTH, Mr. GORTON, Mr. MCCAIN, and Mr. KERRY):

S. 1012. A bill to authorize appropriations for the activities and programs of the National Highway Traffic Safety Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY (for himself and Mr. COATS):

S. 1013. A bill to amend the Internal Revenue Code of 1986 to increase the amount of the earned income tax credit for individuals with young children; to the Committee on Finance.

By Mr. GRASSLEY:

S. 1014. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption amount; to the Committee on Finance.

By Mr. MCCAIN:

S. 1015. A bill to amend the Communication Act of 1934 to require that the live television transmission of certain sporting events be available by broadcast over a national broadcast television network; to the Committee on Commerce, Science, and Transportation.

By Mr. PELL:

S. 1016. A bill to amend the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to develop comprehensive tests of academic excellence, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. EXON:

S. 1017. A bill to amend title 11, United States Code, to provide that an automatic stay in certain bankruptcy proceedings shall not apply to State property taxes; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SHELBY:

S. 1002. A bill to impose a criminal penalty for flight to avoid payment of arrearages in child support; to the Committee on the Judiciary.

CRIMINAL PENALTY FOR FLIGHT TO AVOID PAYMENT OF CHILD SUPPORT

Mr. SHELBY. Mr. President, I rise today to introduce an important piece of legislation regarding child support enforcement. I am pleased that my colleague from Illinois, Mr. HYDE, has introduced the same legislation in the House of Representatives.

Nationwide, \$18 billion in child support obligations remain uncollected. In 1985, 4,381,000 women were supposed to receive child support. Less than half of these women received full payment, while 1,138,000 received nothing at all. When looking at women and their children who live below the poverty line, these figures become even more alarming. Clearly, our society needs to take a stronger position on the abandonment of children. Our country needs to make the enforcement of child support a major priority.

Each State varies from another in laws and enforcement capabilities. Although, all 50 States have laws giving local authorities the right to garnish paychecks and seize property of a delinquent parent, these laws are of little help when a runaway spouse crosses a State line. Absent parents often avoid their child support responsibility by fleeing the State.

The legislation that I am introducing today will make it a Federal crime for a parent or legal guardian to cross a State line in order to avoid payment of child support. A first offense is punishable by fine or imprisonment of up to 6 months. Further offenses can be punished by up to 2 years of imprisonment. This legislation will crack down on State garnishment laws. The delinquent father will be less likely to flee a State to avoid child support payments when faced with the prospect of serving time in a Federal penitentiary.

Mr. President, nonpayment of child support is a national disgrace, a form of economic child abuse. Divorce and single-parenting are traumatic enough without leaving economic ruin in its wake. I urge my colleagues to give this measure serious consideration and join me in sending a strong signal to those parents in this country who have escaped court-ordered child support by simply moving to a new State. I also ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1002

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FLIGHT TO AVOID PAYMENT OF ARREARAGES IN CHILD SUPPORT.

Chapter 49 of title 18, United States Code, is amended by adding at the end the following:

"§ 1075. Flight to avoid payment of arrearages in child support

"(a)(1) Whoever, for the purpose of avoiding payment of an arrearage under a legal child support obligation, leaves or remains outside the State in which such obligation is imposed, shall be fined under this title or imprisoned not more than six months for the first offense and not more than two years for a second or subsequent offense.

"(2) An absence of six months without any payment of arrearage shall create a rebuttable presumption of intent to avoid arrearage payment under this section.

"(3) After serving a term of imprisonment for an offense under this section, the continued failure to pay an arrearage for six months shall constitute a second offense under this section.

"(b) As used in this section—

"(1) the term 'arrearage' means, with respect to a legal child support obligation, a judicially determined arrearage in payments under such obligation; and

"(2) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States."

SEC. 2. TECHNICAL AMENDMENT.

The table of sections for chapter 49 of title 18, United States Code, is amended by adding at the end the following:

"1075. Flight to avoid payment of arrearages in child support".

By Mr. GLENN (for himself and Mr. SPECTER):

S. 1003. A bill to provide for appointment by the President, by and with the advice and consent of the Senate, of certain officials of the Central Intelligence Agency; to the Select Committee on Intelligence.

APPOINTMENT OF CERTAIN OFFICIALS BY THE PRESIDENT

Mr. GLENN. Mr. President, I rise to introduce legislation, on behalf of myself and Senator SPECTER, which would require Presidential nomination and Senate confirmation of the following six officials at the Central Intelligence Agency [CIA]: The Deputy Director for Operations; the Deputy Director for Intelligence; the Deputy Director for Science and Technology; the Deputy Director for Administration; the Deputy Director for Planning and Coordination; and the General Counsel.

Currently, the law mandates Presidential nomination and Senate confirmation of three officials at the CIA: the Director of Central Intelligence [DCI], the Deputy Director of Central Intelligence [DDCI], and the CIA Inspector General [IG].

President Bush announced this morning the impending departure of William Webster as Director of Central Intelligence. Judge Webster is a man of enormous integrity and has done a fine job as DCI. This summer, the Senate Select Committee on Intelligence will be holding a series of confirmation hearings on a nominee to replace Judge Webster as DCI. Today's announcement underscores the importance of the confirmation process.

Mr. President, I believe that this measure is needed for several reasons. The CIA general counsel and the five deputy directors have responsibilities that have significant and increasing importance for U.S. National Security. Requiring Presidential appointment and Senate confirmation of these positions would merely validate this standing.

As the Federal Government has expanded and become more complex since World War II, the Presidential nomination and Senate confirmation process

has become an increasingly important means to ensure the accountability of senior level executive branch officials to the American people through their duly elected representatives in the Congress. In addition, the Senate confirmation process provides a second forum to assess the competence of an individual for a high-ranking post in the Federal Government—serving as a check against possible executive branch politicization of these positions.

Of the hundreds of positions requiring Senate confirmation, these six officials at the CIA are at least as high in rank and importance of their position as officials in similar roles in other agencies and departments. For example, there are over 40 positions at the Department of Defense requiring Senate confirmation; 20 positions at the Department of Energy; and nearly 30 positions requiring confirmation in the State Department—in addition to numerous ambassadorships.

As the CIA has grown over the years, its support for U.S. national security policies—which include intelligence collection and analysis as well as covert action—have broadened into many different areas. The individuals who hold these six positions advise the DCI and the DDCI about policy. The DCI and the DDCI are in turn responsible for providing leadership and direction not only to the CIA, but the entire U.S. intelligence community as well. Thus, the five CIA Deputy Directors and the CIA General Counsel play a significant role supporting the entire national security infrastructure of our country.

The CIA's Deputy Director for Operations, for example, has responsibility for human source intelligence collection and is responsible for extraordinarily sensitive and highly classified operations. In addition, the Deputy Director for Intelligence has responsibility for producing intelligence assessments in support of U.S. policymakers. These intelligence estimates form the foundation of our foreign policy and define the threat to U.S. national security that is the basis of our defense spending.

The CIA's General Counsel is responsible for providing legal advice to the DCI and the agency as a whole on all matters. (1 of the recommendations of the congressional committees investigating the Iran-Contra affair was that the General Counsel of the CIA be confirmed by the Senate). In addition, the Deputy Director for Planning and coordination is responsible for identifying intelligence collection and analysis priorities for the agency—a particularly important position considering today's rapidly evolving international security environment.

Mr. President, I believe that Senate confirmation of these positions could also serve to strengthen relations between the executive branch and the

Congress. The confirmation process will reduce the likelihood of future problems resulting from unqualified individuals holding these positions. Hopefully, both the President and the DCI will consult the Senate Select Committee on Intelligence [SSCI]—which will have jurisdiction over these nominations—prior to formal nomination in order to solicit committee views.

The confirmation process can serve to create confidence and rapport between the nominee and the legislative branch. Through the record established during confirmation, the nominee and the SSCI could clarify and establish a common understanding of the position's role and responsibilities, develop a constructive working relationship, and define the appropriate constraints on CIA activities. I believe that this process will go a long way toward avoiding future problems as a result of misunderstandings, which in turn could lead to abuses of authority.

Some may argue that to require Presidential nomination and Senate confirmation of these individuals will somehow "politicize" these positions by bringing in inexperienced outsiders as senior personnel at the CIA.

Mr. President, I believe that this argument is unpersuasive. In fact, I am convinced that the Senate confirmation process will help to prevent the politicization of these positions by ensuring that only well qualified individuals serve in these posts. This will prevent the possibility of appointments made by DCIS which might be based on political factors or personal and business ties. Such appointments could ultimately be damaging to the CIA and its mission.

Indeed, I have addressed this concern in the legislation. Subsection (b) of the bill specifies that appointments "shall be made without regard to political affiliation and shall be limited to persons with substantial prior experience and demonstrated ability in the field of foreign intelligence or counterintelligence, or, in the case of the general counsel, to persons either with substantial prior experience and demonstrated ability in the field of foreign intelligence or counterintelligence or in a related area of the law."

Mr. President, I am second to no one in my support for a strong, effective, and responsible intelligence capability for our Nation. Nevertheless, the CIA, like any large bureaucracy, is capable of waste, abuse, mismanagement, and incompetence. Because the CIA is such a vast and secretive organization, it is essential that it be fully accountable for its actions.

Intelligence activities are consistent with democratic principles only when they are conducted in accordance with the law and in an accountable manner to the American people through their duly elected representatives. I believe

that Presidential nomination and Senate confirmation of the CIA's general counsel and the five deputy directors will serve to strengthen the accountability of the CIA—and ultimately enhance the effectiveness of this important agency.

By Mr. HOLLINGS:

S. 1004. A bill to authorize a certificate of documentation for the vessel *Billfish*; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "BILLFISH"

• Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel *Billfish*, official number 920896, be accorded coastwise trading privileges and be issued a coastwise endorsement under 46 U.S.C. 12106.

The *Billfish* was constructed in Merrit Island, FL, in 1978 as a recreational vessel. It is 29.6 feet in length, 11.5 in breadth, has a depth of 6 feet, and is self-propelled.

The vessel was purchased on December 8, 1989, by Jay R. Johnson of Charleston, SC, who intended to employ it in a charter fishing business. When Mr. Johnson purchased the boat, it was documented with the U.S. Coast Guard, and he assumed that there were no restrictions on operating the boat as a passenger vessel carrying six or less passengers. However, due to certain vessel documentation laws, the vessel did not meet the requirements for a coastwise license endorsement that is required in the operation of a charter fishing business in the United States.

After an extensive investigation, the vessel's owner was able to submit proof of ownership of numerous prior owners of the boat. However, he was not able to meet the requisite demands of the Coast Guard that requires proof of U.S. citizenship of all prior owners of a vessel in order for that vessel to qualify for coastwise trading privileges. As a result, the vessel's owner has received documentation for the *Billfish* for recreational purposes, but not coastwise trade, thereby preventing him from using the boat for the purpose for which he purchased the vessel.

The owner of the *Billfish* is thus seeking a waiver of the existing law because he wishes to use the vessel for small fishing charters. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Billfish* to engage in the coastwise trade and the fisheries of the United States.●

By Mr. HOLLINGS:

S. 1005. A bill to authorize a certificate of documentation for the vessel *Marsh Grass III*; to the Committee on

Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "MARSH GRASS III"

• Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel *Marsh Grass III*, official number 96316, be accorded coastwise trading privileges and be issued a coastwise endorsement under 46 U.S.C. 12106.

The *Marsh Grass III* is a fishing vessel that was built in Miami, FL for Chantiers France in 1962. It is 30.27 feet in length, 10.87 feet in breadth, and has a depth of 4.81 feet.

The vessel was purchased on April 26, 1990 by Marsha Hass of Charleston, SC to be used primarily as a fishing vessel. At the present time, the vessel is restricted from coastwise trade due to the fact that it has not been under continuous ownership by a U.S. citizen. The current owner was unaware at the time of the purchase of the *Marsh Grass III* that it had been built for a foreign entity. She also was unfamiliar with the laws restricting coastwise trade for vessels previously owned by foreign entities. Official U.S. documentation for the *Marsh Grass III* has since been received, and it has been inspected by the U.S. Coast Guard.

The owner of the *Marsh Grass III* is seeking a waiver of existing law because she wishes to use the vessel to carry passengers for small fishing charters. Her desired intentions for the vessel's use would not have a detrimental effect of the coastwise trade in U.S. waters. It is her desire to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing today is to allow the *Marsh Grass III* to engage in the coastwise trade and the fisheries of the United States.●

By Mr. HOLLINGS:

S. 1006. A bill to authorize a certificate of documentation for the vessel *Miss Lelia*; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "MISS LELIA"

• Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel *Miss Lelia*, official number 577213, be accorded coastwise trading privileges and be issued a coastwise endorsement under 46 U.S.C. 12106.

The *Miss Lelia* was constructed in Fort Lauderdale, FL in 1976 as a fishing vessel. It is 34.1 feet in length, 13.6 feet in breadth, has a depth of 6.3 feet, and is self-propelled.

The vessel was purchased March 7, 1990, by J.R. Copeman and James W. Green of Rockville, SC, to be used primarily as a fishing vessel. The owners of this vessel also wish to use the *Miss Lelia* to carry passengers for hire—divers—which falls under the restrictions of coastwise trade.

At the present time, the vessel is restricted from coastwise trade due to its having been under foreign ownership in the past, of which the current owners

were unaware when they purchased the *Miss Lelia*. Official U.S. documentation for the *Miss Lelia* has since been received, however, and it has been inspected by the U.S. Coast Guard.

The owners of the *Miss Lelia* are seeking a waiver of existing law in order to carry passengers for hire. Their desired intentions for its use in no way will adversely affect coastwise trade in the U.S. coastal waters. It is their desire to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing today is to allow the *Miss Lelia* to operate in coastwise trade of the United States.●

By Mr. JOHNSTON (by request):

S. 1007. A bill to withdraw certain public lands in Eddy County, New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT

• Mr. JOHNSTON. Mr. President, I am pleased to introduce today at the request of the administration legislation that would permanently withdraw the public land surrounding the waste isolation pilot plant in Carlsbad, NM. This legislation has been submitted by the Department of Energy. It is an important milestone in the Department's efforts to open the WIPP facility for a 5-year demonstration phase.

The Waste Isolation Pilot Plant is a research and development facility of the Department of Energy that was authorized by Public Law 96-164 for the purpose of demonstrating the safe disposal of transuranic radioactive waste generated by DOE's nuclear weapons production activities. The WIPP facility, built 2,000 feet below the surface in the Delaware salt basin in New Mexico, has been under construction since 1981. Construction of the facility is now completed, and the facility will soon be ready to begin the demonstration phase. During that phase, DOE will conduct a series of experiments to evaluate the facility's ability to comply with the environmental laws governing the safe storage and disposal of nuclear waste.

The WIPP site consists of 10,240 acres in Eddy County, NM, all of which is public land administered by the Bureau of Land Management. Currently, the land is utilized under an administrative land withdrawal issued by the Department of the Interior in June 1983. This administrative withdrawal is for a period of 8 years. However, it does not authorize use of the land for transportation, storage, or burial of any radioactive waste at the site.

The Department of the Interior has completed action on a modification of the existing land order that would allow use of radioactive waste at the site for testing purposes. However, the administration has agreed to defer its

effective date until June to give Congress a chance to consider land withdrawal legislation.

The Department's legislation that I am introducing today would permanently withdraw this land from the public domain and transfer it to control by the Department of Energy. It would be possible to continue use of the land under the recently-approved modification of the existing land order, at least for the demonstration phase. However, both the Department of Energy and the State of New Mexico have indicated a preference to withdraw the land permanently through legislation.

DOE is seeking a permanent land withdrawal for several reasons. The environmental standards of the Environmental Protection Agency [EPA] for disposal of radioactive waste require that DOE exercise active institutional control over the disposal site for up to 100 years and passive control thereafter. Since DOE has statutory responsibility for managing radioactive waste, the agency should have permanent jurisdiction and control over the site. In addition, because the period of active use and institutional controls will exceed the maximum 20-year period for administrative land withdrawals, a statutory, permanent land withdrawal is desirable.

The target date for completion of activities leading to the opening of WIPP is now July 1991. The Department has been moving quickly toward completion of the tasks that remain prior to the opening of WIPP for the demonstration phase. I hope that we in Congress will do our part and move quickly on the land withdrawal legislation that has been submitted by the Department. It is important that we get started working on this legislation now so that the opening of this facility will not be delayed by the failure of the Congress to enact legislation.

Transuranic waste from our Nation's defense production activities is generated and stored at 10 DOE sites around the country. At some of these sites, we are running out of the limited temporary storage space. Therefore, opening of this facility will be an extremely important step in demonstrating that the defense waste cleanup is underway at DOE sites around the country.

The Committee on Energy and Natural Resources has been monitoring the progress of the WIPP facility for several years now. I am pleased that we have now reached the point that this important facility is almost ready to open. This is a major milestone in the Department's efforts to demonstrate that we have the technology necessary to store and dispose safely the byproducts of our Nation's nuclear weapons.

Mr. President, I ask unanimous consent that the transmittal letter from the Department of Energy, a section-by-section analysis, and the text of the

bill be printed in the RECORD following my statement.

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

S. 1007

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 "Waste Isolation Pilot Plant Land Withdrawal Act."

SEC. 2. DEFINITIONS.

As used in this Act—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agreement" or "Agreement for Consultation and Cooperation" means the July 1, 1981, Agreement for Consultation and Cooperation, as amended by the November 30, 1984 "First Modification" and the August 4, 1987 "Second Modification," or as it is amended after the date of enactment of this Act, between the State of New Mexico and the United States Department of Energy as authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164);

(3) "EEG" means the Environmental Evaluation Group for the Waste Isolation Pilot Plant referred to in section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456).

(4) "Secretary" means the Secretary of Energy; and

(5) "WIPP" means the Waste Isolation Pilot Plant project authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 to demonstrate the safe disposal of radioactive waste materials generated by defense programs.

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP.

(a) WITHDRAWAL, JURISDICTION, AND RESERVATION.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in subsection (c) are withdrawn from all forms of entry, appropriation, and disposal under the general land laws (including without limitation the mineral leasing laws, the geothermal leasing laws, the material sale laws, except as provided in section 4(b)(2)(D) of this Act, and the mining laws). These lands shall be known as the "Waste Isolation Pilot Plant Withdrawal" (referred to in this Act as the "Withdrawal").

(2) Jurisdiction over the Withdrawal is transferred permanently from the Secretary of the Interior to the Secretary. The Withdrawal is permanently reserved for the use of the Secretary for the construction, operation, repair and maintenance, shutdown, monitoring, decommissioning, post-decommissioning control, and other authorized activities associated with, and limited by, the mission of the WIPP.

(b) REVOCATION OF PUBLIC LAND ORDERS.—Public Land Order 6403, of June 29, 1983, as modified by Public Land Order 6826 of January 28, 1991, and the memorandum of understanding accompanying Public Land Order 6826, are revoked.

(c) LAND DESCRIPTION.—(1) The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled "WIPP Withdrawal Site Map," dated October 9, 1990 and on file with the Bureau of Land Management, New Mex-

ico State Office, are established as the boundaries of the Withdrawal.

(2) Within 30 days after the date of enactment of this Act, the Secretary of the Interior shall:

(A) publish in the Federal Register a notice containing a legal description of the Withdrawal; and

(B) file copies of the map and the legal description of the Withdrawal with the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the Secretary, the Governor of the State of New Mexico, and the Archivist of the United States.

(d) TECHNICAL CORRECTIONS.—The map and legal description referred to in subsection (c) have the same force and effect as if they were included in this Act. The Secretary of the Interior may correct clerical and typographical errors in the map and legal description.

