SENATE—*Tuesday, June 4, 1991*

(Legislative day of Monday, June 3, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

PRAYER

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

Let us pray:

Behold how good and how pleasant it is for brethren to dwell together in unity!—Psalm 133:1.

Eternal God of peace and love, we celebrate our unity as a Nation—E Pluribus Unum— but we also celebrate our diversity. We thank Thee for unity which prevents diversity from becoming anarchy and for diversity which prevents unity from becoming uniformity.

Mighty God, here are 100 of the most powerful people in the world. Grant that the power each Senator holds be united with the power of the other 99 so that, like a great symphony, they will make beautiful music which will bless the world. Help us never forget, "United we stand, divided we fall." Forbid, Lord, that differences be so divisive that the Senate be polarized and paralyzed, and the whole become less than the sum of its parts.

In these desperately critical days, economically, socially, and internationally, may we never allow division to emasculate the greatness and power of our Nation and forfeit the leadership which has so clearly identified us in the world.

We ask this in the name of Him whose leadership was servanthood. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC., June 4, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

WELCOME BACK REVEREND HALVERSON

Mr. MITCHELL. Mr. President, I know all Senators join me in welcoming back to the Senate our beloved Chaplain, Reverend Halverson. We are pleased that he has recovered, and we look forward to continuing to work with him and to benefit from his guidance in prayer.

SCHEDULE

Mr. MITCHELL. Mr. President, there will be a period for morning business today not to extend beyond 11 a.m., with Senators permitted to speak therein. The time between 10 a.m. and 11 a.m. will be under the control of the majority leader or his designee.

At 11 a.m. this morning the Senate will resume consideration of S. 173, the modified final judgment bill.

From 12:30 p.m. until 2:15 p.m. today, the Senate will stand in recess in order to accommodate the respective party conferences.

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 11 a.m.

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

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

The legislative clerk proceeded to call the roll.

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

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

The Senator from Michigan is recognized.

Mr. LEVIN. I thank the Chair.

(The remarks of Mr. LEVIN pertaining to the introduction of S. 1198 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEVIN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

TRADE RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

Mr. MOYNIHAN. Mr. President, this morning the distinguished majority leader and others will be speaking about the question of our trade relations with the People's Republic of China. Specifically to note that China now enjoys most-favored-nation treatment, in contradistinction to countries such as the Soviet Union. I have joined the majority leader and other Senators in legislation that would condition most-favored-nation treatment upon the President's certifying that certain minimum standards of international legality and human rights are maintained by the Government of the People's Republic.

I will take just a moment of the Senate's time to mention the question of Tibet, which is as far away as a land could be, and which has somehow disappeared from time to time, at least from the memory of the international community. Tibet was an independent nation that was invaded and conquered and is now occupied by the People's Republic of China. The invasion took place when our own concerns were very much distracted by the invasion of South Korea by North Korea, later joined by the People's Republic. But since 1950, that has been the reality. The world has not accepted it but has never sufficiently protested it.

There is no question that Tibet was an independent nation prior to that event. It had been recognized by the countries around it, by Bhutan, a Buddhist country to the south; by Nepal; by Mongolia to the north. Great Britain, through the British Government in India, recognized Tibet and czarist Russia did. The United States sent emissaries there in 1942 at a time when we were allied with China in the war against Japan, and they were specifically received by Foreign Office officials—like our State Department officials—as representatives of a legal entity. Tibet was a country that could have joined the United Nations, a country that ought to have done, and per-

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

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haps His Holiness the Dalai Lama has had occasion to comment on that.

Of note here is the fact that the one great violation of international standards in the world today with respect to the occupation by one sovereign nation of another is China's occupation of Tibet. It is the largest occupation in land area, and most grotesque and savage in terms of its genocide of the Tibetan people, their replacement by Han Chinese and the exile of the Government of Tibet to India. Yet, the People's Republic denies the existence of the issue. It seems to me appropriate that the United States Senate should insist that, if the Chinese Government chooses to deny its occupation of a soverign nation, we choose to affirm and deplore it.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. I thank the Chair.