(e) WATER RIGHTS.—This Act does not establish a reservation to the United States with respect to any water or water rights on the Withdrawal. This Act does not authorize the appropriation of water on the Withdrawal by the United States after the date of enactment of this Act, except in accordance with the laws of the State of New Mexico. This Act does not affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) GENERAL AUTHORITY.—The Secretary shall be responsible for the management of the Withdrawal and the WIPP, and shall consult with the State of New Mexico in discharging those responsibilities as well as any other responsibility required by this Act.

(b) MANAGEMENT PLAN.—(1)(A) Within one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of the Interior and the State of New Mexico, shall develop a management plan for the use of the Withdrawal until such time as the decommissioning of the WIPP has been completed.

(B) Any use of the Withdrawal for activities not associated with the WIPP shall be subject to conditions and restrictions that may be necessary to permit the conduct of WIPP activities.

(2) The management plan shall address other uses of the Withdrawal, including, but not limited to, domestic livestock grazing, hunting and trapping, maintenance of wildlife habitat, the disposal of salt tailings remaining on the surface, and mining, in accordance with the following—

(A) GRAZING.—The Secretary shall permit grazing to continue where established before the date of enactment of this Act subject to regulations, policies, and practices that the Secretary determines necessary or appropriate. The management of grazing shall be conducted in accord with, among other authorities—

(i) the Act entitled "An Act to stop injury to public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes," approved June 28, 1934 (43 U.S.C. 315 et seq., commonly referred to as the "Taylor Grazing Act");

(ii) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.);

(iii) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902 et seq.); and

(iv) Executive Order 12548 (51 Fed. Reg. 5985).

(B) HUNTING AND TRAPPING.—The Secretary shall permit hunting and trapping within the Withdrawal in accordance with applicable laws and regulations of the United States and the State of New Mexico, except that the Secretary, after consultation with the State of New Mexico, may issue regulations designating zones where, and establishing periods when, no hunting or trapping is permitted for reasons of public safety, administration, or public use and enjoyment.

(C) WILDLIFE HABITAT.—In order to preserve the wildlife of the Withdrawal, the Secretary shall manage the Withdrawal so as to maintain the wildlife habitat.

(D) SALT TAILINGS.—Notwithstanding any other law, the Secretary shall dispose of salt tailings that are extracted from the Withdrawal and that are not needed for backfill at the WIPP. Disposition shall be made under sections two and three of the Act of July 31, 1947, as amended (30 U.S.C. 602, 603; commonly referred to as the "Materials Act of 1947").

(E) MINING.—Except for that mineral extraction permitted by the terms of certain leases existing below 6,000 feet in Section 31, Township 22 South, Range 31 East of the Withdrawal, more particularly described as Federal Oil and Gas Lease No. NMNM 02953 and Federal Oil and Gas Lease No. NMNM 02953C, which leases were granted prior to the date of enactment of this Act, surface or subsurface mining unrelated to the mission of the WIPP, including slant drilling under the Withdrawal from within or without the Withdrawal, shall not be permitted on or under the Withdrawal, before or after decommissioning.

(c) CLOSURE TO THE PUBLIC.—If the Secretary determines that the health and safety of the public or the common defense and security require the closure to the public use of any road, trail, or other portion of the Withdrawal, the Secretary may take whatever action the Secretary determines to be necessary or desirable to effect and maintain the closure.

(d) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements—

(1) with the Secretary of the Interior and the State of New Mexico for the administration of grazing within the Withdrawal; and

(2) with the State of New Mexico for the maintenance of the wildlife habitat of the Withdrawal.

(e) SUBMISSION OF PLAN.—Within one year after the date of enactment of this Act, the Secretary shall submit the management plan developed under subsection (b) to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, and the State of New Mexico. Any amendments to the plan shall be submitted promptly to those Committees and the State of New Mexico.

SEC. 5. PERFORMANCE ASSESSMENT PLAN.

The Secretary, in consultation with the National Academy of Sciences, the Administrator, the Governor of the State of New Mexico, and the EEG, shall develop and update a performance assessment plan to include experiments that the Secretary considers to be necessary to assure the protection of the health and safety of the public, to determine the timing of experiments, to estimate the quantities and types of waste required for any of these experiments, and to identify the data required to assess compliance with applicable Environmental Protec-

tion Agency disposal standards for transuranic waste.

SEC. 6. AUTHORIZATIONS.

(a) PERFORMANCE ASSESSMENT PHASE.—The Secretary may place transuranic waste in WIPP to perform tests and experiments during the performance assessment phase.

(b) DISPOSAL OPERATIONS.—Upon completion of—

(1) the performance assessment phase;

(2) the Secretary's determination, after the Administrator's review under section 8(a), that WIPP complies with environmental standards for the disposal of transuranic wastes; and

(3) submittal to Congress of the Secretary's plans for decommissioning the WIPP and managing the Withdrawal after the decommissioning of the WIPP, the Secretary may dispose of up to 6.2 million cubic feet of contact handled transuranic waste and 250,000 cubic feet of remote handled transuranic waste in WIPP.

SEC. 7. ISSUANCE OF ENVIRONMENTAL PROTECTION AGENCY DISPOSAL STANDARDS FOR TRANSURANIC WASTE.

(a) ISSUANCE OF ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—The Administrator, pursuant to authority under other provisions of law, shall—

(1) issue revised proposed environmental standards for disposal of transuranic wastes no later than 12 months after the date of enactment of this Act; and

(2) issue final environmental standards for disposal of transuranic wastes not later than two years after the date of enactment of this Act.

(b) COMPLIANCE WITH FUTURE STANDARDS.—If the Administrator is ordered by a court of law to repromulgate or reissue the standards required under subsection (a) or is enjoined from implementing the standards or is otherwise prevented from giving the standards full force and effect by a court of law, the Secretary shall demonstrate compliance with the standards required under subsection (a) notwithstanding any court order to the contrary, unless the court order expressly finds and orders that its injunction relates to substantive health and safety aspects of the standards directly applicable to the WIPP.

(c) FAILURE TO ISSUE.—If the Administrator fails to issue environmental standards for disposal of transuranic wastes under subsection (a), the Secretary shall demonstrate compliance with the environmental standards for the disposal of transuranic wastes as those regulations were in effect on November 18, 1985.

SEC. 8. COMPLIANCE WITH ENVIRONMENTAL PROTECTION AGENCY STANDARDS FOR TRANSURANIC WASTE.

(a) COMPLIANCE WITH ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—(1) The WIPP is subject to generally applicable Environmental Protection Agency radiation standards that apply to management and storage of transuranic waste.

(2) Prior to the permanent disposal of transuranic waste at the WIPP—

(A) the Secretary, with respect to the WIPP, shall comply with the Environmental Protection Agency disposal standards for transuranic waste established under section 7; and

(B) the Secretary shall submit a determination of compliance with Environmental Protection Agency disposal standards for transuranic wastes and necessary supporting documents to the Administrator for review. Within six months, the Administrator shall review and provide comments on the determination of compliance to the Secretary.

The Secretary, following review of the Administrator's comments, shall revise the determination of compliance as appropriate, and submit this determination to Congress.

(b) ENGINEERED BARRIERS.—The WIPP shall use both engineered and natural barriers to isolate transuranic waste after disposal to the extent necessary to comply with Environmental Protection Agency disposal standards for the waste. For purposes of this subsection, "engineered barriers" means the blackfill, room seals, and any other man-made barrier components of the disposal system.

SEC. 9. BAN ON HIGH-LEVEL RADIOACTIVE WASTE.

The Secretary shall not emplace or dispose of high-level radioactive waste as defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)) in the WIPP.

SEC. 10. ECONOMIC ASSISTANCE.

(a) WIPP-RELATED BUSINESS AND EMPLOYMENT OPPORTUNITIES.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that may be conducive to the economy of the State of New Mexico, especially Lea and Eddy counties, and report annually to the State of New Mexico on these activities.

(b) IMPACT ASSISTANCE PAYMENTS.—(1) The Secretary may provide payments to the State of New Mexico to assist the State and its affected units of local government in mitigating the potential environmental, social, transportation, economic and other impacts resulting from the WIPP. Upon initiation of the performance assessment phase, the Secretary may provide up to \$20,000,000 in each fiscal year beginning in fiscal year 1992 and continuing throughout the performance assessment phase. If, at the end of this phase, the Secretary determines that the site is suitable to become a repository for the disposal of transuranic waste, the Secretary may provide up to \$20,000,000 each fiscal year in which the repository is operated for disposal. Upon completion of disposal operations at the WIPP, the Secretary may provide up to \$13,000,000 each fiscal year until decommissioning of the repository is completed. A portion of all payments received by the State of New Mexico under this section shall be provided directly to the affected units of local government in the vicinity of, and along the transportation routes to, the WIPP. The portion of payments provided to local governments, the identification of local governments to receive payments, and the share of the local government payment to each local government shall be based on a State assessment of needs, conducted in consultation with its affected units of local government and based upon the demonstration of local impacts by the affected local governments.

(2) If the Secretary determines that the WIPP does not meet either the technical or the legal requirements for a transuranic mixed waste disposal facility, payments under this subsection may be terminated only after this waste is removed from the WIPP site and the associated impacts resulting from the WIPP have been mitigated.

(c) PAYMENTS EQUIVALENT TO TAXES.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide a payment each fiscal year to the State of New Mexico and each unit of local government in which the withdrawal is located. A payment under this subsection shall be determined by—

(1) calculating the amount the State of New Mexico and the unit of local govern-

ment would receive were they authorized to tax the development and operation of the WIPP, as the State of New Mexico and the unit of local government taxes the other comparable real property and industrial activities occurring within the State of New Mexico and the unit of local governing; and

(2) subtracting from the amount calculated under paragraph (1) any amount paid in the most recent fiscal year by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State of New Mexico and any of its local governments for contractor and subcontractor activities attributable to WIPP in excess of the actual amount paid in fiscal year 1990 by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State of New Mexico and any of its local governments for contractor and subcontractor activities attributable to WIPP.

Payments under this subsection shall continue until all activities related to the development and operation of the WIPP are terminated at the WIPP site.

(d) **POTASH LEASE.**—There is authorized to be appropriated to the Secretary such sums as may be necessary to acquire the 1,600 acre potash leasehold within the Withdrawal, comprising a portion of Federal Potash Lease No. NM0384584.

SEC. 11. DECOMMISSIONING OF THE WIPP.

(a) **PLAN FOR WIPP DECOMMISSIONING.**—Within five years after the date of enactment of this Act, the Secretary shall submit to the Committees on Armed Services and Energy and Natural Resources of the United States Senate; the Committees on Armed Services, Energy and Commerce, and Interior and Insular Affairs of the United States House of Representatives; the State of New Mexico; the Secretary of the Interior; and the Administrator a plan for decommissioning the WIPP. In addition to activities required under the Agreement, the plan shall be consistent with the disposal standards for transuranic wastes established by the Administrator that apply to the WIPP at the time the plan is prepared. The Secretary shall consult with the Secretary of the Interior and the State of New Mexico in the preparation of this plan.

(b) **MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.**—Within five years after the date of enactment of this Act, the Secretary shall develop a plan for the management and use of the Withdrawal following the decommissioning of the WIPP. The Secretary shall consult with the Secretary of the Interior and the State of New Mexico in the preparation of this plan.

SECTION-BY-SECTION ANALYSIS OF THE WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT

SECTION 1. SHORT TITLE

Section 1 would cite this Act as the "Waste Isolation Pilot Plant Land Withdrawal Act".

SECTION 2. DEFINITIONS

Section 2 would provide definitions relevant to the Act.

SECTION 3. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP

Section 3 would authorize the withdrawal of the land within the current boundaries of the WIPP site (the "Withdrawal"), comprised of some 10,240 acres, from all forms of entry, appropriation and disposal under the general land laws and the permanent transfer of jurisdiction over the Withdrawal to the Secretary of Energy (the "Secretary").

SECTION 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES

Section 4 would make the Secretary responsible for the management of the WIPP. The Secretary would be required to develop a management plan, in consultation with the Secretary of the Interior and the State of New Mexico, within one year of the date of enactment. Grazing, hunting, and trapping would be permitted within the Withdrawal, but would be subject to necessary or appropriate regulation. New surface or subsurface mining, including slant drilling, would be prohibited. The Secretary would have the authority to close any or all of the Withdrawal to the public.

SECTION 5. PERFORMANCE ASSESSMENT PLAN

Section 5 would require the Secretary, in consultation with the National Academy of Sciences, the Administrator of the EPA, the State of New Mexico, and the Environmental Evaluation Group, to develop and update a WIPP performance assessment plan that describes experiments needed to assess compliance with EPA standards for disposal of transuranic waste and any other experiments that the Secretary considers necessary.

SECTION 6. AUTHORIZATIONS

Section 6 would allow the Secretary to place transuranic waste in the WIPP for the purposes of the performance assessment phase. After completion of the performance assessment phase, the Secretary may begin permanently disposing of transuranic waste if he determines, after a review by the Administrator of the EPA as specified in section 8(a), that the WIPP complies with relevant environmental standards and has submitted plans for decommissioning the WIPP and managing the Withdrawal after decommissioning to the Congress. EPA's No-Migration Determination only allows emplacement of transuranic waste for the purposes of the test phase. Under the Resource Conservation and Recovery Act, the EPA would have to make a new or amended No-Migration Determination before the Department of Energy could begin permanent disposal operations. EPA's Determination would be made with full opportunity for public comment.

SECTION 7. ISSUANCE OF ENVIRONMENTAL PROTECTION AGENCY DISPOSAL STANDARDS FOR TRANSURANIC WASTE

Section 7 would require the Administrator of the EPA to issue final standards for disposal of transuranic wastes within two years after the date of enactment. The Secretary must demonstrate compliance with these standards notwithstanding any court order requiring the promulgation or reissuance of the standards or any injunction preventing their enforcement, unless the court finds that its injunction relates to health and safety aspects of the standards applicable to the WIPP. If the Administrator fails to issue standards for waste disposal, the Secretary must demonstrate compliance with the environmental standards for transuranic waste disposal in effect on November 18, 1985.

SECTION 8. COMPLIANCE WITH ENVIRONMENTAL PROTECTION AGENCY STANDARDS FOR TRANSURANIC WASTE

Section 8 would make the WIPP subject to EPA management and storage standards applicable to transuranic waste. Before disposal of transuranic wastes at WIPP, the Secretary must comply with EPA standards for disposal, submit a determination of compliance to the Administrator of the EPA for review, revise the determination of compliance as appropriate, and submit the deter-

mination to the Congress. This section also would require the WIPP to use both engineered and natural barriers to isolate the transuranic waste to the extent necessary to comply with EPA disposal standards.

SECTION 9. BAN ON HIGH-LEVEL RADIOACTIVE WASTE

Section 9 would prohibit the Secretary from placing high-level radioactive waste in the WIPP.

SECTION 10. ECONOMIC ASSISTANCE

Subsection (a) would require the Secretary to encourage WIPP related business and employment opportunities within the State of New Mexico.

Subsection (b) would provide for payments to the State of New Mexico to assist in the mitigation of environmental, social, economic, and other impacts resulting from the WIPP. The Secretary could provide up to \$20 million per fiscal year throughout the performance assessment phase and an additional \$20 million for each year that the repository is operated for disposal. After completion of disposal operations, the Secretary could provide up to \$13 million per fiscal year until decommissioning of the repository is completed. The State of New Mexico will determine how this money is to be distributed within the State. If the Secretary determines that the WIPP fails to meet necessary technical or legal requirements, payments to the State of New Mexico may not be terminated unless all waste is removed from the WIPP and any associated impacts have been mitigated.

Subsection (c) would authorize the Secretary to provide payments to the State of New Mexico, and each unit of local government in which the WIPP is located, equal to the amount those governments would have received were they authorized to tax the WIPP. Subsection (c) also contains an offset provision which would govern increases in payments, by Department of Energy contractors and subcontractors to the State, that are attributable to WIPP activities.

Subsection (d) would authorize such funds as may be necessary for the Secretary to complete the purchase of a Federal Potash Lease that is located on the WIPP site.

SECTION 11. DECOMMISSIONING OF THE WIPP

Section 11 would require the Secretary to submit a plan for decommissioning the WIPP to designate Senate and House committees, the State of New Mexico, the Secretary of the Interior, and the Administrator of the EPA, within five years of the date of enactment. The plan must be consistent with EPA standards for disposal of transuranic waste that apply to the WIPP at the time the plan is prepared. Within five years of enactment, the Secretary would also be required to develop a plan for the management and use of the Withdrawal following the decommissioning of the WIPP. The Secretary must consult with the State of New Mexico and the Secretary of the Interior in the preparation of the plans.

THE SECRETARY OF ENERGY,
Washington, DC, April 11, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation entitled the "Waste Isolation Pilot Plant Land Withdrawal Act." I strongly urge the Congress to enact this legislation. Its timely enactment would provide a statutory foundation for the important test programs to be conducted at the Waste Isolation Pilot Plant (WIPP) and remove the need

for use of the current WIPP administrative land withdrawal.

The Congress authorized the WIPP project to demonstrate the safe disposal of radioactive waste generated by the Department's defense activities. The WIPP's development has proceeded in a phased manner, from site characterization and validation through facility construction. The facility is located deep underground in thick salt formations on public lands near Carlsbad, New Mexico.

The next step—a vital one—is the performance assessment phase during which experiments will be conducted on site to assess the facility's ability to perform safely and to obtain operational experience. Upon completion of this phase, a determination will be made as to whether to dispose of waste at the site permanently.

In my testimony before Congress and in numerous public statements, I have said that I will not permit WIPP to open until I am certain that it is safe and has met all prerequisites specified in the Department's "WIPP Decision Plan," which is regularly updated and released for public review and comment. I expect these prerequisites to be completed by early this summer. To promote safe operations at the facility and to ensure the protection of public health and safety, it is necessary to withdraw the lands around the WIPP site from public use. Permanent land withdrawal through legislative means is the option preferred by the Department to allow the performance assessment phase to move forward expeditiously, and, we believe, is in the best interests of the State of New Mexico. If legislation is not enacted in a timely manner, then we plan to proceed under the current administrative land order.

The enclosed legislative proposal includes a number of key provisions. These include: Quantitative limits on the amount of waste that could be emplaced at WIPP; a ban on high-level waste emplacement and disposal; independent review by the Environmental Protection Agency (EPA) Administrator of the Department's determination of compliance with the EPA disposal standards for transuranic waste; and essential provisions from the pending State of New Mexico-Department of Energy agreement for financial assistance to mitigate WIPP-related impacts in the State.

In addition, the proposal includes a number of other economic assistance provisions for the State of New Mexico. First, the Department would continue to encourage business and employment activities in the State of New Mexico. Second, the Department would provide payments to the State and units of local government in which the land withdrawal is located. Those payments would be equal to taxes that these jurisdictions would receive were they authorized to tax WIPP as an industrial facility. Third, when the land withdrawal takes effect under this proposal, the Department would be in a position to provide the State of New Mexico additional funds in the amount of \$42,451,750.00, held in a special reserve account, for certain road projects.

This proposal also would require compliance with EPA standards for the management, storage, and disposal of transuranic waste. Under the Resource Conservation and Recovery Act, EPA issued to the Department a Final No-Migration Determination in November 1990. This Determination includes specific conditions that limit the scope of the performance assessment phase activities, the amount of waste to be used at WIPP for testing, and the time for testing with waste. The Department will fully comply with this

Determination throughout the performance assessment phase. Under the Resource Conservation and Recovery Act, EPA will also be required to make another No-Migration Determination before initiation of the disposal phase.

The Office of Management and Budget has advised that there is no objection to the presentation of this legislative proposal to Congress, and its enactment would be in accord with the President's program.

I believe that this country must and can demonstrate the ability to manage and dispose of nuclear waste safely. The WIPP performance assessment phase is a vital step in that process.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).*

By Mr. MCCONNELL:

S. 1008. A bill to require State agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Department of Justice; to the Committee on the Judiciary.