(The remarks of Mr. WIRTH pertaining to the introduction of S. 1199 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Under the previous order the remaining time between now and 11 a.m. is under the control of the majority leader.

The Chair recognizes the majority leader, Senator MITCHELL.

ANNIVERSARY OF TIANANMEN SQUARE MASSACRE

Mr. MITCHELL. Mr. President, 2 years ago today, hundreds of unarmed Chinese students and workers, men and women, were brutally massacred on the orders of their own Government, because their peaceful demonstration of dissent threatened the power and privileges of an aged Communist elite.

The Western World watched transfixed as the students raised the statue of the Goddess of Liberty in Tiananmen Square to symbolize their hope for personal freedom and a better life.

The world watched in disbelief that turned to horror as army troops, tanks, and armed soldiers moved against a defenseless people, as it became clear that the ruling regime of China would not be deterred from suppression.

A month after the massacre, after vowing to the American people that the Chinese Government would pay a price for its repression, President Bush sent a secret high-level delegation to deal with that Communist regime.

Half a year later, President Bush vetoed a bill to protect the Chinese students in this country against forced repatriation. He said he would issue an Executive order which would have the same effect. But he did not.

Only under the pressure of public opinion did he finally agree to give these innocent people the political refuge to which their cause entitled them from the beginning.

And Christmas 1989, the season of peace, the year of the massacre itself, saw the President, high-level appointees toasting the authors of the Tiananmen Square massacre, on behalf of our Government.

Meanwhile, then and ever since then, the Communist regime in China was hunting down, imprisoning, torturing, and executing people whose only crime was that they want democracy.

The American people do not favor support of the current regime in China. The Congress is on record as voting overwhelmingly against that regime's repression. The world community condemns the renewal of political indoctrination in China, the new limits on overseas study, the increased surveillance of people and the renewed danger to dissenters.

The whole civilized world recoiled at the horror the Chinese regime unleashed.

A year ago today, Chinese students risked death or imprisonment to honor the martyrs of the prodemocracy movement by laying wreaths and trying to assemble at the site. This year, the cordon of troops around the square has prevented even those signs, those modest signs of respect for the dead and wounded of the protest movement.

Last year, scarcely a week before the anniversary of the massacre, President Bush requested renewal of most-favored-nation trade status for China.

Last year, the President said renewal of that trade status for China was the best way to bring about a transformation of Chinese Government policy and practice; the best way to support the goals for which young men and women gave their lives on the pavement of Tiananmen Square.

Now another year has gone by.

The martyrs of Tiananmen are as dead today as they were a year ago. And dead along with them is the hope of transformation in China.

Nothing has changed. The regime remains intransigent. The protesters still at large are still subject to imprisonment, torture, inhuman terms of confinement and deprivation of all rights by what can only be called kangaroo courts.

Any Chinese man or woman, regardless of age, suspected of sympathy for the dissenters is subject to arbitrary arrest, detainment, trial and imprisonment, not for things actually done, but for things the person believes others had the right to do.

The year-long renewal of most-favored-nation trade status for China has brought the world precisely nothing in the way of reform of the Chinese regime. It has brought the United States precisely nothing in the way of an improved world climate for peace. It has brought the people of Hong Kong precisely nothing in the way of assurance about their future under Chinese rule.

The policy of encouraging China's Government to take the minimal steps that are the responsibility of every government has failed in each and every particular of its goals.

It has not encouraged the Chinese regime to respect the human rights of any Chinese citizen;

It has not persuaded the Chinese Government to become a responsible party in the world effort to control the transfer of arms and arms technology;

It has not emboldened the Chinese Government to broaden its experiments with a market economy beyond one province;

It has not changed the Chinese Government's genocidal treatment of the people of Tibet;

It has not made the Chinese Government respect the elemental rules of fair trade even in its trade relationship with the United States.