NATIONAL CHILD ABUSER REGISTRATION ACT

• Mr. MCCONNELL. Mr. President, I rise today to introduce legislation to protect our Nation's children from repeat child abusers.

This bill, the National Child Abusers Registration Act, would require the registration of all convicted child abusers and sexual offenders with the National Crime Information Center of the Department of Justice.

Few crimes committed in the United States today affect one as deeply as the crime of child abuse and neglect. It has almost become a daily occurrence—news reports of a child being sexually or physically mistreated. According to the Department of Justice, in 1989 alone, there were 2.4 million reported cases of child abuse. Of those, 380,000 involved sexual abuse. In addition, ChildHelp USA estimates that one out of every six boys and one out of every three girls will be sexually abused or victimized before the age of 18. These appalling figures reveal the need for Federal, State, and local officials to become involved, to eliminate these affronts to human decency.

The horrifying facts and statistics do not stop there. According to the National Institute of Mental Health, the typical child sexual offender will molest an average of 117 youngsters in his/her lifetime and garner multiple child abuse convictions. These child abusers often do not fit the stereotype—they may be respected citizens, professionals, or even individuals entrusted to care for children in our community.

In 1985, a Maryland school psychologist was convicted of child molestation and received a probated sentence. He moved to Virginia, again was hired as a school psychologist, and was subsequently arrested for the molestation of 12 to 15 elementary schoolchildren. In 1986, a physician in Ohio was convicted of molestation. He moved to Washington, DC, resumed medical practice, and

was arrested again in 1987, convicted for molesting children in a hospital.

In both of these instances, the States had no means of checking an individual's record to verify previous sexual violations against children. These States had no way to see if an individual had one or a hundred child abuse convictions in other parts of the country. Mr. President, convicted child sexual offenders in Washington State should not be able to move 3,000 miles to prey on children in Washington, DC, and vice versa.

The bill that I am proposing today will assist in combating this problem. By requiring States to register the names and other pertinent information about convicted child abusers with the National Crime Information Center, we can and will be able to clamp down on repeat offenders by having information available, and easily accessible for every children's organization in the United States.

Having this child abuser information will enable these organizations to conduct needed background checks on prospective employees. Therefore reassuring parents that their children are not easy prey for a convicted child molester.

The time has come for Congress to aggressively address the growing problem of repeat cases of child abuse in the country. I strongly urge my colleagues to join with me in safeguarding the lives of children by supporting the National Child Abuser Registration Act.*

By Mr. COATS:

S. 1009. A bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to \$4,000; to the Committee on Finance.

INCREASE IN PERSONAL EXEMPTION FOR CHILDREN

• Mr. COATS. Mr. President, for a number of months now I have been reinvigorating a public discussion on the failure of the personal exemption to keep up with the costs of living and raising children in today's economy.

As you are aware, a number of my colleagues and I were successful in including a doubling of the personal exemption in the Tax Reform Act of 1986. This was clearly a step in the right direction.

Despite this victory, however, and despite the concurrent initiation of an indexation of the personal exemption for inflation—a step which, by the way, should have been taken 40 years ago—the current level of the personal exemption still falls far short of where it needs to be to meet its original mission of accounting for the financial obligations of families.

I have been very pleased to note the growing awareness both on Capitol Hill and within the media of just how difficult it has become for an average

American family to make ends meet. Increased prices for basic fundamentals like food, housing, health care and education have, in many instances, forced second members of households into the job market. And they have often required a greater dependence on credit and debt.

Yet while a second income may help pay the bills, families are still finding their ability to adequately support their children a great challenge.

Rising living expenses are not the sole cause of the economic decline of the American family, however. The increasing and highly unfair tax burden on American families has been a major contributor to their woes. Because the personal exemption was not indexed for inflation from 1948 until the mid-1980's, it steadily lost its value. The failure of Congress to rectify this situation amounted, in essence, to an annual tax increase on Americans.

In fact, according to the Urban Institute, families earning one-half of the median income in 1948 paid only 2 percent of their income in total taxes. Today, in 1990, families with one-half of median income hand out about 23 percent of their paychecks to Federal, State, local, and Social Security taxes.

Mr. President, our Government has been digging too deeply into American family pockets for too long. As we continue to siphon off greater amounts of the family paycheck we see parents who must work longer hours at the expense of time with their children.

And we see a continued growing dependence on Government handout programs—programs which we cannot afford and which, in my estimation, often do little to strengthen or improve the family condition.

It is time to reverse this trend and restore the original value of the personal exemption. In fact, the current level of \$2,150 should be tripled to account for the annual costs of raising a child. While budget realities inhibit our ability to triple the personal exemption, I believe we can and should at least double it to \$4,000.

Last January I introduced a bill, S. 152, to do just that for all taxpayers and their dependents, and I have been very pleased with the interest and support that has been expressed by a number of my colleagues.

Today I rise to introduce another bill that more directly recognizes the sizable tax burden on families with children. This legislation will simply double the personal exemption for dependents under age 18 and index it thereafter for inflation.

While I would prefer to see the personal exemption increased for everyone, this new bill is another fine variation on that theme. Families with children have been feeling the brunt of the growing tax burden and are in need of the most immediate relief.

The heightened discussion on the need for profamily tax policy lends promise to success in this endeavor. With recent comments by Senators and Members from the other side of the aisle, I believe there is a general consensus that a reexamination of the priorities set forth in our Tax Code is needed with a greater focus on the needs of the American family. This view is shared by organizations from all ends of the political spectrum including the Family Research Council and the Progressive Policy Institute.

I intend to do everything I can to see that we continue to move forward with this goal and to press for a restoration of a fair personal exemption level. I invite my colleagues in the Senate to join me in cosponsoring this important legislation. We have relied on the good faith of the American family for too long. It is time to do the right thing and allow them to meet their own needs with their own hard earned dollars by reducing their tax burden.

Your support will be much appreciated.●

By Mr. INOUE (for himself, Mr. ADAMS, Mr. AKAKA, Mr. BOND, Mr. CRANSTON, and Ms. MIKULSKI):

S. 1010. A bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendants; to the Committee on Commerce, Science, and Transportation.

FLIGHT ATTENDANT DUTY TIME ACT

● Mr. INOUE. Mr. President, on behalf of our Nation's flight attendants, I am introducing legislation that would amend the Federal Aviation Act to provide limitations on the duty-time hours for flight attendants.

As Members of Congress, we are required to travel more than the average person, and understand the fatigue which accompanies flight travel. To prevent fatigue and overwork which may threaten the ability of airline aviation professionals to perform effectively, the Federal Aviation Administration [FAA] rightfully regulates the hours of work for airline pilots, flight engineers, flight navigators, dispatchers, and air traffic control operators. Although Federal rules also regulate flight attendants for safety reasons, they have been unjustifiably excluded from these FAA work-time regulations. Thus, flight attendants average in excess of 15-20 duty-time hours per day.

Such fatigue and exhaustion compromise a flight attendant's ability to provide quality service to the flying public. In addition to providing the best possible service, airline flight attendants are trained as safety professionals. They perform routine safety procedures and must be continually alert and prepared throughout the flight for such emergencies as rapid depressurization, cabin fires, passenger

illness, and terrorist attacks. Their job is physically demanding in a noisy, stressful, and poorly ventilated environment.

Since 1978, the FAA has promised and failed to issue flight-duty time for flight attendants. In addition, the Department of Transportation [DOT] states that there is no conclusive evidence to demonstrate a correlation between a flight attendant's fatigue and passenger safety. However, common sense dictates that if a flight attendant has not slept or rested for the last 18-24 hours, he or she will not be able to function in an alert and effective manner, let alone be able to respond to emergencies or other potential safety hazards that may occur on an airplane.

Mr. President, the DOT and the FAA have acknowledged many cases in which flight attendants have been required to work as many as 24 consecutive hours. A particularly alarming case is that of the accident involving Galaxy Airlines in Reno, NV in 1985. An investigation disclosed that at the time of the accident, two of the flight attendants had been on duty for over 18 hours and were scheduled to continue for another 7 hours.

Irrespective of the danger that overworked flight attendants pose to the safety of our airways, as well as themselves, the DOT has consistently refused to include them in its protective class of safety sensitive aviation employees which currently includes airline pilots, flight engineers and navigators, dispatchers, and air traffic controllers. Yet, the DOT has determined that flight attendants are safety sensitive employees for purposes of submitting to random drug and alcohol testing. The DOT's conflicting and inconsistent position—safety sensitive in one regard but not another—is not in the best interest of public safety.

Our bill mandates that the DOT promulgate final regulations within 8 months of enactment, and requires that it must establish duty-time limitations and rest requirements that are outlined in the bill. If the DOT fails to take action, the bill provides for backup duty-time limitations to be implemented. Thereafter, the Department may amend these limitations under its rulemaking authority.

Mr. President, we request unanimous consent that the text of our bill be printed in the RECORD.

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

S. 1010

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 "Flight Attendant Duty Time Act".

SEC. 2. AMENDMENT TO THE FEDERAL AVIATION ACT.

(a) IN GENERAL.—Title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421-1433)

is amended by adding at the end thereof the following new section:

"SEC. 614. DUTY TIME OF FLIGHT ATTENDANTS.

"(a) **RULEMAKING PROCEEDING.**—Not later than 60 days after the date of the enactment of this section, the Secretary shall initiate a rulemaking proceeding for the purpose of establishing limitations on duty time for flight attendants, including minimum rest requirements.

"(b) **FINAL REGULATIONS.**—Except in any case in which the prohibitions referred to in subsection (c) take effect, the Secretary shall issue, not later than 240 days after the date of the enactment of this Act, final regulations establishing limitations on duty time for flight attendants, including minimum rest requirements as follows:

"(1) For domestic flights, a maximum of 14 hours of actual duty time and a minimum of at least 10 consecutive hours of rest after each duty period.

"(2) For international flights, a maximum of 16 hours of actual duty time and minimum of at least 12 consecutive hours of rest after each duty period.

"(3) For a long-range international nonstop flight, a maximum period of actual duty time no more than 4 hours greater than the scheduled duty time, with a maximum period of actual duty time no greater than 20 hours, and a minimum consecutive rest period (after such duty period) equal to at least twice the scheduled flight time.

"(4) For all flight attendants, a minimum of eight 24 consecutive hour periods of rest at their domicile per calendar month, including at least one 24 hour consecutive period of rest within every 7 calendar days.

"(5) For all flight attendants, at least a continuous 1 hour rest break in any flight or segment scheduled for 8 hours or more of flight time in a designated rest area.

"(c) **MANDATED PROHIBITIONS.**—If the Secretary does not initiate a rulemaking proceeding under subsection (a) before the 60th day following the date of the enactment of this Act or does not issue final regulations under subsection (b) before the 240th day following such date of enactment, no air carrier may after such date operate an aircraft using a flight attendant who has been on duty more hours, or who has had fewer hours of rest, than those required by paragraphs (1) through (5) of subsection (b).

"(d) **MODIFICATION OF MANDATED PROHIBITIONS.**—The Secretary may issue regulations modifying the prohibitions contained in paragraphs (1) through (5) of subsection (b) if the Secretary determines that such modifications are in the interest of safety and transmits a copy of the modifying regulations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The modifying regulations may not take effect until the expiration of the 90-day period beginning on the date of the transmittal of the modifying regulations to such committees.

"(e) **DEFINITIONS.**—In this section, the following definitions apply:

"(1) **AIR CARRIER.**—The term 'air carrier' means any air carrier which is subject to the provisions of part 121 or part 135 of title 14 of the Code of Federal Regulations.

"(2) **DEBRIEFING TIME.**—The term 'debriefing time' means a time period of at least 30 minutes for domestic flight and of at least 45 minutes for international flight after the block-in time of the last flight or segment of a flight.

"(3) **DESIGNATED REST AREA.**—The term 'designated rest area' means a passenger seat of an aircraft assigned for crew rest purposes.

"(4) **DOMESTIC FLIGHT.**—The term 'domestic flight' means any flight or segment of a flight worked by a flight attendant totally within the 48 contiguous States and the District of Columbia.

"(5) **DUTY TIME.**—The term 'duty time' means all time worked for an air carrier at any place and in any capacity and, with respect to flying, shall begin at the required report time and shall end at the conclusion of the debriefing time, or when released by the carrier, whichever is later. Duty time accrues until the crewmember is given a required rest period by the carrier. Time spent deadheading, either on an aircraft or by surface transportation, to or from an assignment by an air carrier, time spent ferrying, and time spent attending meetings and training shall also be considered duty time. Duty time continues—

"(A) throughout a rest period of a shorter duration than that contained in subsection (b)(1), (b)(2), or (b)(3), as the case may be; and

"(B) during in-flight rest periods contained in subsection (b)(5).

"(6) **INTERNATIONAL FLIGHT.**—The term 'international flight' means any flight or segment worked by a flight attendant for which a take off or landing is scheduled outside the 48 contiguous States and the District of Columbia.

"(7) **LONG-RANGE INTERNATIONAL NONSTOP FLIGHT.**—The term 'long-range international nonstop flight' means a single nonstop international flight scheduled for 8 hours or more of flight time.

"(8) **REPORT TIME.**—The term 'report time' means a time period of at least 30 minutes prior to the scheduled departure time of the first flight or segment of a flight in a flight attendant's duty period or the time the flight attendant is required to report to work, whichever is earlier.

"(9) **REST.**—The term 'rest' means uninterrupted time free from all duty.

"(10) **SCHEDULED FLIGHT TIME.**—The term 'scheduled flight time' means the elapsed time of a flight of an air carrier based on the times shown in schedules published for the air carrier.

"(11) **SECRETARY.**—The term 'Secretary' means the Secretary of Transportation.

"(f) **TREATMENT OF DUTY PERIOD WITH DOMESTIC AND INTERNATIONAL FLIGHT SEGMENTS.**—A duty period with both domestic and international flight segments shall be treated as international flying for the purpose of calculating duty and rest requirements under this section if the majority of the flight time during that duty period is on an international segment and domestic flying if the majority of the flight time during that duty period is on a domestic segment."

(b) **CONFORMING AMENDMENT.**—The table of contents contained in the first section of the Federal Aviation Act of 1958 is amended by adding at the end of the matter relating to title VI the following:

"Sec. 614. Duty time of flight attendants.

"(a) Rulemaking proceeding.

"(b) Final regulations.

"(c) Mandated prohibitions.

"(d) Modification of mandated prohibitions.

"(e) Definitions.

"(f) Treatment of duty period with domestic and international flight segments."•

By Mr. KASTEN (for himself, Mr. BOND, Mr. JEFFORDS, Mr. KOHL, and Mr. DURENBERGER):

S. 1011. A bill to require the Secretary of Agriculture to make payments under the dairy export incentive program to promote the export of certain minimum quantities of nonfat dry milk and butter during fiscal year 1991, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EXPORTS OF NONFAT DRY MILK AND BUTTER

• Mr. KASTEN. Mr. President, I rise today to introduce legislation that will promote the export of certain quantities of nonfat dry milk and butter.

My bill is very simple. It would require the Department of Agriculture to export at least 100 million pounds of nonfat dry milk and 50 million pounds of butter during fiscal year 1991. These products will be exported under the Dairy Export Incentive Program [DEIP] established under the Food Security Act of 1985 and the 1990 farm bill.

This year the United States has exported some 22 million pounds of nonfat dry milk and butter under the DEIP. I believe that the goal we have set in this bill is very reasonable and will go a long way in helping the depressed milk market.

The Dairy Export Incentive Program helps U.S. exporters to meet prevailing world prices for targeted dairy products and destinations. The program offers U.S. exporters a bonus in the form of commodity certificates issued by the U.S. Department of Agriculture's [USDA] Commodity Credit Corporation [CCC] to help them meet competition from other subsidizing nations, especially the European Community.

Mr. President, dairy farmers in Wisconsin and across the Nation are barely surviving on the current low price of milk. By reducing the Government surplus, we will inevitably promote higher prices for milk.

The DEIP benefits U.S. dairy farmers, processors, manufacturers, and exporters by helping to provide access to foreign markets. The program makes possible sales of U.S. dairy products that would otherwise not have been made due to the subsidized prices offered by some U.S. competitors.

Mr. President, in simple terms, if we don't do something to help these desperately needy family farmers, we could end up putting some 4,000 of them out of business. Dairy farmers are crying out for help—so I hope my colleagues will join with me in providing this much-needed relief.•

• Mr. DURENBERGER. Mr. President, I rise today in support of legislation being introduced to direct the Secretary of Agriculture to make payments under the Dairy Export Incentive Program [DEIP] to promote the export of certain minimum quantities of nonfat dry milk and butter during the remaining portion of fiscal year 1991.

This legislation would direct the Secretary to promote the export of 100,000,000 pounds of nonfat dry milk and 50,000,000 pounds of butter during the next 5 months. On March 1, 1991, the Secretary of Agriculture announced new allocations under the Dairy Export Incentive Program that 70 countries were eligible for bonuses of 308,000,000 pounds of nonfat dry milk and 59 countries were eligible for 90,000,000 pounds of butter. Since that announcement, only a small portion of the possible allocation has actually been awarded to eligible nations. This legislation would require the Secretary to take appropriate action needed to move at least one-third of the possible nonfat dry milk allocation and slightly more than one-half of the eligible butter allocation.

On Friday, I will be hosting a meeting in my office with Secretary Madigan and leading Minnesota agricultural officials to discuss the current dairy situation and possible actions which can be taken to increase the price that farmers receive for milk. I know that one of the requests which will be made to Secretary Madigan will be for USDA assistance in substantially utilizing the available DEIP allocation. This bill will give the Secretary the authority to marshal the resources needed to promote the export of 100,000,000 pounds of dry milk and 50,000,000 pounds of butter.

The level of dairy stocks being required to be moved under this legislation is roughly equivalent to about 1.5 billion pounds of milk. Most experts suggest that the current overhang of surplus dairy production which is depressing milk prices is in the vicinity of 5 billion pounds. This measure removes about 30 percent of that overhang.

In closing, I would urge my colleagues to give this measure expeditious consideration and approval. While this measure is not a panacea to the existing dairy crisis, it is a component of a package of actions which can be used to stabilize and increase the price of milk which farmers receive.●

By Mr. BRYAN (for himself, Mr. HOLLINGS, Mr. DANFORTH, Mr. GORTON, Mr. MCCAIN, and Mr. KERRY):

S. 1012. A bill to authorize appropriations for the activities and programs of the National Highway Traffic Safety Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION AUTHORIZATION ACT

● Mr. BRYAN. Mr. President, as chairman of the Consumer Subcommittee I am pleased to introduce this bill, which is a comprehensive reauthorization of the National Highway Traffic Safety Administration [NHTSA]. I am especially pleased to be joined in this effort

by my Commerce Committee colleagues Senators HOLLINGS, DANFORTH, GORTON, KERRY, and MCCAIN, all of whom have distinguished records of hard work and experience in the area of highway safety.

NHTSA's responsibility can be simply stated—to save lives. Obviously, nothing could be of greater importance, or more deserving of our attention and efforts toward reauthorization.

NHTSA's primary responsibility is to improve the safety of our vehicles and our highways. Since the agency was created in 1966, progress has been made. However, about 45,000 people still are killed on our highways each year, and motor vehicle-related injuries are the leading cause of death for children over 1 year old. Motor vehicle crashes cost the U.S. economy \$74 billion each year. There can be no doubt that NHTSA, and those of us who consider legislation in this area, still have our work cut out for us.

As everyone who works on highway safety issues is aware, the effort to reauthorize NHTSA has been strenuous, but as yet unsuccessful. The agency has been without an authorization since 1982, despite the fact that the Senate has passed three separate bills during this time. In the last Congress, in March 1989, I introduced S. 673, which was unanimously approved by the Commerce Committee, and passed by the Senate on a voice vote in August 1989. Despite the early Senate action, the bill was not enacted into law.