When a policy designed to effect change in all these ways fails to effect change in even one of them, the adherents of that policy must join all others in realizing that it is a failed policy.

Yet once again today, on the second anniversary of the Tiananmen massacre, with hundreds if not thousands of political prisoners in China, with repression across that society the order of the day, with violence against the people of Tibet unabated, with arms sales proliferating undeterred and with trade policies that are a slap in the face to American companies seeking to do business abroad honestly—with all these indisputable and documented facts in place, President Bush is again proposing to extend favored trade status to China, without conditions.

Not since the worst days of the Soviet gulag has this Nation faced as clear a moral choice in foreign policy. It is a choice clear on the grounds of national economic interest. It is a choice clear on the grounds of national moral interest.

Yet the President suggests that American policy—not the motives or actions of the Chinese Communists themselves—but it is American policy and American policymakers who want to isolate China.

I reject, as all Americans reject, the idea that it is the policy of our Government which has ever forced any government anywhere in the world to turn guns on its own citizens.

I reject the idea that our Government's adherence to standards of de-

cency in international affairs offers any kind of excuse to any tyrant, any dictator anywhere, east or west, to massacre unarmed dissidents.

I reject the idea that it is American values that have to be sacrificed to the whims of the authors of the Tiananmen Square massacre.

I reject the idea that our Nation, the standard-bearer of democracy and human rights in the world today, must suspend our standards and deny our ideals for the sake of accommodating a group of Communist tyrants who have outlived their own ideology but do not wish to give up power and the privileges that go with it.

The Chinese Government's consistent complicity in the pirating of American software has caused enormous financial losses for America's business community. The Chinese Government's policy of barring access to Chinese markets while exploiting its own access to American markets has given the Chinese regime a $10 billion trade surplus at our expense.

President Bush does not talk about cultural genocide in Tibet. He does not talk about Chinese arming of the genocidal Khmer Rouge in Cambodia. He does not talk about repression in China.

Instead, he talks about the morality of not isolating China, as though something we had done were the cause of China's isolation, rather than what the Chinese Government has done.

The President speaks as though upholding the status quo in China is the only moral thing to do.

With all due respect, he is mistaken. There is nothing moral in upholding power that is misused.

There is nothing moral in abandoning those who look to us for help.

The world has changed in the past 5 years in ways that are upsetting established governments all over the globe. Governments which have neglected the interests of their own people have fallen in Africa, in Eastern Europe, in Central America.

Our Nation, our Government, our America should be in the forefront of those welcoming the emergence of democratic movements, a shift toward accountability by all governments, everywhere. The United States does well where freedom does well. America succeeds where democracy succeeds.

It is time to treat China as we treat all other nations.

I believe we in the Congress can best serve democracy and the best interests of the United States by refusing to forget what happened at Tiananmen Square and by insisting that the President change his failed policy toward the Communist tyrants of China.

Mr. President, I understand from the Chair the control of the time is from the majority leader.

The PRESIDING OFFICER. The majority leader is correct.

Mr. MITCHELL. I yield such time as the Senator from Massachusetts may require, and then the Senator from Illinois, 5 minutes, and then the Senator from Arizona such time as he may require.

Does the Senator from Illinois wish to be provided as much time as he requires?

Mr. DIXON. I think 5 minutes will be adequate, but I will ask for a minute or 2 if necessary.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

ANNIVERSARY OF THE TIANANMEN CRACKDOWN

Mr. KENNEDY. Mr. President, I want to commend our majority leader for, really, an excellent statement and a principled stand. This has been his position since the time of that terrible tragedy in Tiananmen Square some 2 years ago. I think this morning in the Senate he has, as on other occasions on our national television, I think, made the strongest possible case for insisting that any most-favored-nation provisions would be conditioned upon important progress in addressing these needs.