The authorization bill I am introducing today includes many of the provisions contained in S. 673. These issues include requirements that NHTSA complete rulemakings to improve the safety of passenger vehicles, including additional head injury protection and rollover protection.

I am pleased to note that there are some very important issues addressed in S. 673 that do not need to be addressed in this authorization bill because the rulemakings they would have required have been completed by NHTSA. These issues include improved side impact protection for passenger cars, and passive restraints and foot crush standards for light trucks.

In addition to issues addressed in earlier legislation, this bill includes rulemakings on some safety issues that have evolved since S. 673 was first drafted, including airbags and antilock brakes. As improved technology becomes available and proven, we want to insure that it is provided for all consumers, and not just those who can afford luxury cars. In particular, with respect to airbags, this bill will require that airbags be available in all cars and light trucks on a phased-in schedule. There now is general agreement that airbags with manual seatbelts offer occupants superior protection to any other system, yet NHTSA's current

rules allow manufacturers to use either automatic seat belts or airbags. While most manufacturers are moving toward airbags on their own, this bill will insure that the installation of airbags will not vary from model to model, but will be available to all.

Additionally, this bill contains authorizations for NHTSA's operations and research, and its programs funded out of the highway trust fund, including programs established by sections 402 and 403 of title 23 United States Code, and impaired driving prevention grants to States. Section 402 provides funds to the States through a formula based on population and highway mileage to assist in highway safety through NHTSA-approved programs. Section 403 funds research in a number of safety areas, including intelligent vehicle-highway systems.

The operations and research funding and the section 403 program adopt the administration's requests for fiscal year 1992. The operations and research funding is increased by the inflation factor recommended by the Congressional Budget Office for fiscal years 1993 and 1994. The section 403 funding is the administration's request for fiscal year 1992, and identical amounts for four additional years. Since the administration's request for 1992 is a substantial increase over prior years' funding, no increases have been authorized for later years. The section 402 funding provides the 1991 authorized amount for fiscal year 1992, and increases this amount by the Congressional Budget Office inflation factor for an additional 4 years.

This bill also replaces the two current NHTSA-administered programs of impaired driving prevention grants—sections 408 and 410 of title 23 United States Code—with one new program to become effective upon the sunset of the earlier programs. The new program is structured in a manner identical to the current programs, but eliminates the overlap between the two, retains the most effective elements of each, and adds some additional measures that have been shown to be effective to prevent impaired driving. Incentive grants are provided to States to encourage such actions as: prompt suspension of drivers' licenses of impaired drivers; sobriety checkpoints; mandatory blood alcohol intoxication levels of 0.10, decreasing to 0.08 in later years; and mandatory minimum penalties for those convicted of impaired driving.

I believe this bill is comprehensive and will provide important authorization and direction to this vital agency. All parties working on highway safety share the common goal of saving lives and preventing injuries. This bill will advance that process, and go a long way toward achieving these goals. I urge my colleagues to support it.●

● Mr. HOLLINGS. Mr. President, as chairman of the Commerce Committee,

I am pleased to join Senator BRYAN, chairman of the Consumer Subcommittee, and other colleagues in cosponsoring this legislation to reauthorize the National Highway Traffic Safety Administration [NHTSA]. It is obvious that this agency has the power to save lives. An agency with this kind of responsibility deserves our fullest oversight and support, and reauthorization legislation is an important part of the congressional assistance for these safety activities. However, despite the continual efforts of this committee and the Senate, including Senate passage of reauthorization legislation by voice vote early in the 101st Congress, NHTSA has not been reauthorized since 1982. I certainly will do everything I can to avoid a similar result this Congress.

The issues within NHTSA's responsibility deserve serious and immediate attention because they can provide vital improvements in the safety of the motor vehicles and highways of this country. Over 900 people are killed on our highways each week, so there can be no question that these issues are of the highest priority.

This legislation contains authorizations for a number of important operations, research activities, and State grant program which NHTSA administers. In my view, among the most important are the incentive grants provided to encourage States to more effectively address the issue of impaired driving. Close to 50 percent of all traffic fatalities are alcohol-related, so there is enormous potential for saving lives by addressing this issue. This authorization bill reorganizes, streamlines, and improves the two current incentive grant programs into one program that should effectively encourage States to take the particular measures believed to be most successful in preventing impaired driving, including a prompt license suspension for impaired drivers, mandatory minimum penalties for those convicted of impaired driving, use of sobriety checkpoints, and improved enforcement of "21 drinking age" laws.

The legislation also addresses a broad range of other safety measures, including vehicle manufacturing standards and accident avoidance research. I believe that its enactment will continue the progress we have seen since NHTSA's creation in 1966 in reducing highway deaths and injuries. I urge my colleagues to join me in supporting this important measure.●

● Mr. DANFORTH. Mr. President, today I am joining Senators BRYAN, HOLLINGS, GORTON, and MCCAIN in introducing the National Highway Traffic Safety Administration Reauthorization Act of 1991, designed to reduce highway death and injury. Each year, 45,000 Americans die in highway crashes and another 520,000 receive serious injuries. In my home State of Missouri,

there were 1,096 highway deaths last year—a 4-percent increase over the previous year. According to the Department of Transportation [DOT], highway crashes cost the U.S. economy \$75 billion annually.

Congress has given the National Highway Traffic Safety Administration [NHTSA] primary responsibility for solving highway safety problems. Despite the importance of NHTSA, no reauthorization has been enacted since 1982. In the last 9 years, the Senate has approved, without opposition, three reauthorization bills. The Senate and the House have been unable to reach agreement, however. I hope that, in this Congress, legislation will be enacted to address safety issues raised in previous NHTSA bills, promising new safety technologies, and impaired driving.

UNFINISHED BUSINESS

Each year 9,000 Americans are killed in side-impact crashes. In 1979, NHTSA opened a rulemaking to improve its side-impact standard, which was inadequate because it only called for a small door beam that did not protect occupants in vehicle-to-vehicle crashes.

Last September, NHTSA announced a modification to the passenger car side-impact protection standard designed to prevent pelvic and torso injuries. NHTSA has not completed a modification to the standard that would prevent head injuries from side impact. These injuries account for about one-half of side-impact deaths. The last four Senate-passed NHTSA bills required improved passenger car side-impact protection to prevent head, torso, and pelvic injuries. The bill we are introducing today requires NHTSA to conduct a rulemaking on reducing such head injuries.

Another important issue addressed in earlier bills is multipurpose vehicle [MPV] safety. MPV's, which include minivans, pickups, and four-wheel drive vehicles, currently account for about one-third of the light-duty vehicle market. In 1990, MPV sales increased to 5 million because these relatively inexpensive vehicles are being used as passenger cars. Although MPV's compete directly with passenger cars, NHTSA has exempted them from many of the passenger car safety standards. These exemptions have contributed to the annual toll of more than 8,500 MPV fatalities.

Recently, some of these exemptions have been eliminated. Our bill would complete the process by requiring an MPV rollover prevention standard. Many MPV's, particularly sport-utility vehicles, have high centers of gravity, which can cause them to roll over. For example, NHTSA reports that 64 percent of all single-vehicle accidents of the discontinued Suzuki Samurai involved rollover. The rollover rate for full-sized sedans in single-vehicle crashes is only 8 percent. Our legisla-

tion also includes a provision from earlier bills requiring the development of a side-impact protection standard for these vehicles.

Another piece of unfinished business is the need for a rulemaking on methods to reduce head injuries. Each year, between 400,000 and 500,000 Americans suffer head injuries in automobile crashes. The National Head Injury Foundation estimates that over 50,000 of these head injury victims are permanently disabled. An airbag can eliminate head injuries resulting from frontal crashes. Even if all cars are equipped with air bags, however, head injuries will still occur from rollover and side-impact crashes. The rulemaking would draw on NHTSA's research, which indicates that many of these head injuries can be prevented if additional padding is placed in the interior of the car where a crash victim's head is likely to hit.

Our legislation also contains language from last Congress' NHTSA bill to conduct a rulemaking on reducing pedestrian injuries resulting from vehicle design. Since 1981, NHTSA has done considerable research on reducing the annual toll of 8,000 pedestrian fatalities. It has identified sources of pedestrian injuries and vehicle design changes to minimize these injuries, but, to date, NHTSA has not conducted a rulemaking.

One final item of unfinished business involves automobile bumpers. Our bill contains language from previous bills to require NHTSA to raise the bumper collision standard to 5 miles per hour. In 1982, NHTSA lowered its standards for bumpers from 5 miles per hour to 2.5 miles per hour. This lower standard has been costly to consumers. A recent Insurance Institute for Highway Safety [IIHS] study tested the bumper strength of 34 different cars in a 5 miles per hour crash test. Damages to those vehicles ranged from \$618 to \$3,300. In the worst cases, the Hyundai Sonata and Subaru Legacy sustained damages totaling \$3,300. Before the bumper standard was lowered, the 1981 Ford Escort sustained no damages from the same test.

AIRBAGS

Under DOT's passive restraint rule, a passenger vehicle must be equipped with either airbags or automatic seatbelts. Although either option is available to manufacturers, statistics prove that airbags provide better protection.

Automatic belts can be either manually operated or, in some cases, may have motorized shoulder harnesses. A 1989 IIHS study on nonmotorized automatic belts found that the automatic feature had been disabled on one or more belts in 95 percent of the new cars it surveyed in dealer showrooms. Motorized automatic belts provide an automatic shoulder harness, but require the driver or passenger to buckle the lapbelt. A University of North

Carolina study found that less than 30 percent of the occupants of cars with motorized belts connected their lapbelts. In addition, a German study found that, even with automatic belts, 30.4 percent of the drivers in frontal collisions suffered from skull-brain trauma.

On the other hand, evidence is accumulating on the effectiveness of airbags. Since May 1989, State Farm insurance Co. has tracked the experience of its policyholders with airbag-equipped cars. In all but 3 out of 3,739 accidents in which the airbag deployed, the driver survived. In the State of Missouri, 143 State Farm policyholders have been saved from death or more serious injury by airbags. Our bill requires that all passenger cars manufactured on or after September 1, 1995, have both driver- and passenger-side airbags. In addition, MPV's manufactured after September 1, 1997, must have both driver- and passenger-side airbags.

NEW VEHICLE TECHNOLOGIES

Our legislation encourages new technologies to prevent accidents and relieve congestion. One such technology is a smart car/smart highway system. According to NHTSA, driver error contributes to more than 80 percent of all crashes. In advanced smart car/highway systems, automatic braking or steering is used to help overcome a driver's lapse in judgment or his inability to detect risks. These advanced systems will rely on computers and radio signals beamed up from the roadway to keep vehicles spaced safely and moving smoothly.

Less advanced systems might include safety improvements such as enhanced cruise control, which uses a radar technology to help maintain a safe following and leading distance. Another radar-related technology provides a driver with a warning if he attempts to switch lanes when there is a vehicle in his blind spot.

For fiscal year 1992, the Bush administration has requested \$62 million for smart car/highway research with \$8 million of this money scheduled to go to NHTSA. Our legislation would encourage DOT to develop a strategic plan to maximize the safety benefits of these systems.

Daytime running lights are another promising new technology. There is considerable evidence that equipping vehicles with these lights increases the visibility of vehicles and can reduce accidents. An IIHS study of a fleet of 2,000 cars equipped with such lights found that they had 7 percent fewer accidents than unlighted cars in the same fleet. In addition, a Finnish study showed that multivehicle accidents dropped 27 percent once daytime running lights were required. Moreover, Canada now requires that all new vehicles sold in that country have automatic daytime running lights. Our leg-

islation requires a rulemaking on whether manufacturers should be permitted to equip vehicles with daytime running lights, notwithstanding any State law that affects the use of such lights. It also requires NHTSA to consider whether these lights should be standard equipment.

Antilock brake systems are another promising safety technology. These brakes greatly increase the ability of a vehicle to stop in a short distance and in a straight line. They are especially effective in wet, snowy, or icy conditions. Currently, antilock brakes are available on some pickup trucks and luxury models. Our bill requires NHTSA to conduct a rulemaking on whether antilock brakes should be mandated for passenger cars and MPV's.

Our bill also requires NHTSA to consider a new technology known as heads-up display systems. These displays can project speed, fuel, and other instrument readings onto the lower part of the windshield, enabling the driver to check readings without looking down, enhancing safety.

THE IMPAIRED DRIVING PREVENTION ACT OF 1991

Our bill also addresses the leading cause of highway death—drunk and drugged driving, an issue on which Congress has played a leadership role during the last decade.

In 1982, according to NHTSA, 25,170 Americans were killed in alcohol-related crashes. That year, Senator PELL and I authorized legislation, known as the 408 Program, providing States with incentive grants if they passed laws requiring prompt license suspension, a 0.10-percent blood alcohol content [BAC] per se intoxication standard, and minimum jail sentences or community service for repeat offenders. To date, 25 States have qualified for these grants by passing laws with the required provisions.

In 1984, Congress passed the National Minimum Drinking Age Act. Since enactment, all 50 States have adopted a minimum drinking age of 21. In 1988, Senator LAUTENBERG and I authorized the Drunk Driving Prevention Act. This act created the 410 program for grants to States which adopt antidrunk driving enforcement measures, such as administrative per se suspension of licenses and open container laws.

These efforts have made a small but measurable difference. NHTSA reports that there were 22,415 drunk driving fatalities in 1989. The percentage of fatal crashes that are alcohol-related has also dropped from 57.2 percent to 49.2 percent.

NHTSA has proposed elimination of the 408 and 410 drunk driving programs. It has also proposed that, in the future, there be no distinct antidrunk driving program, but rather a safety bonus program whereby States could receive grants for enacting safety proposals,

such as mandatory seatbelt and motorcycle helmet laws, as well as drunk driving prevention measures. Mothers Against Drunk Driving [MADD] and the National Association of Governors' highway safety representatives have testified before the Commerce Committee that drunk driving is still the leading cause of highway deaths and should remain the focus of a targeted program.

Our bill provides for sunseting the 408 and 410 programs. It also creates a new impaired driving program to include a number of the most effective features of the 408 and 410 programs, as well as some additional promising impaired driving prevention initiatives.

One of the features of the program involves encouragement of increased use of sobriety checkpoints. These checkpoints have been endorsed as an effective tool to fight impaired driving by DOT Secretary Samuel K. Skinner and National Transportation Safety Board Chairman James Kolstad. In June 1989, the Supreme Court upheld the constitutionality of such checkpoints by a vote of 6 to 3. In a concurring opinion, Justice Blackmun called impaired driving a "tragic aspect of American life" and cited an earlier decision in which he noted that the "slaughter on our highways exceeds the death toll of all our wars."

Another requirement for receiving a grant under the new program involves efforts to videotape impaired drivers. Some local law enforcement officials are using video cameras to record the image of a weaving car and its incoherent driver. Aetna Life & Casualty and MADD have formed a partnership to purchase a limited number of video cameras for the police departments in cities such as Columbus, OH, and Kansas City, MO. Michael Creamer, a deputy sheriff in Columbus, explained the importance of the camera, "We'll show the judge, the jury and the courtroom how they really looked driving on the wrong side, falling down by the car, unable to walk or recite the alphabet." Creamer said all 17 drunk drivers that his department videotaped have pleaded guilty. Last May, the Supreme Court upheld the use of videotaping drunk drivers by an 8 to 1 margin.

Another requirement under the new program involves BAC levels. A State would have to establish a per se BAC standard of no more than 0.10 percent for the first 3 years. To qualify for the grant after that time, the State would have to have a 0.08 percent BAC standard. Virtually every major developed country has a standard lower than 0.10 percent BAC: Canada 0.08 percent BAC; Australia 0.05 percent BAC; Finland 0.05 percent BAC; Norway 0.05 percent BAC; Sweden 0.02 percent BAC; France 0.08 percent BAC; Spain 0.08 percent BAC; Japan 0.08 percent BAC; and U.K. 0.08 percent BAC. States with 0.08 percent BAC per se include Utah, Oregon,

California, and Maine. The scientific community believes that 0.08 percent BAC is well above the level of driving impairment. To get above 0.08 percent, a 170-pound male must drink 4 drinks in 1 hour on an empty stomach. He will metabolize 0.015 percent, or about one drink an hour, so he must continue to drink to stay at 0.08 percent. Thirty-seven studies show impaired depth perception, vision, and judgment at levels at or below 0.04 percent BAC.

Two additional features of this new program merit discussion: First the program endeavors to give States some flexibility by waiving one of the five basic criteria if they can show reduced alcohol-related fatalities over a 5-year period; and second the program provides a supplemental grant to States that create an effective drugged driving prevention program. A 1988 DOT review of drugged driving indicates between 10 percent and 22 percent of crash-involved drivers tested positive for drugs.

CONCLUSION

This legislation will reduce impaired driving, make vehicles more crash-worthy, and help drivers avoid accidents. I urge my colleagues to support it.

• Mr. GORTON. Mr. President, in the last few weeks, the tragic deaths of Senators HEINZ and TOWER have reminded the Senate of the importance of transportation safety. The most critical aspect of transportation safety is highway safety. Over 94 percent of those killed in transportation accidents die in highway crashes. If current trends continue over the next 10 years, these crashes will kill 450,000 Americans, force the hospitalization of over 5 million of our citizens, and cost our country more than \$750 billion. Highway crashes are the leading cause of death for Americans under the age of 34.

Since 1982, the Senate has repeatedly passed legislation to reauthorize the Nation's leading highway safety agency—the National Highway Traffic Safety Administration [NHTSA]. Although these efforts have not been enacted into law, they have helped to move NHTSA forward on several important issues, including side-impact protection for passenger cars and the application of the passive restraint rule to light trucks.

I am pleased to be a cosponsor of this year's NHTSA reauthorization bill. If its recommendations were adopted, they would significantly reduce highway death and injury.

Much work remains to be done to improve passenger car and light truck safety. We must improve the safety of small trucks and minivans by making sure that they have basic safety protections as passenger cars, such as the side-impact protection standard. We must ensure that vehicles have suffi-

cient stability so that they are not prone to roll over.

Another critical safety need is to ensure that all vehicles are equipped with airbags. The Department of Transportation has estimated that universal installation of airbags would save 8,000 lives a year. Our bill would require that, beginning on September 1, 1993, all federally purchased vehicles must have driver- and passenger-side airbags. More importantly, it would require that all newly manufactured passenger cars have full-front airbags by September 1, 1995, and that all light trucks have full-front airbags by September 1, 1997.

NHTSA also has a mandate to help those who purchase vehicles under the Motor Vehicle Information and Cost Savings Act. One of NHTSA's responsibilities under this act is the establishment of minimum standards for bumpers. In 1982, NHTSA lowered its bumper standard from 5 miles per hour to 2.5 miles per hour. At the time, it promised to develop a rating system to inform consumers about the strength of automobile bumpers, but it never developed such a system.

We never should have allowed the bumper standard to be lowered. Each year the Insurance Institute for Highway Safety [IIHS] conducts crash tests with bumpers. Several of the 1991 cars IIHS tested at 5 miles per hour had damages of over \$3,000. The 2.5 miles per hour standard is unacceptable. With the ever increasing cost of automobile insurance and higher deductible levels, car owners cannot afford to drive vehicles equipped with tissue paper bumpers that offer no protection from low speed collisions.

We should address the bumper issue in two ways. First, it is time to return to its 1982 5 miles per hour bumper standard. Second, automakers should inform consumers of the maximum speed at which a vehicle's bumper can prevent damage to the vehicle.

Finally, this bill includes a title that would create a program to encourage States to take steps to prevent drunk and drugged driving. It includes incentives to enact proven preventive measures, such as administrative per se license suspension. It also encourages new techniques, such as videotaping, for evidentiary purposes, drunk drivers who are weaving and incoherent at the time of apprehension.

I look forward to working with the members of the committee in seeing that this bill is adopted into law. I urge all our colleagues to support this important safety legislation. •

By Mr. GRASSLEY (for himself and Mr. COATS):

S. 1013. A bill to amend the Internal Revenue Code of 1986 to increase the amount of the earned income tax credit for individuals with young children; to the Committee on Finance.

By Mr. GRASSLEY:

S. 1014. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption amount; to the Committee on Finance.

EMERGENCY TAX RELIEF FOR FAMILIES

Mr. GRASSLEY. Mr. President, today, I am introducing legislation in the form of two separate bills that addresses an increasing problem in America today, the unfair treatment of families through the Tax Code. My "emergency tax relief for families" legislation will make major strides toward accomplishing more tax fairness for families.

The first bill, which is cosponsored by Senator COATS, would expand the young child tax credit to up to \$500 to families with adjusted gross income of under \$50,000, and children under 5 years old. Congressman WOLF is sponsoring the companion bill in the House.

The current law is tied to the earned income tax credit and is only available to families with an AGI under \$21,000 and children under 1 year old. In addition, the maximum credit under current law is only around \$350.

My second bill would increase the dependent exemption from the current \$2,100 to \$7,000 by the year 2000. This is approximately the amount the exemption would be if it had kept up with inflation. The nearly \$5,000 loss due to inflation only underscores the growing unfairness to families reflected in the Tax Code.

Mr. President, today is Tax Freedom Day, and I've introduced legislation to recognize the fact that, on this day, Americans stop working for the government and start working for themselves and their families. This Sunday is also Mothers' Day, when all Americans pay tribute to the women who helped bring life to them, and who continue to make great sacrifices for their families.

I can't think of a more appropriate way of commemorating both of these landmark occasions, than to bring tax relief to the working mothers and families of America.

Senator COATS and Congressman WOLF have taken the lead in expanding the personal exemption. Now, we want to strengthen this approach by expanding tax credits for young children, which will be a greater benefit for lower income working families.

I'm very pleased that others have begun to recognize the need to provide direct tax relief for families, rather than more spending for bloated bureaucracies. Two weeks ago, I offered an amendment to the budget resolution in committee that supported the notion that if taxes were raised on wealthy Americans, the revenue would be used to provide tax cuts to middle- and lower-income families, rather than for more spending programs. My amendment passed 20 to 1 in commit-

tee, and was included in the budget resolution passed in the Senate.

Yesterday, Congressman DOWNEY and Senator GORE introduced their proposal to offset tax cuts for families by increasing taxes on upper incomes. I commend my colleagues for their attempt to cut taxes, which a number of us have been pushing for a long time. Unfortunately, the cut is offset by raising taxes on others, which will be a sticking point.

Nevertheless, as a Republican, I take heart in the fact that some Democrats who advocate raising taxes actually want to cut taxes for others, rather than use the revenues for more wasted spending. This is certainly a major step in the right direction, and I congratulate these Democrats for being on the cutting edge.

I believe tax relief for families can and should be paid for by cutting spending in other areas. However, as I expressed in my budget resolution amendment, if taxes are raised on the wealthy, it's essential that the revenue be plowed back into tax relief for middle- and lower-income families, instead of new spending programs. There's just no more cost-effective way of helping families and children than through direct tax assistance.

Now that there is strong support and momentum on both sides of the aisle, and in both Houses of Congress for family tax relief, I'm very encouraged that we're going to finally see some results. I look forward to working with my colleagues in accomplishing this extremely important goal.

I ask unanimous consent that both bills be printed in the RECORD.

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

S. 1013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN EARNED INCOME TAX CREDIT.

(a) **GENERAL RULE.**—Subsection (a) of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) is amended by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end thereof the following new paragraph:

“(3) in the case of a taxpayer with 1 or more young qualifying children, the supplemental young child credit.”

(b) **SUPPLEMENTAL YOUNG CHILD CREDIT.**—(1) Subsection (b) of section 32 of such Code is amended by adding at the end thereof the following new paragraph:

“(3) **SUPPLEMENTAL YOUNG CHILD CREDIT.**—“(A) **IN GENERAL.**—The term ‘supplemental young child credit’ means the applicable percentage of so much of the taxpayer’s earned income for the taxable year as does not exceed \$10,000.

“(B) **LIMITATION.**—The amount of the supplemental young child credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of

“(i) the applicable percentage of \$10,000, over

“(ii) the applicable percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds \$50,000.

“(C) **APPLICABLE PERCENTAGE.**—For purposes of this paragraph, the term ‘applicable percentage’ means 5 percent multiplied by the number of young qualifying children of the taxpayer for the taxable year.

“(D) **YOUNG QUALIFYING CHILD.**—For purposes of this section, the term ‘young qualifying child’ means any qualifying child who has not attained age 5 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends. If the taxpayer elects to take a child into account under the preceding sentence, such child shall not be treated as a qualifying individual under section 21.”

(2) Paragraph (1) of section 32(b) of such Code is amended by striking subparagraph (D).

(c) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) Paragraph (2) of section 32(f) of such Code is amended by adding at the end thereof the following flush sentence:

“Separate tables shall be prescribed for purposes of determining the amount of the supplemental young child credit.”

(2) Subsection (1) of section 32 of such Code is amended by adding at the end thereof the following new paragraph:

“(4) **SUPPLEMENTAL YOUNG CHILD CREDIT.**—In the case of any taxable year beginning after 1992, paragraph (1) shall also apply to the \$10,000 and \$50,000 amounts set forth in subsection (b)(3), except that ‘calendar year 1990’ shall be substituted for ‘calendar year 1989’ in subparagraph (B) of section 1(f)(3).”

(3) Clause (1) of section 3507(c)(2)(B) of such Code is amended by striking “(without regard to subparagraph (D) thereof).”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

S. 1014

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN EXEMPTION AMOUNT.

(a) **IN GENERAL.**—Section 151(d)(1) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended to read as follows:

“(1) **GENERAL RULE.**—“(A) **YEARS AFTER 1990.**—Except as otherwise provided in this subsection, the exemption amount for taxable years beginning in a calendar year after 1990 shall be \$7,000.

“(B) **TRANSITION RULE.**—In the case of any taxable year beginning in a calendar year after 1991 and before 2000, the exemption amount shall be determined in accordance with the following table:

For taxable years beginning in:	The exemption amount is:
1992	\$2,700
1993	3,200
1994	3,750
1995	4,300
1996	4,850
1997	5,400
1998	5,950
1999	6,500.”

(b) **CONFORMING AMENDMENT.**—

(1) Section 151(d)(4)(A) of such Code (relating to inflation adjustments) is amended—

(A) by striking “calendar year after 1989” and inserting “calendar year after 2000”, and

(B) by striking “paragraph (1)” and inserting “paragraph 1(A)”.

(2) Section 151(d)(4)(A)(ii) of such Code is amended by striking “calendar year 1988” and inserting “calendar year 1999”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

By Mr. McCAIN:

S. 1015. A bill to amend the Communications Act of 1934 to require that the live television transmission of certain sporting events be available by broadcast over a national broadcast television network; to the Committee on Commerce, Science, and Transportation.

PUBLIC ACCESS TO NATIONAL SPORTING EVENTS ACT

● Mr. McCAIN. Mr. President, sporting events in our country are not simply a matter of physical fitness and athletics. It involves something much deeper. Cheering for the home team reflects pride—pride in your hometown, pride in your State, and, most certainly, pride in your Nation.

Baseball and football are particularly embedded in our Nation’s heritage. The first recorded baseball game ever in the United States took place on June 19, 1846, between the Knickerbockers and the New York Nine. Incidentally, the New York Nine won by a score of 23 to 1 in 4 innings.

Since then, baseball has been crowned as America’s national pastime. Roaring, cheering fans have thrilled at the feats of such baseball greats as Babe Ruth, Ted Williams, Roberto Clemente, Ernie Banks, and such present day heroes as Ricky Henderson, and Nolan Ryan, who just recently pitched his seventh recordbreaking no-hitter.

These players are role models to our youth, and our Nation’s pride.

Football has also enjoyed a grand history in the United States. The first football match most closely resembling the game as it is played today took place in Cambridge, MA, in May 1874, between Harvard University and McGill University of Montreal. Professional football dates back to 1895, and continued with the founding of what is known today as the National Football League in 1920.

America has since cheered such football greats as Johnny Unitas, Joe Namath, Bob Griese, Neil Lomax, Walter Payton, and Joe Montana.

The invention of television provided baseball and football with the perfect medium to draw an even larger audience to these ever popular games. The year 1939 was a momentous one for football, with the advent of the first televised football game between Fordham University and the College of Waynesburg. For the first time, a television audience shared the excitement with the crowds in the stands as Fordham defeated Waynesburg, 34 to 7.

Television became, and remains still, an integral component in the popularity of these sports, so much so that

even the broadcast sports announcers have become famous personalities. Harry Caray, Howard Cosell, Joe Garagiola, and Al Michaels have all contributed greatly to the sport's popularity.

This is why it is greatly disturbing to see the growing trend toward making sports events available only through media other than live broadcast television. The growth of other media has brought many benefits to sports fans. Through subscription channels and pay-per-view programming, sports enthusiasts have continual access to their favorite sports. This is one of the greatest benefits subscription viewers enjoy.

Nonetheless, I believe that certain programs should remain available to all Americans through over-the-air broadcasts. Baseball and football are an integral part of our Nation's heritage, and the championship games for each of these sports, the World Series and the Super Bowl, are American traditions. These traditions should remain available to everyone, and not only to those who are able to pay for subscription television.

Mr. President, access to the World Series and the Super Bowl should not be determined by an income test. These traditions have always been available to all Americans, regardless of their income level. This access should remain unchanged.

The people have demonstrated their support and appreciation for what the baseball and football leagues have done for America. Through their representatives in Congress, and through the courts, these leagues have enjoyed the benefit of various antitrust exemptions. These benefits also bring a responsibility to the public the leagues serve. The leagues have given Americans two traditions which they have cherished since their inception.

These traditions should not be taken away.

For this reason, I am introducing the "Public Access to National Sporting Events Act." This bill would amend the Communications Act of 1934 to require that the live television transmission of certain sporting events be available by broadcast over a national broadcast television network.

Specifically, the bill stipulates that, regardless of any other agreements made between the sponsoring leagues and other media, the World Series and the Super Bowl will remain accessible to the public by live television transmission to be carried simultaneously by the broadcast stations affiliated with a national television broadcast network.

This bill guarantees that there is continued access to these championship games, which Americans enjoy and cherish as national traditions.

I am also concerned about the possibility of the Olympic games becoming

available only by subscription. This bill does not address this concern. Nonetheless, it is my hope that this issue can be fleshed out through hearings in the coming weeks.

Mr. President, for all Americans, particularly those who love the World Series and the Super Bowl, as I do, this legislation is necessary for the preservation of two great national traditions.

I urge my colleagues to support this legislation.

Mr. President, I request that the full text of the bill be printed in the RECORD immediately following my remarks.

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

S. 1015

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Access to National Sporting Events Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) there is a growing trend toward making sports events available only through media other than live broadcast television;

(2) access to these events is becoming increasingly costly to the consumer;

(3) as this trend develops, whether the consumer has access to sports events will be determined by the ability of the consumer to pay;

(4) many consumers have benefited from the constant availability of sports programming through subscription media;

(5) nonetheless, the access by members of the public to certain sports events should not be dependent upon their ability to pay for that access;

(6) in particular, the National Football League's annual championship game, known as the "Super Bowl", and the American League's and the National League's annual championship series, known as the "World Series", have enjoyed tremendous popularity and growth, in large part as a direct result of benefits which have been conferred upon their sponsoring leagues by the Congress and the Federal courts;

(7) the National Football League, the American League, and the National League benefit from antitrust exemptions which permit them to operate their franchises free of the restrictions of our antitrust laws.

(8) Such benefits have allowed those leagues to prosper to their advantage and to the advantage of the American public;

(9) however, this advantage to the public will soon become a disadvantage if the availability of certain events is limited only to those who can afford the subscription costs of media other than the national television broadcast networks;

(10) limited access to viewing the Super Bowl and the World Series would deprive citizens of the ability to enjoy these events which have become an American tradition, and which benefit from the antitrust exemptions conferred upon them by Congress and the Federal courts; and

(11) therefore, Congress should ensure that these American traditions remain available to the public via live broadcast television.

SEC. 3. Title VII of the Communications Act of 1934 (47 U.S.C. 701 et seq.) is amended

by adding at the end the following new section:

"TELEVISION TRANSMISSION OF CERTAIN CHAMPIONSHIP GAMES

"SEC. 714. (a) Any joint agreement by or among the professional football clubs of the National Football League in which the National Football League (or any successor league) sells or otherwise transfers all or any part of the rights of its member clubs in the live television transmission of its annual league championship game known as the 'Super Bowl' shall provide for such live television transmission to be carried simultaneously by the broadcast stations affiliated with a national television broadcast network.

"(b) Any joint agreement by or among the major league professional baseball clubs of the American League and National League in which the American League and National League (or any successor leagues) sell or otherwise transfer all or any part of the rights of their member clubs in the live television transmission of their annual championship series known as the 'World Series' shall provide for such live television transmission to be carried simultaneously by the broadcast stations affiliated with a national television broadcast network.

"(c) Nothing in this section shall be construed as prohibiting a community antenna television system or any other person from obtaining rights to the live television transmission of the Super Bowl or World Series."•

By Mr. PELL:

S. 1016. A bill to amend the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to develop comprehensive tests of academic excellence, and for other purposes; to the Committee on Labor and Human Resources.

COMPREHENSIVE TESTS OF ACADEMIC EXCELLENCE

Mr. PELL. Mr. President, I am today introducing legislation that would require the Secretary of Education to develop or have developed a national test or series of tests that would serve as a national test. This legislation differs from that which became law in 1988 in that it requires the Secretary to take this action and is silent on the question of whether or not the test should be mandatory.

My interest in a national test goes back more than 24 years to 1967 when Senator John Sherman Cooper and I joined forces to introduce the Quality in Education Act. That legislation sought to devise a method by which we might be able to compare secondary school education on a district-by-district basis throughout the Nation.

In the aftermath of the proposals set forth in "the Nation's Report Card" in 1987, I resurrected that idea, modified it, and introduced legislation that authorized the Secretary of Education to formulate The Optional Test of Academic Excellence. As I noted, that legislation became law in 1988. My understanding, however, is that little work has been done by the Department with respect to the optional test, something I consider most unfortunate in light of

the national debate now going on in this area.

My idea is that the Secretary should approve a test or series of tests that would serve as a national test of academic excellence.

Unlike my previous legislation, there is no stipulation that the test be voluntary. I note that the administration in the education proposals unveiled last week has proposed that the test be a voluntary one. And, while we may reach that conclusion as we put the final legislation together, I thought it best not to limit the framework of the discussion from the outset by stipulating that the test would be voluntary.

My idea is that we have a national test that does not differ markedly from the New York regents test. Its purpose would be threefold. First, it would measure an individual's educational achievement.

Second, it would give a local education agency an indication of how its students compared with others. It would point out both strengths and weaknesses in the educational attainment of students on a district-by-district basis.

Third, it would award a certificate to each student who passed the examination, and, in that way, it would help identify talented students who might not otherwise be recognized. They could take the certificate to a college or to the workplace as an indication of their educational achievements and ability.

If enacted, the national test would inevitably raise questions regarding a national curriculum. And those are questions that must be addressed as we continue to debate the feasibility of a national test.

In some ways, we already have the elements of a national curriculum because of the dominance of a few States in the selection of textbooks. The requirements set by those States tend to establish a floor that all States adhere to because other options are not available. The question, therefore, may not be should we have a national curriculum, for indeed the basic elements may already be there. The real question may be: What elements do we want to be part of that national curriculum?

We have already had one hearing on the national test and national curriculum concerns within the context of the reauthorization. I would hope, Mr. President, that the legislation I am introducing today might be considered as an important part of the reauthorization of the Office of Educational Research and Improvement. In that regard, I look forward to working closely with the administration to arrive at legislation upon which we can agree and which we all believe is in the best interests of our Nation and its people.

I ask unanimous consent that the text of the proposed legislation appear

in the RECORD in its entirety at this point.

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

S. 1016

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TESTS FOR ACADEMIC EXCELLENCE.

Section 4602 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3152) is amended to read as follows:

"SEC. 4602. TESTS FOR ACADEMIC EXCELLENCE.

"(a) TEST OF ACADEMIC EXCELLENCE AUTHORIZED.—The Secretary, after consultation with appropriate State and local educational agencies and public and private organizations, shall develop or approve comprehensive tests of academic excellence, to be administered to identify outstanding students who are in the eleventh grade of public and private secondary schools.

"(b) PREPARATION AND CONDUCT OF TESTS.—

"(1) The Secretary shall establish a program through consultation or arrangements with appropriate State educational agencies, local educational agencies, public and private secondary schools, and public and private organizations throughout the Nation, under which the tests of academic excellence prepared or approved under this part shall be given by such agencies or schools to students described in this section. The tests of academic excellence shall be tests of acquired skills and knowledge appropriate for the completion of a secondary school education.

"(2) The Secretary shall assure that the tests authorized by this section are conducted in a secure manner.

"(c) CERTIFICATE.—

"(1) The Secretary is authorized and directed to prepare a certificate, of such appropriate design as the Secretary shall prescribe, and in such numbers as are necessary, for issuance to students who have scored at a sufficiently high level, as determined by the Secretary, on a test of academic excellence prepared or approved under this subpart and given in accordance with arrangements made under this section. Each such student shall be awarded a certificate within 60 days following the date on which the student was given a test.

"(2) Each certificate awarded pursuant to this subsection shall be signed by the Secretary.

"(d) REPORT.—The Secretary shall prepare and submit to the Congress a report on the estimated costs of administering, scoring, and analyzing the tests of academic excellence prepared or approved under this section."

By Mr. EXON:

S. 1017. A bill to amend title 11, United States Code, to provide that an automatic stay in certain bankruptcy proceedings shall not apply to State property taxes; to the Committee on the Judiciary.

BANKRUPTCY CODE AMENDMENT ACT

● Mr. EXON. Mr. President, in the 101st Congress I introduced a bill that was of vital importance to local governmental entities in Nebraska. Due to a ruling of Nebraska's bankruptcy court, those local governmental entities were having their efforts to assess and collect real estate taxes thwarted if the prop-

erty in question was subject to a bankruptcy proceeding.

This was, and remains, a very serious problem for those governments as they rely substantially on ad valorem taxes as their base of income. The effect of a bankruptcy proceeding is that the property in question is effectively removed from the tax rolls during the time the property is subject to the bankruptcy proceeding.

When I introduced my previous bill on this subject I predicted that the Nebraska ruling would have a far reaching impact as other courts would begin adopting the same position. That has indeed been the case. A similar case with a similar holding, in re Parr Meadows Racing Association, Inc., has now been issued by the Second Circuit Court of Appeals. The U.S. Supreme Court declined an opportunity to review that ruling.

The National Association of Counties has recognized the importance of this decision and has adopted a resolution expressing their support for legislation amending our bankruptcy laws to preserve the priority of local tax claims and liens. I ask unanimous consent that a copy of a resolution passed by that association be placed in the RECORD following my remarks.