I just ask the majority leader if he is familiar with the statement of the Prime Minister, Premier Lee Pung, who only at the time of the anniversary, just recently, insisted that the military crackdown had been an appropriate response to the peaceful student protest, and the Chinese Government would do it again if they were faced with a similar demonstration? I think he has made the case so well in covering a wide variety of areas. But the attitude of the current Chinese Government regime would certainly appear they would be prepared to do it again today if he is not troubled by that attitude as well.

Mr. President, as has been pointed out, 2 years ago today the Government of the People's Republic of China initiated a brutal crackdown on the courageous prodemocracy students demonstrating in Tiananmen Square. By the end of the week, hundreds of peaceful demonstrators had been ruthlessly slaughtered and thousands more had been detained by government authorities.

Now, President Bush has formally announced his intention to renew most-favored-nation trading status with China. His decision, he claims, is the right thing to do with respect to China.

Unfortunately, the facts indicate otherwise. Since the Tiananmen Square massacre, the Chinese Government has intensified its repression of prodemocracy forces.

As this year's anniversary of the Tiananmen massacre approached, the Premier of China, Lee Pung, commented upon that great tragedy. He harshly insisted that the military crackdown had been an appropriate response to the peaceful student protest and that the Chinese Government would do it again if similar demonstrations were attempted in the future.

Today, Tiananmen Square is lined with armed guards to repress even the smallest demonstration of sympathy for the memory of those who died there 2 years ago.

To renew China's MFN status in the face of this brutality would make a mockery of the lives lost at Tiananmen Square and undermine whatever forces of democracy are still struggling for a new China.

President Bush's policy toward China makes no sense. Immediately following the Tiananmen crackdown, he promised to suspend all political-level exchanges with China. Yet within a month, he dispatched National Security Adviser Brent Scowcroft to Beijing—a trip that was kept secret from the Congress and the American people and was only acknowledged after it was reported by the press in December.

When Congress sought to extend the visas of Chinese students living in the United States, President Bush vetoed the legislation and said he would extend the visas by Executive order.

The White House subsequently denied that this promise had been made before finally capitulating and extending the visas.

The President also waived sanctions suspending the export of satellites, the sale of aircraft, and the delay of international loans to China.

In response to these gestures, the Chinese Government detained up to 30,000 prodemocracy dissidents, executed an undisclosed number of these brave individuals, sentenced more than 800 to prison, and brought new charges against individuals who supported the democracy movement.

President Bush then sent Brent Scowcroft on another secret visit to Beijing. He vetoed congressional sanctions regarding OPIC, trade assistance, and nuclear cooperation.

In response, the Chinese Government extended its crackdown on prodemocracy advocates, purged moderate elements from the Government, tightened restrictions on the foreign press, and harassed business entities and students living abroad who supported the democracy movement.

Now, the President wants to renew China's MFN status—thereby relinquishing our Government's best weapon in the struggle to encourage the Chinese leadership to change its policies. In light of Beijing's prior responses to his overtures, the President's unconditional renewal of MFN would only signify our country's acquiescence to further repression.

China is totally undeserving of MFN status on a score of issues, ranging from human rights to trade practices to nuclear proliferation.

If America is to champion the forces of freedom, it must take a stand against China's repressive regime.

By granting China MFN status the White House would only reinforce what the State Department itself calls an authoritarian one-party state ruled by the Chinese Communist Party.

It is time for the United States to take a more active role in supporting the prodemocracy forces in China and the long-suffering Chinese people.

The most important step we can take in this direction is to condition the renewal of China's MFN status, as has been proposed by Senator MITCHELL, upon several important criteria, including a determination by the President that China is honoring internationally recognized standards of human rights.

President Bush claims that he must renew MFN with no strings attached in order to reward China for its role in the United Nations with respect to the Persian Gulf resolutions and the liberation of Kuwait. But how can we support freedom in Kuwait while ignoring it in China?