The legislation that I am introducing today is simple. It removes the process of assessing and levying ad valorem property taxes from the stay that is imposed by the filing of a bankruptcy. Doing so will allow our local governmental units to continue the process of assessing and levying such taxes without fear of violating the stay provisions of our current bankruptcy law.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1017

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (10) by striking out "or" after the semicolon;

(2) in paragraph (14) (as added by section 102 of the Act entitled "An Act to amend title 11 of the United States Code regarding swap agreements and forward contracts," approved June 25, 1990 (Public Law 101-311; 104 Stat. 267)) by striking out the period and inserting in lieu thereof a semicolon;

(3) by redesignating paragraphs (14), (15), and (16) (as added by section 3007 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508)) as paragraphs (15), (16), and (17), respectively;

(4) in paragraph (16) (as redesignated under paragraph (3) of this section) by striking out "or" after the semicolon;

(5) in paragraph (17) (as redesignated by paragraph (3) of this section) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(6) by adding between paragraph (17) (as redesignated by paragraph (3) of this section)

and the matter following such paragraph the following:

"(18) under subsection (a) of this section, of the valuation, assessment, levy, or perfection of any lien under State law for any ad valorem property tax imposed by any political subdivision."•

ADDITIONAL COSPONSORS

S. 26

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 26, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income the value of certain transportation furnished by an employer, and for other purposes.

S. 141

At the request of Mr. DASCHLE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 141, a bill to amend the Internal Revenue Code of 1986 to extend the solar and geothermal energy tax credits through 1996.

S. 144

At the request of Mr. MCCAIN, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 144, a bill to protect the natural and cultural resources of the Grand Canyon and Glen Canyon.

S. 190

At the request of Mr. GRAHAM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 190, a bill to amend 3104 of title 38, United States Code, to permit veterans who have a service-connected disability and who are retired members of the Armed Forces to receive compensation, without reduction, concurrently with retired pay reduced on the basis of the degree of the disability rating of such veteran.

S. 397

At the request of Mr. WIRTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 397, a bill to amend the Solid Waste Disposal Act to require producers and importers of newsprint to recycle a certain percentage of newsprint each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirement, to establish a management and tracking system for such newsprint, and for other purposes.

S. 398

At the request of Mr. WIRTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 398, a bill to amend the Solid Waste Disposal Act to provide management standards and recycling requirements for spent lead-acid batteries.

S. 399

At the request of Mr. WIRTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of

S. 399, a bill to amend the Solid Waste Disposal Act to prohibit the Administrator of the Environmental Protection Agency from listing used oil and affiliated materials as a hazardous waste under that Act, to require producers and importers of lubricating oil to recycle a certain percentage of used oil each year, to require the Administrator to establish a recycling credit system for carrying out such recycling requirement, and for other purposes.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 540

At the request of Mr. BURNS, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 540, a bill to amend title 23, United States Code, to assist in the development of an infrastructure to support the use of public lands for travel and tourism purposes, and for other purposes.

S. 583

At the request of Mr. ROTH, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 583, a bill to amend the Internal Revenue Code of 1986 to require the recapture of certain losses of savings and loan associations, to clarify the treatment of certain Federal financial assistance to savings and loan associations, and for other purposes.

S. 602

At the request of Mr. SASSER, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 602, a bill to improve the food stamp and nutrition programs, and for other purposes.

S. 659

At the request of Mr. GRAHAM, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 659, a bill to suspend temporarily certain bars to the furnishing of veterans benefits to certain former spouses of veterans and to suspend temporarily a bar to the recognition of certain married children of veterans for veterans benefits purposes.

S. 715

At the request of Mr. BURNS, the names of the Senator from California [Mr. SEYMOUR] and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of S. 715, a bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

S. 722

At the request of Mr. ROTH, the name of the Senator from Mississippi [Mr.

LOTT] was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 with respect to the requirement that an S corporation have only 1 class of stock.

S. 778

At the request of Mr. GORE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 778, a bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and Inspector General, and for other purposes.

S. 781

At the request of Mr. SARBANES, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 786

At the request of Mr. MOYNIHAN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 786, a bill to amend the Foreign Assistance Act of 1961 to authorize the provision of medical supplies and other humanitarian assistance to the Kurdish peoples to alleviate suffering.

S. 821

At the request of Mr. LIEBERMAN, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from Hawaii [Mr. AKAKA], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 821, a bill to establish the Silvio Conte National Fish and Wildlife Refuge.

S. 844

At the request of Mr. DOMENICI, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 844, a bill to provide for the minting and circulation of one dollar coins.

S. 878

At the request of Mr. DODD, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 878, a bill to assist in implementing the plan of action adopted by the World Summit for Children, and for other purposes.

S. 879

At the request of Mr. DASCHLE, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 883

At the request of Mr. BOND, the name of the Senator from Missouri [Mr. DAN-

FORTH] was added as a cosponsor of S. 883, a bill to authorize funds for the construction of highways and to authorize activities under chapters 1 and 2 of title 23, United States Code.

S. 884

At the request of Mr. PACKWOOD, the names of the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 884, a bill to require the President to impose economic sanctions against countries that fail to eliminate large-scale driftnet fishing.

S. 890

At the request of Mr. KENNEDY, the names of the Senator from Nebraska [Mr. EXON], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 890, a bill to reauthorize the Star Schools Program Assistance Act, and for other purposes.

S. 899

At the request of Mr. LUGAR, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 899, a bill to amend the Older Americans Act of 1965 to recognize, support, and promote the use of volunteers to assist older Americans, to encourage older Americans to volunteer in local communities, and for other purposes.

S. 987

At the request of Mrs. KASSEBAUM, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 987, a bill to amend the Home Owners' Loan Act to improve the qualified thrift lender test, and for other purposes.

SENATE JOINT RESOLUTION 8

At the request of Mr. BURDICK, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 8, a joint resolution to authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week."

SENATE JOINT RESOLUTION 40

At the request of Mr. THURMOND, the names of the Senator from Illinois [Mr. DIXON], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 40, a joint resolution to designate the period commencing September 8, 1991, and ending on September 14, 1991, as "National Historically Black Colleges Week."

SENATE JOINT RESOLUTION 65

At the request of Mr. D'AMATO, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Joint Resolution 65, a joint resolution designating the week beginning May 12, 1991, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 78

At the request of Mr. BENTSEN, the names of the Senator from North Caro-

lina [Mr. SANFORD], the Senator from Rhode Island [Mr. PELL], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Maryland [Mr. SARBANES], the Senator from Colorado [Mr. BROWN], the Senator from Utah [Mr. GARN], the Senator from California [Mr. CRANSTON], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 78, a joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

SENATE JOINT RESOLUTION 96

At the request of Mr. RIEGLE, the names of the Senator from Delaware [Mr. BIDEN], the Senator from South Dakota [Mr. DASCHLE], the Senator from Texas [Mr. BENTSEN], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Joint Resolution 96, a joint resolution to designate November 19, 1991, as "National Philanthropy Day."

SENATE JOINT RESOLUTION 110

At the request of Mr. MOYNIHAN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 110, a joint resolution expressing the sense of the Congress that the United States and the Soviet Union should lead an effort to promptly repeal United Nations General Assembly Resolution 3379 (XXX).

SENATE JOINT RESOLUTION 115

At the request of Mr. MOYNIHAN, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Joint Resolution 115, a joint resolution to designate the week of June 10, 1991, through June 16, 1991, as "Pediatric AIDS Awareness Week."

SENATE JOINT RESOLUTION 127

At the request of Mr. PACKWOOD, his name was added as a cosponsor of Senate Joint Resolution 127, a joint resolution to designate the month of May 1991, as "National Huntington's Disease Awareness Month."

SENATE CONCURRENT RESOLUTION 24

At the request of Mr. CRAIG, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Concurrent Resolution 24, a concurrent resolution expressing the sense of the Congress that the President should seek to negotiate a new base rights agreement with the Government of Panama to permit the U.S. Armed Forces to remain in Panama beyond December 31, 1999, and to permit the United States to act independently to continue to protect the Panama Canal.

AMENDMENTS SUBMITTED

CONSUMER PROTECTION AGAINST PRICE-FIXING ACT

DOLE AMENDMENT NO. 91

(Ordered to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to the bill (S. 429) to amend the Sherman Act regarding retail competition, as follows:

At the end of section 3, add the following:
 "() Notwithstanding sections 4 and 16 of the Clayton Act, in any action under this section, the plaintiff, shall recover actual damages sustained, interest calculated at the rate specified in section 1961 of title 28, United States Code, or at such other rate as the court finds to be fair to fully compensate such person for the injury sustained, on such actual damages for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances, and the cost of suit, including a reasonable attorney's fee."

DOLE AMENDMENT NO. 92

(Ordered to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to amendment No. 90 proposed by Mr. BROWN to the bill S. 429, supra, as follows:

On page 2, line 9, strike all through page 4, line 18.

DOLE AMENDMENT NO. 93

(Ordered to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to the bill S. 429, supra, as follows:

Beginning on page 2, line 20, strike all through page 4, line 14.

THURMOND AMENDMENT NOS. 94 THROUGH 114

(Ordered to lie on the table.)

Mr. THURMOND submitted 21 amendments intended to be proposed by him to the bill S. 429, supra, as follows:

AMENDMENT NO. 94

On page 2, line 9, strike all through page 4, line 18.

AMENDMENT NO. 95

Beginning on page 4 of the Brown substitute amendment, line 19, delete all beginning with "including" through page 5, line 10, and ending with the word before "An".

AMENDMENT NO. 96

Beginning on page 5, line 21, delete all of section 5.

AMENDMENT NO. 97

On page 5, line 4, starting with the word "except" strike all through the word "agreement".

AMENDMENT No. 98

Beginning on page 2, line 20, strike all through page 4, line 14.

AMENDMENT No. 99

On page 4, line 23 delete all after the word "section" through the word "service".

AMENDMENT No. 100

Beginning on page 4, line 16, delete all beginning with the word "including" through page 5, line 2 and ending with the word before "An".

AMENDMENT No. 101

On page 5, delete lines 14-17.

AMENDMENT No. 102

At the end of section 3, add the following: "() Notwithstanding sections 4 and 16 of the Clayton Act, in any action under this section, the plaintiff, shall recover damages sustained, interest calculated at the rate specified in section 1961 of title 28, United States Code, or at such other rate as the court finds to be fair to fully compensate such person for the injury sustained, on such actual damages for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances, and the cost of suit, including a reasonable attorney's fee."

AMENDMENT No. 103

At the end of section 3, add the following: "() In any action under this section, the court shall award the cost of suit, including a reasonable attorney's fee, to a substantially prevailing defendant upon a finding that the plaintiff's conduct was frivolous, unreasonable, without foundation, or in bad faith."

AMENDMENT No. 104

At the end add the following: "() The provisions of this Act shall apply to all actions commenced after the effective date of enactment of this Act."

AMENDMENT No. 105

At the end add the following: "() DEFENSE.—It shall be a defense to an action described in this Act that the defendant was so small in the relevant market as to lack market power."

AMENDMENT No. 106

At the appropriate place, add the following: "() The provisions of this Act shall apply to all actions commenced after the effective date of enactment of this Act."

AMENDMENT No. 107

At the appropriate place, add the following:

"() Notwithstanding sections 4 and 16 of the Clayton Act, in any action under this section, the plaintiff, shall recover damages sustained, interest calculated at the rate specified in section 1961 of title 28, United States Code, or at such other rate as the court finds to be fair to fully compensate such person for the injury sustained, on such actual damages for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances, and the cost of suit, including a reasonable attorney's fee."

AMENDMENT No. 108

At the appropriate place, add the following:

"() In any action under this section, the court shall award the cost of suit, including a reasonable attorney's fee, to a substantially prevailing defendant upon a finding that the plaintiff's conduct was frivolous, unreasonable, without foundation, or in bad faith."

AMENDMENT No. 109

At the appropriate place, add the following:

"() DEFENSE.—It shall be a defense to an action described in this Act that the defendant was so small in the relevant market as to lack power."

AMENDMENT No. 110

On page 5, line 4 delete "section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement." and insert in lieu thereof "section."

AMENDMENT No. 111

Beginning on page 5, delete all of section 5.

AMENDMENT No. 112

In section 3, delete the following: SEC. 8(a)(1) (A), (B), (C), (D) and SEC. 8(a) (1), (2), (3).

AMENDMENT No. 113

Beginning on page 4 of the Brown substitute amendment, line 19 delete all beginning with "including" through page 5, line 10, and ending with the word "An"; insert in lieu thereof "an".

AMENDMENT No. 114

On page 4, line 23 delete "section, except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service." and insert in lieu thereof "section."

METZENBAUM AMENDMENT NOS.
115 THROUGH 226

(Ordered to lie on the table.)

Mr. METZENBAUM submitted 112 amendments intended to be proposed by him to the bill S. 429, supra, as follows:

AMENDMENT No. 115

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the

Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a

good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 116

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps

to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the

Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 117

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an ac-

tion to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 118

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy

to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set,

change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 119

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by

the claimant in the resale of such good or service, and

"(i) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or

3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 120

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an ac-

tion to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 121

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy

to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set,

change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 122

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into

an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 123

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 124

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the

Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a

violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 125

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to

continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 126

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall con-

sider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 127

In lieu of the amendable matter, insert: "with instructions to report back forthwith with the following amendment:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct

or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement

to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one month after being signed by the President.

AMENDMENT NO. 128

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the

claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 129

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such

competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 130

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied

request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(i) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to

vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 131

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business jus-

tification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 132

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to con-

tinue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 133

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 134

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court

finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change

or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 135

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply un-

less, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 136

At the appropriate place, insert the following: "Notwithstanding any other provision herein.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting be-

tween section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought

by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 137

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by

the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or

the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 138

In lieu of the amendable matter, insert: "with instructions to report back forthwith with the following amendment:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or

the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one month after being signed by the President.

AMENDMENT NO. 139

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for

such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or serv-

ice to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 140

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 141

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such

competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 142

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such

other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 143

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in

the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 144

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under sec-

tion 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 145

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied

request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(i) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the

Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 146

At the end, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an ac-

tion to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 147

At the appropriate place, insert the following: "The foregoing provisions shall have no effect.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy

to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service

shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 148

At the appropriate place, insert the following: "Notwithstanding any other provision herein.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into

an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 149

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 150

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court

finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change

or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 151

In lieu of the amendable matter, insert: "with instructions to report back forthwith with the following amendment:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or

all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to

vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one month after being signed by the President.

AMENDMENT NO. 152

Strike all after the first word and insert in lieu thereof the following: "any action under this section, the court may award the cost of suit, including a reasonable attorney's fee, to a substantially prevailing defendant, upon a finding that the plaintiff's conduct was frivolous, unreasonable, without foundation, or in bad faith."

AMENDMENT NO. 153

Strike all after the first word and insert in lieu thereof the following: "any action under this section, the court may award the cost of suit, including a reasonable attorney's fee, to a substantially prevailing defendant, upon a finding that the plaintiff's conduct was frivolous, unreasonable, without foundation, or in bad faith."

AMENDMENT NO. 154

Strike all after the first word and insert in lieu thereof the following: "any action under this section, the court may award the cost of suit, including a reasonable attorney's fee, to a substantially prevailing defendant, upon a finding that the plaintiff's conduct was frivolous, unreasonable, without foundation, and in bad faith."

AMENDMENT NO. 155

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to

continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 156

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall con-

sider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 157

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact

could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

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a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

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"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was

the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

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"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

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SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial

torial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 159

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or

the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

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SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 160

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or

conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

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sale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

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AMENDMENT NO. 161

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

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"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

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by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

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"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged

on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 164

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termi-

nation or refusal to continue to supply unless, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 165

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

“(B) For purposes of paragraph (1), the court shall find the existence of ‘sufficient evidence’ that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

“(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

“(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

“(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 166

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 167

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 168

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 169

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective one week after being signed by the President.

AMENDMENT NO. 170

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(i).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 171

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(i).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 172

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(i), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(i).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 173

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(i), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 174

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 175

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 176

In lieu of the matter proposed to the stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 177

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 178

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 179

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 180

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 181

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 182

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 183

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 184

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(i).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 185

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 186

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 187

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 188

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 189

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 190

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 191

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 192

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 193

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 194

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 195

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 196

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 197

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(1) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(1).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change, or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 198

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(1) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(1).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change, or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 199

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted

action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change, or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the

agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 200

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 30 days after being signed by the President.

AMENDMENT NO. 201

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an ac-

tion brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or

conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 202

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or

all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT No. 203

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

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such

goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT No. 204

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination,

or conspiracy if the claimant presents evidence that such person—

“(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

“(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

“(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”.

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into

an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 205

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

“(B) For purposes of paragraph (1), the court shall find the existence of ‘sufficient evidence’ that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

“(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

“(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

“(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”.

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 206

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition

by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue

to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 207

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in

the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 208

Strike all after the first and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy

to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service

shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 209

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 210

Strike all after the first word and insert in lieu thereof the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such

competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 211

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied

request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to

vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 212

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justifica-

tion for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 213

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for

such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 214

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor

outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 215

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who

sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set,

change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 216

In lieu of the matter proposed to be stricken, insert the following:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 217

Strike all after the first word and insert in lieu thereof the following:

The provisions of section 3 of this Act shall not apply to a defendant which—

(1) had annual total sales of \$7 million or less at the time the action was filed, and

(2) was so small in the relevant market as to lack market power.

AMENDMENT NO. 218

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action

to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 219

At the appropriate place, insert the following: "Notwithstanding any other provision herein:

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the

trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting

competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 220

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply un-

less, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 10 days after being signed by the President.

AMENDMENT NO. 221

At the appropriate place, insert the following: “Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

“(B) For purposes of paragraph (1), the court shall find the existence of ‘sufficient evidence’ that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

“(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

“(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

“(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

“(i) expressly or impliedly acquiesced to the request or demand, or

“(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

“(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

“(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

“(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action

to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

“(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon.”

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 222

At the appropriate place, insert the following: “Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

“SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the

trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting

competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 223

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply un-

less, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 15 days after being signed by the President.

AMENDMENT NO. 224

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action

to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 225

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the

trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting

competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

AMENDMENT NO. 226

At the appropriate place, insert the following: "Notwithstanding any other provision herein,

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply un-

less, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took action, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (c)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual bona fide non-price business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of non-price vertical restraints.

SEC. 6. This Act shall become effective 20 days after being signed by the President.

THURMOND AMENDMENT NOS. 227 THROUGH 234

(Ordered to lie on the table.)

Mr. THURMOND submitted eight amendments intended to be proposed by him to the bill S. 429, supra, as follows:

AMENDMENT NO. 227

At the appropriate place, add the following:

"DEFENSE.

It shall be a defense to an action described in this Act that the defendant was so small in the relevant market as to lack market power."

AMENDMENT NO. 228

At the appropriate place, add the following:

"() Nothing in this Act, shall be construed to allow the award of triple damages.

AMENDMENT NO. 229

On page 5, line 4 of the amendment starting with the word "except" strike all the language through "the agreement" on page 5, line 10.

AMENDMENT NO. 230

Beginning on page 2, line 9 strike all through page 4, line 18.

AMENDMENT NO. 231

Delete all from page 5, line 21 through page 6, line 2.

AMENDMENT NO. 232

On page 5, line 4 of the amendment starting with the word "except" strike all the language through "the agreement" on page 5, line 10.

AMENDMENT NO. 233

Beginning on page 2, line 9 strike all through page 4, line 18.

AMENDMENT NO. 234

Delete all from page 5, line 21 through page 6, line 2.

METZENBAUM AMENDMENT NO. 235

(Ordered to lie on the table.)

Mr. METZENBAUM submitted an amendment intended to be proposed by him to the bill S. 429, supra, as follows:

Strike all after the first word and insert in lieu thereof the following:

The provisions of section 3 of this Act shall not apply to a defendant which—

(1) had annual total sales of \$7 million or less at the time the action was filed, and

(2) was so small in the relevant market as to lack market power.

LEAHY AMENDMENT No. 236

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 429, supra, as follows:

On page 5, strike lines 14 through 17 and insert the following:

SEC. 5. (a) In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by

such a right, such right shall not be presumed to define a market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

(b) For purposes of subsection (a)—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code; or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

SEC. 6. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following hearings in May. Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251:

Oversight hearing, May 9, 1991, 2 p.m., SR-485, regarding the impact of the Supreme Court's Ruling in *Duro versus Reina* on the administration of justice in Indian country and on S. 962 and S. 963, legislation to reaffirm the inherent authority of tribal governments to exercise criminal jurisdiction over all Indian people on reservation lands.

Hearing, May 15, 1991, 9:30 a.m., SR-485, regarding reauthorization of the Native American Programs Act, administration for native Americans.

Hearing, May 16, 1991, 9 a.m., SR-485, regarding S. 668, to authorize consolidated grants to Indian tribes to regulate environmental quality on Indian reservations.

Hearing, May 23, 1991, 9 a.m., SR-485, regarding S. 290, to establish an Indian Substance Abuse Program, and for other purposes.

Oversight hearing, May 23, 1991, 2 a.m., SR-485, regarding Indian libraries, archives, and information services.

SUBCOMMITTEE ON AGRICULTURE AND CREDIT

Mr. LEAHY. Mr. President, I would like to announce that a joint hearing of the Senate Committee on Agriculture and Forestry Subcommittee on Agriculture and Credit, and the House Committee on Government Operations Subcommittee on Government Information, Justice and Agriculture will hold a hearing on May 21, 1991 at 9 a.m. in SR-332. The hearing will address the Farmers Home Administration national appeal staff. For further information, please contact Suzy Dittrich of subcommittee staff at 224-5207.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. ROBB. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 8, 1991, at 2 p.m. to hold a closed hearing on intelligence matters.

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

COMMITTEE ON SMALL BUSINESS

Mr. ROBB. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, May 8, 1991, at 2 p.m. The committee will hold a full committee oversight hearing on small business procurement in the dredging industry.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROBB. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works and the Subcommittee on Labor, Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Wednesday, May 8, beginning at 2 p.m., to conduct a joint hearing on the environmental and economic implication of a free-trade agreement with Mexico.

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

SUBCOMMITTEE ON LABOR

Mr. ROBB. Mr. President, I ask unanimous consent that the Subcommittee on Labor of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, May 8, 1991, at 2 p.m., for a joint hearing with the Committee on Environment and Public Works on the United States-Mexico Free-Trade Agreement.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. ROBB. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., May 8, 1991, to receive testimony on S. 484, the Central Valley Project Improvement Act.

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

COMMITTEE ON ARMED SERVICES

Mr. ROBB. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Wednesday, May 8, 1991, at 2 p.m., to receive a briefing from Maj. Gen. James M. Myatt, USMC, commanding general, 1st Marine Division, and members of the 1st Marine Division on the conduct of ground operations in their tactical

area of responsibility during Operation, Desert Shield/Desert Storm.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROBB. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Monday, May 13, beginning at 9 a.m., to conduct a hearing to hear testimony on S. 823, the Transportation Improvement Act of 1991; S. 965, the Surface Transportation Efficiency Act of 1991; and various truck issues.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROBB. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, May 14, beginning at 9 a.m., to conduct a hearing to hear testimony on S. 823, the Transportation Improvement Act of 1991; S. 965, the Surface Transportation Efficiency Act of 1991; and various truck issues.

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

ADDITIONAL STATEMENTS

TRIBUTE TO FLORIDIAN ROBERT B. WILLIAMS

• Mr. GRAHAM. Mr. President, because of my own strong interests in the subject, I am always delighted to acknowledge the contributions of Floridians in the health care arena. A particular source of great pride for us is Robert B. Williams, the director of the department of pharmacy at Shands Teaching Hospital, located on the campus of the University of Florida, who will assume the presidency of the American Society of Hospital Pharmacists [ASHP] this May.

ASHP was founded in 1942 and is the professional association representing pharmacists in the hospital and managed care settings. With more than 24,000 members from each of the 50 States, the society has extensive publishing and educational programs for its members to the benefit of the public. It is also a national accrediting organization for pharmacy residency and technician training programs.

In addition to his administrative duties at Shands, Bob is clinical professor and assistant dean for hospital affairs at the University of Florida's College of Pharmacy. Bob's undergraduate and graduate degrees are in pharmacy from Ferris (MI) State College and Ohio State University.

Along with his teaching and clinical responsibilities, Bob has been a leader

in clinical pharmacy at the local, State, and national levels. In addition, he is a prodigious author with nearly 100 publications and papers to his credit.

Mr. President, I am sure my colleagues join me in extending best wishes to Bob as president of ASHP.●

RECOGNITION OF THE NATIONAL WILDLAND FIREFIGHTERS MEMORIAL

● Mr. BAUCUS. Mr. President, I rise today to draw the Senate's attention to an event taking place at this moment in my home State of Montana. At the Aerial Fire Depot, in Missoula, people are gathering to dedicate a memorial to those who have lost their lives battling this Nation's forest fires.

Mr. President, Missoula is a particularly appropriate location for this memorial. Nearly 42 years ago, 13 young men donned their jumpsuits and parachutes, and flew out of Missoula to drop on a fire along the Missouri River. They were never to return.

The Mann Gulch fire, where these young men lost their lives on that hot August afternoon in 1949, is located not far from the ranch where I grew up. The fire, caused by a lightning strike, was burning in the sparse timber and scrub that is so typical of this area. I know of this country, and it is tough country. It rises steeply from the river. It is studded with breaks, gulches, and cliffs. And the wind on hot summer afternoons becomes erratic, gusty, and unpredictable.

I would bet that those 13 young men cramped inside that old Ford Tri-Motor joked and enjoyed the views on that flight down from Missoula. Inside, each was feeling that rising sense of anticipation and excitement that precedes a parachute jump. However, each knew that the real risk that all firefighters share lay not in the jump, but in what they might face upon landing.

Mr. President, what happened that late afternoon has since become the stuff of myth and legend. The movie, "Red Skies Over Montana," was Hollywood's attempt to capture this event. The loss of 13 young lives in the swirling vortex of the Mann Gulch fire generated controversy, charge, and countercharge. Investigations were held. Procedures were changed.

In thinking about this event, I have concluded that the meaning of the Mann Gulch fire, or any other where firefighters have lost their lives, lies in the deep appreciation we should all feel for those who routinely place themselves in harm's way. Believe me, the ferocious power of a forest fire is something that must be experienced to be understood.

The names of Stanley J. Reba, Marvin L. Sherman, James D. Harrison, Henry J. Thol, Leonard L. Piper, Eldon E. Dietteret, Joseph P. Sylvia,

Philip R. McVey, Newton R. Thompson, David R. Navon, Robert J. Bennett, and William J. Hellman will be called forth today in Missoula. They are just a few of the firefighters who have lost their lives. Two hundred and twenty-six have perished since 1977 alone.

Mr. President, as I speak, another fire season is upon us. From Alaska to the Mexican border, young people are arriving at ranger stations and jump bases for another season. Refresher courses are being given. Equipment is being readied. New arrivals are being trained. To all of those who have and will fight this country's wildfires, this Nation is in your debt.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Julie Dammann, a member of the staff of Senator BOND, to participate in a program in Germany, sponsored by the Hanns Seidel Foundation, from May 11-18, 1991.

The committee has determined that participation by Ms. Dammann in the program in Germany, at the expense of the Hanns Seidel Foundation, is in the interest of the Senate and the United States.●

COMMUNITY ECONOMIC DEVELOPMENT CONFERENCE

● Mr. SMITH. Mr. President, there is probably no more important issue at the community level this year than economic health. In the wake of the economic downturn in New England and across the country, many communities and small businesses are fighting for survival.

My colleague, Senator WARREN RUDMAN, and I are sponsoring a Community Economic Development Conference on May 28 in Manchester, NH. The conference is for New Hampshire representatives of municipalities, small business people, and other interested citizens to learn about Federal resources available to strengthen the business climate and improve the local economy.

This conference will address the problems of housing, infrastructure, business development, and job creation—areas that are critical in reestablishing a strong New Hampshire economic climate. New Hampshire College, New Hampshire Municipal Association, Farmers Home Administration, and Blue Cross-Blue Shield of New Hampshire will join us in sponsoring the conference.

U.S. Representative BILL ZELIFF, who is also the owner of the Christmas Tree Farm Inn in Jackson, NH, will address the conference during breakfast. His speech will be followed by panel discussions on "How a Community Develops a Solid Economic Base" and "How a Community Addresses Their Citizens' Housing Needs."

I will address the conference at lunch, giving a report from the Senate on current economic policies that would boost the economy. This segment will be followed by a discussion on job creation and job retention. Finally, the attendees will have the opportunity to hear from representatives of various State and Federal agencies to discuss a number of Federal programs and respond to specific questions on Federal opportunities.

Organizations participating in the conference include: the U.S. Department of Agriculture, Farmers Home Administration; U.S. Small Business Administration; the Department of Commerce, Economic Development Administration, the Federal Highway Administration; the International Trade Administration, the New Hampshire Office of State Planning; New Hampshire Housing Finance Authority; the Northeast Rural Water Association; the Small Business Development Center; and the U.S. Environmental Protection Agency.

I look forward to a successful and productive conference.●

C. FREDERICK ROBINSON

● Mr. RIEGLE. Mr. President, I rise today to pay tribute to Mr. C. Frederick Robinson, a community leader from the city of Flint in my home State of Michigan.

Mr. Robinson has been an active and valuable member of the community and has contributed many things that have made Flint and Genesee County, MI, a better place for people to live.

Mr. Robinson was an original organizer and founder of the Community Civic League, an organization geared to political education and activism. He also helped organize the Urban Coalition of Flint, which advocates on behalf of citizens for needed social and institutional change. As an attorney, he has participated in many efforts to help protect the basic rights for all residents of the community.

On Thursday, May 9, 1991, Mr. Robinson's family, friends, and colleagues

will gather in Flint to honor the accomplishments of Mr. Robinson. Although I will not be able to personally participate in this event, I know I echo the thoughts of many when I say that Mr. Robinson is a man of dedication and commitment.●

SENIOR SERVICES OF SEATTLE/ KING COUNTY BRAVO! V SENIOR VOLUNTEER CELEBRATION

● Mr. ADAMS. Mr. President, I arise today to pay tribute to a group of prominent citizens of my hometown of Seattle, WA, who will be honored for their outstanding voluntary contributions to bettering the lives of the residents of Seattle. Tomorrow, on May 9, 20 individuals from all walks of life in our great city will be honored at a banquet and awards ceremony to recognize them for their extraordinary talent and commitment to our community.

The Bravo! V Senior Volunteer Celebration is the fifth annual event to celebrate a special group of volunteers. This event is sponsored by Senior Services of Seattle/King County, a community-based organization which has for many years dedicated itself to providing services to the elderly residents of Seattle and King County. The Bravo! V Senior Volunteer Celebration is one of the many services provided by senior services.

Each year Senior Services of Seattle/King County invites community businesses and organizations to nominate the individuals they believe best exemplify outstanding voluntary service to our community, and from this list selects those to be honored at the award ceremony.

Mr. President, because the accomplishments of the 20 individuals to be honored tomorrow are so impressive I would like to briefly mention each of the honorees and the organization that nominated them for public recognition.

SENIOR VOLUNTEER HONOREES

Dr. Philip N. Hogue is a retired physician and has been a Red Cross volunteer since 1961, including serving on the board of directors for 20 of those years. Of particular note has been his work as chair of both the Military and Social Services Committee and the AIDS Education Committee of the Red Cross. Dr. Hogue was nominated by the American Red Cross.

Mr. Donald R. Cline is being recognized for his direct work with the disabled and frail elderly. Mr. Cline has worked closely with 22 individuals over the past 5 years, including 2 who were victims of Alzheimer's disease and 4 victims of multiple sclerosis. His work with these individuals has been hands on by providing them with transportation, doing their grocery shopping, doing yard work, and other services. Mr. Cline was nominated by ARCO.

Ms. Ann Pattee has been an active volunteer over the past 15 years includ-

ing at the Union Gospel Mission's mail-room and mending clothes at the Josephinum. Ms. Pattee was nominated by the Association of Retired Seattle City Employees for whom she has volunteered for 14 years as treasurer and served as an executive board member since 1977.

Mr. Neil McCormick, a Boeing Co. retiree since 1978, has been active with SCORE—the Senior Corps of Retired Executives—a national program of retired executives and managers who provide voluntary management counseling to small businesses and community organizations. He has chaired the local SCORE chapter and has served as a representative to the regional and national offices of SCORE. Mr. McCormick was nominated by Boeing management.

Ms. Rosella Flannigan has been responsible for recruiting and training volunteers and matching them with low-income seniors or disabled persons for Catholic Community Services' Volunteer Chore Ministry since it began in 1981. Ms. Flannigan, a nurse, assesses the needs of each potential client to provide an appropriate volunteer match. She works with 50 volunteers who serve 40-60 clients each month. Ms. Flannigan was nominated by Catholic Community Services.

Mr. Leonard Honick has contributed as a volunteer in a variety of capacities to benefit older Americans and other members of the community, including the Senior Corps of Retired Executives [SCORE], the Red Cross Language Bank, and the Mayor's Office for Senior Citizens, where he was a key volunteer in Chautauqua 1988—a Senior World's Fair. Of special note is that Mr. Honick was responsible for forming the Chautauqua Northwest's Mature Market Services, a unique senior consulting service to help business, Government, and community agencies understand the consumer needs of people age 55-plus. Mr. Honick was nominated by Chautauqua Northwest.

Mr. Ken Dodson is the catalyst for Community Home Health Care's Team Running project—the Hood to Coast Relay. His recruitment of runners and fund raisers for the agency's Patient Care Fund has provided an average of \$30,000 a year for home health care services to enable older persons to remain independently at home. Mr. Dodson was nominated by Community Home Health Care.

Ms. Selma Weisman chairs the Seattle Gray Panthers' Health Care Committee. To gain information about national health care, she has made many trips to Canada, at her own expense, to obtain information about Canada's health system. She shares this information with fellow Gray Panthers, legislators, and many community organizations. She also serves as president of Human Care Services, a nonprofit organization that assists those needing

guardianships and other forms of assistance. Ms. Weisman was nominated by the Gray Panthers.

Mr. Herbert M. Bridge has won many awards and honors for his extensive volunteer work on behalf of a variety of organizations including serving with the Puget Sound chapter of the Naval Reserve Association, the Puget Sound chapter of the American Jewish Committee, vice president of the Federated Jewish Fund, the Seattle Council Navy League and Seafair, and others. Among his honors he was awarded the Washington State Humanitarian Award by the National Conference on Christians and Jews. Mr. Bridge was nominated by the Greater Seattle Chamber of Commerce.

Mr. Floyd Hutton volunteers with two programs at Group Health Cooperative's Senior Resource Center—the Telephone Assistance Resource Center and the new Research and Development Program. He is 1 of 20 volunteers who answer the resource line's over 15,000 requests a year for information. In addition, Mr. Hutton volunteers with the AARP Volunteer Income Tax Assistance Program, the Washington Literacy Program, and the Washington Library for the Blind and Physically Handicapped. Mr. Hutton was nominated by Group Health Cooperative of Puget Sound.

Ms. Jean Lunzer, a retired travel writer for the Seattle Post Intelligencer, has been providing articles to the monthly newsletter of the Retired Senior Volunteer Program [RSVP], providing both travel tips and armchair adventures for the readership. She also volunteers with the Editorial Planning Committee to help plan the focus and content of the paper. Ms. Lunzer was nominated by the Retired Senior Volunteer Program.

Mr. James C. Mizell is a volunteer board member of the Tallmadge Hamilton House Senior Center and chairs its personnel committee. He also serves on the city of Edmonds Civil Service Commission and actively participates with the Evergreen Area Council of Boy Scouts and the Pilchuck Council CampFire and the Big Brothers Bowl-a-thon. Mr. Mizell was nominated by SAFECO Insurance Co.

Mr. George Ledger has a long history as a volunteer with scouting. In 1990 he received the George Meany Award for his 40 years in Scouting, including serving as an assistant Cubmaster, Cub Scout Roundtable Commissioner, assistant Scoutmaster, and roundtable commissioner. He has taught and participated on the staff of our National Boy Scout Jamborees and World Jamborees in Norway and Japan. Mr. Ledger was nominated by the Retired Seattle City Light Employees Association.

Mr. T. Edward Stephens, Ph.D., has been a member of the Seattle Senior Corps of Retired Executives [SCORE] for 25 years—longer than anyone else

in the Seattle SCORE—and has served as a member of the executive board. He has been a SCORE counselor to countless small business owners, has assisted the Small Business Administration [SBA] in evaluating applicants' eligibility for loans and lectured and given speeches on behalf SCORE. Dr. Stephens was nominated by SCORE.

Mr. Del Castle has been a community volunteer in the Seattle area for many years in many capacities. In addition to serving for the past 6 years as a member of the Seattle-King County Advisory Council on Aging, where he chairs the public information Committee, he volunteers with the Seattle Longshore Pensioners Club, the Elder Citizens Coalition, the Puget Sound Council of Senior Citizens, the Harrison Denny Community Council and the Cypress Island Cooperative. In addition to his Sunday column in the Seattle Times, he is now helping to raise \$1 million to endow at the University of Washington the first chair to be established in the Nation in the name of a labor leader, Harry Bridges. Mr. Castle was nominated by the Seattle-King County Advisory Council on Aging.

Mr. Ruben E. Spannaus has provided his volunteer contributions to the United Way since 1947 when he first served as a member of a special committee on a community fund agency. Since then he has served in an extraordinary array of roles with United Way, ranging from committee chairmanships, instructor for the Volunteer Leadership Board Training Program, and interpreter for the Board Bank. He now chairs the Government Affairs Committee and serves as United Way representative to a variety of community entities including the Seattle Public Schools and Seattle-King County Advisory Council on Aging. He is also a member of the United Way of King County Aging Services Panel. Mr. Spannaus was nominated by the United Way of King County.

Mr. Bob Fraser has played numerous community volunteer roles including leadership roles in the Telephone Pioneers of America, and is the elected representative of the Life Member Retirees of the Pioneers for all of western Washington. He was the heart and soul of the Pioneer effort in the Goodwill games, especially in recruiting and training volunteers. Mr. Fraser also provided leadership in repairing Talking Books for the Library of the Blind and has worked with physically challenged children. Mr. Fraser was nominated by the U.S. West Communication/Telephone Pioneers of America.

Ms. Lorna Aagaard was one of the first volunteers at the Burke Museum at the University of Washington, where she was a docent for 20 years and continues to work at the reception desk. She was also one of the first volunteers at the University Medical Center, holding a variety of positions including

chair of the Volunteer Liaison Committee. She was president of the UW Faculty Auxiliary and the Medical Faculty Auxiliary. She has also volunteered at her church for 33 years. Ms. Aagaard was nominated to the University of Washington Retirement Association.

Mr. Norman Chamberlain is known throughout the State of Washington and nationally for his efforts to promote and expand rehabilitation facilities for those who have been incarcerated and who need help as a result of drug or alcohol illnesses. He has served as chair of the Washington Council on Crime and Delinquency and currently chairs the King County Executive's Committee on Prison Sitting. In addition, Mr. Chamberlain has dedicated himself to the creation of the Southeast Seattle Senior Center new building and is cofounder of the South Seattle Crime Prevention Council—a community/police partnership hailed nationally for its innovative structure and its contribution toward crime reduction techniques. Mr. Chamberlain was nominated by VelDyke Realty.

Ms. Josephine Lynch has provided extensive voluntary contributions to young and old alike. She participated in the 50 Plus Child Care Training Program at North Seattle Community College and has volunteered at the YWCA East Cherry Child Care Center where she serves three times a week as a teacher assistant. She also volunteers at the Central Area Senior Center and in other community and church programs. Ms. Lynch was nominated by the YWCA East Cherry Branch.