Another argument the administration has advanced during the past 2 years is that trade between the United States and China will liberalize Chinese society. But since 1989, the United States and China have had close trading ties, and each year, the Chinese Government has become increasingly repressive.

During the past year, Chinese authorities made it clear that they would tolerate no activities even remotely critical of the Government or the party. The Government has used intimidation and a network of informants to crush all dissent.

More than 50 prodemocracy advocates have been sentenced to death for their participation in the Tiananmen demonstration. Most have already been executed.

Thousands of democratic activists have been sentenced to prison or sent off to labor in reeducation camps. Harsh sentences, often exceeding 10 years, have been given out to prodemocracy leaders.

Two recent college graduates from Beijing were sentenced to 11 and 15 years, respectively, for printing one issue of a prodemocracy journal. No allegations of engaging in violent activity were brought against the two. But the court found their crimes to be "serious, their nature sinister, and the offense grave."

Hundreds of democracy advocates are still being detained without trial. The human rights organization Asia Watch has chronicled more than 1,100 cases of arbitrary arrest and imprisonment, denial of due process, repression of political dissidents, and the imposition of harsh prison sentences.

Those who have been sentenced are often sent off to forced labor camps. The Chinese prison camp system holds nearly 20 million people and operates as a vast industrial empire.

Contrary to claims by the Chinese Embassy that the Government "does not permit any export of products produced by convict labor," China is increasing its use of prisoners for slave labor in order to lower the price of exports. Asia Watch recently uncovered official Chinese documents that call for intensified labor camp production, targeted especially at United States, German, and Japanese markets.

Prisoners work up to 15 hours a day and are tortured—often with cattle prods—for disobedience and failure to work fast enough.

The State Department confirmed more than 300 cases of torture in 1990 alone.

Even those detainees who have been released from prison are struggling to survive. Many have been fired from their jobs, expelled from the party, and banished from their villages.

American trade policies must not be used to support these repressive policies of the Chinese Government. Extending China's MFN status without qualification can only be interpreted by democratic forces within China—and around the world—as American complicity in the inhumane practices of the Chinese leadership.

Conditioning MFN status upon improved human rights conditions would show respect for the peaceful protesters who lost their lives at Tiananmen Square. It would provide hope for the prodemocracy forces still at work within China. And it would underscore America's commitment to democracy and fundamental human rights worldwide.

If America forgets the students at Tiananmen Square, who will remember them? If we fail to stand up for peace, freedom, and democracy in China, who will do so? Americans by the millions stood with these brave men and women in 1989. Congress should stand with them today, and America should stand with them in the years to come.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois [Mr. DIXON] is recognized for up to 5 minutes.

Mr. DIXON. Mr. President, I feel confident I can make these remarks in 5 minutes. If I need more time, may I ask unanimous consent to proceed without interruption.

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

THE SECOND ANNIVERSARY OF THE TIANANMEN SQUARE MASSACRE

Mr. DIXON. Mr. President, I recall vividly the series of events in Tiananmen Square. In fact, I know that all of us recall with horror, the sounds and sights of a massacre seen and heard from halfway around the world, brought directly and dramatically into our living rooms, live and in color. I, for one, will never forget it.

The images we all saw, Mr. President! The images of the lone man standing in front of the tank convoy; the fall of the goddess of democracy; the scenes of police brutality against unarmed civilians—such images are indelible because they are so terrible.

The Chinese people chose, with their lives in too many instances, freedom and democracy. The Government, committed to maintaining its outmoded policies, and its obsolete economic structure, chose force over freedom. It is fitting, therefore, that we in the United States, to whom the Chinese people looked for support and assistance, should commemorate this day as a memorial to those who lost their livelihoods and their lives for the cause of democracy. In this way, we recommit ourselves to their valiant struggle for freedom.

Since that day in June 2 years ago, we in the Congress have focused considerable time and effort on China. In spite of the imprisonments of prodemocracy student leaders on flimsy charges, the harassment of Chinese students in this country, the abuse of religious leaders, the prison labor, the nuclear technology sales, the administration has chosen to continue to do business with the Chinese Government.