As this list of 20 individuals indicates, their contributions extend over many years and affect many different facets of community life. Their commitment makes a profound difference in the lives of children, disabled adults, and older persons. Their work benefits community services of all kinds, from serving on boards of directors to providing hands-on care to those in need. These deeply committed and hard working citizens have earned this honor which, most significantly, has been recommended by their peers. And, of course, they symbolize the contributions of tens of thousands of other volunteers serving communities throughout our Nation. They are the spirit of America.

Mr. President, I also want to recognize Senior Services of Seattle/King County, a community organization which sponsor this celebratory event. I have had the privilege of working with this organization for many years and am well-acquainted with the scope and importance of their work of behalf of the older citizens of Seattle. I know that Senior Services could not do what it does so well without the many volunteers that contribute to their organization as well. Hats off to all these incredible people.●

HONORING MICHIGAN TROOPS WHO DIED IN DESERT STORM

● Mr. RIEGLE. Mr. President, today I wish to pay tribute to the 15 brave Michigan service members who lost their lives in service to their Nation in support of Operation Desert Shield/Desert Storm.

The heroic Michigan servicemen I honor today are Army Cpl. Stanley Bartusiak of Romulus, Marine Cpl. Kurt Benz of Garden City, Army Sgt. Roger Brilinki of Ossineke, Navy Boiler Technician Fireman Tyrone Brooks of Detroit, Marine Capt. Jonathan Edwards of Grand Rapids, Army S. Sgt. Mark Hansen of Ludington, Army Spec. Timothy Hill of Detroit, Army PFC Aaron Howard of Battle Creek, Marine Lance Cpl. Michael Linderman, Jr., of Lansing, Army Sgt. Kelly Matthews of Burkley, Army Spec. William Palmer of Hillsdale, Army Spec. Kelly Phillips of Madison Heights, Navy Aviation Boatswain's Mate Marvin Plummer of Detroit, Marine S. Sgt. David Shaw of Harrisville, and Marine Lance Cpl. Tom Tormanen of Milford.

In an hour of national crisis, America called hundreds of young Michigan men and women to service. Each one of them answered willingly and with dignity. Each one gave all we asked of them, and more. Fifteen gave their lives.

It is always tragic when a life is lost, especially the life of a young person. But these heroic troops lost their lives in courageous service to their country. In that we may take pride. They willingly answered the call to serve the United States of America and selflessly gave their lives.

Their families were called upon as well to make the most heartbreaking sacrifice. In the grandest gesture of patriotism, they stood behind their loved ones and supported them even in the face of imminent danger. The families of service members involved in Operation Desert Storm are to be honored and commended. At the same time, let us never forget the profound loss of the families of the 15 fallen men from Michigan.

As a nation, we are indebted to these men and their families. As residents of Michigan, we are proud to have called them neighbors and friends. And, as individuals, we cannot help but mourn their loss. They have given to the United States something we hope never to have to ask of another American.

When we ask an American family to sacrifice a loved one for their country, we can ask for nothing greater. This debt may never be repaid except in our hearts, in our minds, and in our prayers.●

TRIBUTE TO JUDGE EUGENE SPELLMAN

● Mr. GRAHAM. Mr. President, I offer a tribute to an exemplary member of

the Federal judiciary, U.S. District Judge Eugene P. Spellman of the Southern District of Florida.

Judge Spellman died of cancer May 3 in Miami at age 60, having served as a district court judge 11 years. Funeral mass was held today in Coral Gables.

During those 11 years on the Federal bench, Judge Spellman presided over some of the most complicated cases of this century, involving issues of taxation, religious freedom, immigration law, and money laundering.

Amidst the diversity of his docket, the judge brought these consistent characteristics to court: compassion, fairness, intelligence, and humility.

Mr. President, our time-honored system of justice grants considerable power to Federal judges. But Judge Spellman never forgot the powerless—the handicapped, the impaired and the homeless.

Gene Spellman loved his profession, he loved his community and he loved his family. One of Judge Spellman's last accomplishments—and one of his proudest—was to speak at his son Michael's graduation from law school this spring at Florida State University in Tallahassee.

To the Spellman family, we extend our prayers as we share their grief. To future members of the judiciary, we offer the example of Judge Spellman's service as a model.●

CYPRUS AND THE NEW WORLD ORDER

● Mr. HARKIN. Mr. President, I would like to take this opportunity to speak about some of the lessons from the Persian Gulf war and their applicability to the conflict on Cyprus. As you know Mr. President, like the Kuwait crisis, the United Nations Security Council has passed a number of resolutions designed to end the crisis on Cyprus; most notably Security Council Resolutions 353, 1974; 367, 1975; 541, 1983; 550, 1984; and 649, 1990.

Throughout the Persian Gulf crisis President Bush spoke of a new world order resulting from the allied coalition's efforts to liberate Kuwait. Yet, the manner in which the Persian Gulf crisis was resolved did nothing to achieve a new world order. There was nothing new about the way the crisis was handled and little order has come about as a result of the war.

Cyprus, however, holds out a new hope and could be a shining example of how conflicts should be resolved in a new world order. As the international community searches for a solution to the conflict on Cyprus, we must consider not only what lessons can be learned from the gulf crisis but also what lessons will be taught in the future concerning conflict resolution.

What are some of the lessons that can be learned from the gulf war? First, the United Nations Security

Council has an important role to play. If Cyprus is going to be an example of a new world order then United States Security Council Resolutions 367 (1975) and 649 (1990) as well as the agreements reached by the leaders of the two communities in 1977 and 1979 must continue to serve as the basis for the Secretary General's efforts and be implemented. Second, the United States is the only nation capable of providing the diplomatic and political leadership necessary to help resolve the conflict. Cyprus, as we all know, is high on the agenda of the Secretary General. The Secretary General began his illustrious career on Cyprus and would very much like to see the conflict resolved before he leaves office this year. I believe that Cyprus should also be high on the agenda of President Bush. Third, the manner in which U.N. Security Council resolutions are implemented—through diplomatic and political means as opposed to military force—will determine whether there will be a lasting and durable solution or whether greater human suffering will result. Last, as I have said on many occasions, the sovereignty, independence, and territorial integrity of Cyprus must be respected and Turkish troops must leave. These are some of the lessons that can be learned from the gulf war.

Mr. President, we must now turn to those lessons that Cypriots might teach the world. The Cypriot communities face a daunting challenge; to install new state structures that will be accepted by all Cypriots regardless of ethnic background. Cyprus is not alone in its challenge to form new state structures. Yugoslavia, the birthplace of my mother, faces a somewhat similar situation, absent the presence of foreign troops. In Yugoslavia the federal system is breaking apart along the lines of ethnicity and has thrust that country to the verge of civil war. The federal system of Canada, which all would agree is a modern Western industrialized state, was on the brink of collapse only last year. Again, cultural, ethnic and political differences were at the root of the problem. Whether in Africa or Eastern Europe, the Basques of Spain or the Kurds of the Middle East, ethnic differences and the desire for satisfactory political representation are causing tensions, challenging old regimes, placing new tensions on political structures and upon the world community. Even in our own country, which has long prospered and benefited from ethnic diversity, the political model of federalism, while proven to be attainable and advantageous, did not evolve without a civil war.

How the conflict on Cyprus is eventually resolved and how the Cypriots decide to best govern themselves could greatly influence the world and become a model for any new world order. The U.S. Congress, for its part, can be a positive influence on the future course

of events in Cyprus. We can do so by reaffirming our commitment to a proven formula for stability between Greece and Turkey. As I have said before, experience has shown that continuing to fund Greece and Turkey on the basis of the 7:10 ratio is in the best interest of the United States and assists in creating a climate conducive to a lasting settlement on Cyprus.●

AILENE ROSELYN BUTLER

● Mr. RIEGLE. Mr. President, I rise today to pay tribute to Ms. Ailene Roselyn Butler, a community leader from the city of Flint in my home State of Michigan.

Ms. Butler has been an active and valuable member of the community and has contributed to many things that have made Flint and Genesee County, MI, a better place for people to live.

Ms. Butler has always been a pioneer. She was the first and, thus far, only black Flint city councilwoman, Flint's first black Girl Scout leader, the first woman elected as vice president and board member of the Flint NAACP, and Flint's first black female funeral director.

On Thursday, May 9, 1991, Ms. Butler's family, friends, and colleagues will gather in Flint, to honor her many accomplishments. Although I will not be able to personally participate in this event, I know I echo the thoughts of many when I say that Ms. Butler is a woman of dedication and commitment.●

INDUCTION OF BEN C. WILEMAN INTO THE NATIONAL HOUSING HALL OF FAME

● Mr. BOREN. Mr. President, it is great pleasure for me to note the induction of Ben C. Wileman into the National Housing Hall of Fame. The National Housing Hall of Fame honors individuals who have made a lasting contribution to the American housing industry and is sponsored by the National Association of Home Builders.

One of the most innovative and dedicated of its members, Ben Wileman's contributions were key to the development of the association as it is known today. His earliest contribution was as a member of the Home Builders Emergency Committee beginning in 1941. Because of this committee's work, the Federal Government did not take control of the residential building industry during World War II. The committee also helped ensure that local builders could get the supplies needed to build war-worker's housing.

Wileman first came to Washington to lobby for building supplies for Oklahoma in 1941. A Government-ordered control on all building materials put Oklahoma in an all-brick jurisdiction, but the State had a limited supply of

bricks and practically no bricklayers, so Wileman agreed to go to Washington to speak with the committee in charge of building material allocation. During this trip, he also met with the Home Builders Emergency Committee, fore-runner of the NAHB. Wileman joined the group and became very involved in the committee. The committee helped set policy that allowed the residential building industry to continue through the war years.

Highlights of Wileman's NAHB activities include: negotiating the merger of the HBI/NAHB and the National Home Builders Association (1941-43), running various committees from 1941 to 1956, establishing the first annual membership campaign in 1945, serving as vice president in 1946 and providing vision for the fledgling association until the 1960's.

Wileman is also well known as a philanthropist in the Oklahoma City area. He built one of the first shopping centers in the region, and his residential developments were designed to build communities, not just houses. During the late 1950's, Wileman began a long-term interest in providing medical care for middle Oklahoma. He was instrumental in developing the Bellevue Medical Center and continues to endow many of its programs. His contributions to the health of the community have earned him many awards and honors in Oklahoma City.

Ben C. Wileman's contributions to his community and the building industry are well known in Oklahoma, and I am pleased that the rest of the country will now learn of the accomplishments of this outstanding Oklahoman.●

EXECUTIVE CALENDAR

Mr. ROBB. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 81, 82, 83, 84, and 85; 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 STATE

Robert B. Zoellick, of the District of Columbia, to be Under Secretary of State for Economic and Agricultural Affairs.

INTERNATIONAL BANKS

Robert B. Zoellick, of the District of Columbia, to be U.S. Alternate Governor of the International Bank for Reconstruction and Development for a term of 5 years; U.S. Alternate Governor of the African Development Bank for a term of 5 years; U.S. Alternate Governor of the European Bank for Reconstruction and Development.

U.S. Alternate Governor of the African Development Fund; and U.S. Alternate Governor of the Asian Development Bank, vice Richard Thomas McCormack; and to be U.S. Alternate Governor of the European Bank for Reconstruction and Development.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

William G. Curran, of New York, to be U.S. Director of the European Bank for Reconstruction and Development.

INTER-AMERICAN FOUNDATION

Ann Brownell Sloane, of New York, to be a member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 1996.

UNITED STATES INFORMATION AGENCY

Henry E. Catto, of Texas, to be Director of the U.S. Information Agency.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MEASURE PLACED ON CALENDAR—H.R. 1455

Mr. ROBB. Mr. President, I ask unanimous consent that H.R. 1455, the Intelligence Authorization Act, just received from the House, be placed on the calendar.

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

THE CALENDAR

Mr. ROBB. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of Calendar Nos. 76, 77, 78, and 79; that the bills be deemed read a third time and passed, and motions to reconsider the passage of these items be laid upon the table en bloc.

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

Mr. ROBB. Mr. President, I further ask unanimous consent that any statements relating to these calendar items appear at the appropriate place in the RECORD and that consideration of these items appear individually in the RECORD.

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

RELIEF OF FANIE PHILY MATEO ANGELES

The bill (S. 119) for the relief of Fanie Phily Mateo Angeles, was considered, ordered to be engrossed for a third reading, deemed read the third time, and passed, as follows:

S. 119

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Fanie Phily Mateo Angeles shall be held and con-

sidered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 203(a) of such Act, or if applicable, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 202(e) of such Act.

RELIEF OF MARIA ERICA BARTSKI

The bill (S. 159) for the relief of Maria Erica Bartski, was considered, ordered to be engrossed for a third reading, deemed read the third time, and passed, as follows:

S. 159

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Maria Erica Bartski shall be issued a visa and admitted to the United States for permanent residence upon filing an application for a visa and payment of the required visa fees. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries that are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 202(e) of such Act (8 U.S.C. 1152(e)).

RELIEF OF MARY P. CARLTON AND LEE ALAN TAN

The bill (S. 395) for the relief of Mary P. Carlton and Lee Alan Tan, was considered, ordered to be engrossed for a third reading, deemed read the third time, and passed; as follows:

S. 295

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMMEDIATE RELATIVE STATUS FOR MARY P. CARLTON AND LEE ALAN TAN.

(a) IN GENERAL.—Subject to subsection (b), for the purposes of the Immigration and Nationality Act, Mary P. Carlton, the widow of a citizen of the United States, and Lee Alan Tan, the stepchild of a citizen of the United States, shall be considered to be immediate relatives within the meaning of section 201(b) of such Act, and the provisions of section 204 of such Act shall not be applicable in these cases.

(b) DEADLINE FOR APPLICATION.—Subsection (a) shall apply only if Mary P. Carlton and Lee Alan Tan apply to the Attorney General for immigrant visas pursuant to such subsection within 2 years after the date of enactment of this Act.

**RELIEF OF JOHN GABRIEL
ROBLEDO-GOMEZ DUNN**

The bill (S. 464) for the relief of John Gabriel Robledo-Gomez Dunn, was considered, ordered to be engrossed for a third reading, deemed read the third time, and passed, as follows:

S. 464

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the administration of the Immigration and Naturalization Act, John Gabriel Robledo-Gomez Dunn shall be classified as a child within the meaning of section 101(b)(1)(E) of that Act (8 U.S.C. 1101(b)(1)(E)), upon filing of a petition filed on his behalf by his adoptive parents, citizens of the United States, pursuant to section 204 of that Act (8 U.S.C. 1154). No natural parent, brother, or sister, if any, of John Gabriel Robledo-Gomez Dunn shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

**NATIONAL HUNTINGTON'S
DISEASE AWARENESS MONTH**

Mr. ROBB. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 127 designating "National Huntington's Disease Awareness Month"; that the Senate then proceed to its immediate consideration; that the joint resolution be deemed read a third time and passed; the motion to reconsider be laid upon the table; and the preamble be agreed to.

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

The joint resolution (S.J. Res. 127) was considered, ordered to be engrossed for a third reading, deemed read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 127

Whereas 25,000 Americans are victims of Huntington's Disease, a fatal, hereditary, neurological disorder;

Whereas an additional 125,000 Americans have a 50 percent chance of inheriting the gene responsible for Huntington's Disease from an affected parent, and are considered to be "at-risk" for the disease;

Whereas tens of thousands of other Americans experience the destructive effects of the disease, including suffering from the social stigma associated with the disease, assuming the difficult role of caring for a loved victim of the disease, witnessing the prolonged, irreversible physical and mental deterioration of a loved one, and agonizing over the death of a loved one;

Whereas at present there is no cure for Huntington's Disease and no means available to retard or reverse the effects of the disease;

Whereas a victim of the later stages of Huntington's Disease invariably requires total personal care, the provision of which often results in devastating financial consequences for the victim and the victim's family;

Whereas recent advances in the field of molecular genetics have enabled scientists

to locate approximately the gene-site responsible for Huntington's Disease;

Whereas many of the novel techniques resulting from these advances have also been instrumental in locating the gene-sites responsible for familial Alzheimer's Disease, manic depression, kidney cancer and other disorders;

Whereas increased Federal funding of medical research could facilitate additional advances and result in the discovery of the cause and chemical processes of Huntington's Disease and the development of strategies to stop and reverse the progress of the disease;

Whereas Huntington's Disease typifies other late-onset, behavioral genetic disorders by presenting the victim and the victim's family with a broad range of biomedical, psychological, social, and economic problems; and

Whereas in the absence of a cure for Huntington's Disease, victims of the disease deserve to live with dignity and be regarded as full and respected family members and members of society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of May 1991, is designated as "National Huntington's Disease Awareness Month", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

NATIONAL FOSTER CARE MONTH

Mr. ROBB. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 154, a joint resolution designating May 1991 as "National Foster Care Month," and that the Senate proceed to its immediate consideration.

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

The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 154) designating May 1991 as "National Foster Care Month."

The joint resolution (H.J. Res. 154) was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. ROBB. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

APPOINTMENT BY THE CHAIR

The PRESIDING OFFICER. The Chair, pursuant to Executive Order 12131, as amended, signed by the President May 4, 1979, and extended by Executive Order 12692, signed by the President September 29, 1989, appoints the Senator from New Jersey [Mr. BRADLEY] to the President's Export Council.

ORDERS FOR TOMORROW

Mr. ROBB. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10:15 a.m., Thursday, May 9; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 11 a.m., with Senators permitted to speak therein for up to 5 minutes each; and that at 11 a.m. the Senate resume consideration of S. 429.

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

PROGRAM

Mr. ROBB. Mr. President, the majority leader asks I announce for the information of the Senate that on tomorrow, at 10:30 a.m., the newly appointed Senator from Pennsylvania, HARRIS WOFFORD, will be sworn in to fill the vacancy created by the death of our late colleague, John Heinz.

**RECESS UNTIL TOMORROW AT 10:15
A.M.**

Mr. ROBB. Mr. President, if there be no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess, as under the previous order, until 10:15 a.m., Thursday, May 9.

There being no objection, the Senate, at 7:01 p.m., recessed until tomorrow, Thursday, May 9, 1991, at 10:15 a.m.

NOMINATIONS

Executive nominations received by the Senate May 8, 1991:

FEDERAL RESERVE SYSTEM

David W. Mullins, Jr., of Arkansas, to be Vice Chairman of the Board of Governors of the Federal Reserve System for a term of 4 years, vice Manuel H. Johnson, resigned.

IN THE ARMY

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Harold T. Fields, Jr. xxx-xx-xxxx
U.S. Army.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 8, 1991:

DEPARTMENT OF STATE

ROBERT B. ZOELLICK, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF STATE FOR ECONOMIC AND AGRICULTURAL AFFAIRS.

INTERNATIONAL BANKS

ROBERT B. ZOELLICK, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF 5 YEARS; UNITED STATES ALTERNATE GOVERNOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS; UNITED

STATES ALTERNATE GOVERNOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS; UNITED STATES ALTERNATE GOVERNOR OF THE AFRICAN DEVELOPMENT FUND; AND UNITED STATES ALTERNATE GOVERNOR OF THE ASIAN DEVELOPMENT BANK, VICE RICHARD THOMAS MCCORMACK; AND TO BE UNITED STATES ALTERNATE GOVERNOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

WILLIAM G. CURRAN, OF NEW YORK, TO BE UNITED STATES DIRECTOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

INTER-AMERICAN FOUNDATION

ANN BROWNELL SLOANE, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 1996.

U.S. INFORMATION AGENCY

HENRY E. CATTO, OF TEXAS, TO BE DIRECTOR OF THE U.S. INFORMATION AGENCY.

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.