Why?

I believe in doing business with China, but I do not believe one should reward a country with most-favored-nation status after it has consistently flouted the basic tenets of international law. Indeed, my colleagues will recall we revoked most-favored-nation status for Romania when dealings with the Ceaucescu regime got to be too dirty an enterprise. Can anyone convince the American people that China is a substantially fairer, more humane place today than Romania was when MFN was revoked? This Senator is not convinced.

The opponents of the majority leader's reasonable legislation to place conditions on the renewal of MFN to China will say that the Chinese leaders don't care what we do. They will do whatever they want, no matter what we do. I would suggest that the Chinese care a great deal about their trade relationship with the United States.

The release of some political prisoners, the recent accounting of prisoners incarcerated for their involvement in the prodemocracy movement, were all timed to coincide with the de-

bate here in Congress. The Chinese believe by taking some minor steps, they can avoid the wrath of Congress. They are surely not concerned about incurring the wrath of the administration.

Even if it were true that the Chinese will not change their ways, no matter what we enact in Congress, then why is it unreasonable to suggest that conditions we specify are unwarranted? Does not the United States have basic standards of conduct?

How many students and workers need to be imprisoned on trumped-up charges, how many reports of slave labor must there be, how many Tibetans have to die, or how many countries need to purchase Chinese nuclear technology, before human rights become an important enough foreign policy consideration to establish a standard by which other nations must abide in order to receive generous trade benefits?

I said in a recent floor statement that the administration was spinning its wheels in the mud of its China policy. In an attempt to extricate itself from the perception in this country that we are rewarding thugs, the administration has tried to invoke morality as the reason for extending most-favored-nation status, no questions asked. I would suggest, Mr. President, that on this anniversary of Tiananmen Square, it is right, and moral to question the Chinese Government about its prison system, its treatment of dissidents, its policies of intolerance and oppression. The fallen heroes of Tiananmen demand no less.

They are not here to ask the questions. We are. We must.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the majority leader has yielded such time as he may require to the Senator from Arizona.

The Senator from Arizona is recognized.

REMEMBER THE TRAGEDY; HONOR THE HEROES

Mr. DECONCINI. Mr. President, I thank the Chair and compliment my friend and colleague from Illinois for his statement this morning.

I remember that day so well, too. It is so vivid in our minds. I think the Senator has brought it back to us in very clear language and depicted it as one of the horrors of the modern age—to be able to witness that; and then have our Nation literally ignore it.

I thank the majority leader as well for his leadership in this area. I am very pleased the majority leader has provided the opportunity today for the Senate to remember the tragedy, and to honor the heroes of that tragedy.

Two years ago today peaceful prodemocracy demonstrators were ruthlessly gunned down in Tiananmen Square as China's aging leadership made a desperate last-gasp attempt to reassert its steel grip over its people.

Indeed, it did just that. Instead of "letting a thousand flowers bloom," the senile, Communist Chinese Government crushed those flowers and their promise of economic and democratic reform just as it tried to crush the students under the metal tank treads.

The past 2 years have seen China plunge into a new dark age. The cynical protestations of President Bush notwithstanding, China has rejected every overture to join the community of civilized nations. The President—claiming that he knows better than the American people what is good for China and for the United States—has extended to China preferential trade treatment, known as most-favored-nation trade status. As President Bush said in his speech at Yale last week,

> MFN is a means to bring the influence of the outside world to bear on China. Critics who attack MFN today act as if the point is to punish China—as if hurting China's economy will somehow help the cause of privatization and human rights. * * * But the most compelling reason to renew MFN and remain engaged in China is not economic; it's not strategic but moral.

Indeed, is it moral that we should even be considering continuing MFN status for China? Where is the morality of this country, if we are going to ignore the human rights abuses by the Chinese? It is no fun criticizing another country. It is not something that I enjoy, but it is a principle that the United States has stood by for year after year, one administration after another administration. Look at the success that our human rights policy has brought about by continuing, persisting its focus on immigration rights compliance with the Helsinki accords of 1975, with the European nations and the Soviet Union. It does work. It is something the United States can be proud of.

What has the civilized world received from China in the past 2 years in return for extending MFN status? Moral leadership? You cannot say or point to one area of moral leadership, and certainly the abuses are substantial.

It has witnessed the execution of more than 273 prisoners of conscience in the wake of the 1989 prodemocracy protests. As amnesty international has reported, the world has witnessed the detention of close to 10,000 Chinese citizens in Beijing alone for their participation in the Tiananmen demonstrations. We have seen reports of Chinese doctors being jailed for removing Government-mandated intrauterine devices from women who wanted more than one child under China's obviously abhorrent birth control policies. Indeed, these are moral issues.

United States businesses have suffered under China's protectionist trade practices while China has achieved record trade surpluses on over 90 items including chemicals, pesticides and pharmaceuticals with the United States. According to the Commerce Department, our trade deficit with China for 1990 exceeded $1.8 billion.

It increased by nearly $500 million in March of this year alone. China has also illegally pirated American copyrights, trademarks and computer software. Even the Bush administration's assistant United States Trade Representative, Joseph Massey, described China's software piracy as "enormous" when China was cited for these illegal practices less than 2 months ago.

The enormous piracy of our intellectual properties. Is that a moral issue that we should discuss? Is there a moral reason to justify us granting MFN status to China? I think the President is wrong.

What else have we received from coddling the Chinese for the past 2 years? We did not get China's support for our actions at isolating Iraq and authorizing the use of force against Saddam. Instead, we were only assured that China would not object to these actions by exercising its veto in the U.N. Security Council. Is that moral support? Hardly. At the same time, we also witnessed China's reckless escalation of its nuclear and missile proliferation policy to dangerous and unstable parts of the world. For instance, we have learned that China was secretly selling Pakistan the M-11 missile—a missile capable of carrying a nuclear warhead approximately 185 miles, thereby threatening neighbors throughout the region. According to the May 12 Washington Post, M-11 launchers have been sighted in Pakistan.

I do not believe there has been a denial there. Additionally, China exported nuclear weapons and assorted weapons technology to countries such as South Africa, Saudi Arabia, Iran, Algeria, and, yes, even Iraq. Currently, North Korean Scud missiles developed with Chinese technical assistance are being sold to Syria. In a word, we have received nothing from China in the last 2 years to justify continuing the policy of senselessly extending preferential treatment toward this nation, or for continuing the policy; it is senseless to do so.

China's actions prove it is a rogue elephant which refuses to acknowledge its responsibilities in the community of nations.

President Bush sent his representative Robert Kimmit to China to try and reason with the Chinese leadership not long ago. After his visit, Chinese Foreign Ministry spokesman, Wu Jianmin, stated, "The Chinese will never accept the attachment of various conditions to the extension of the [MFN] treatment." Clearly, reaching out to China does not work. But, do we have to accept the Chinese dictates? It has not worked, and I doubt that it will ever work. The record speaks loudly and clearly on this point. We have

found that this policy does not work, and it does not bring despot nations to their senses. This is a moral principle.

Perhaps rejecting MFN for China will work. It would certainly send a very strong and clear message to the Chinese Government that business as usual cannot continue with the United States.

I urge my colleagues to cosponsor S. 1167, legislation I introduced to immediately terminate China's MFN status. At the very least, the well crafted legislation sponsored by the distinguished majority leader must be the vehicle by which the Senate informs the Chinese—and its apologist, President Bush—that until it is ready to enter the 20th century and take steps to recognize the legitimate rights of its people and its responsibilities to the outside world, we will not do business with China's current gang of thugs.

Mr. President, let me end by saying that there are many outstanding Chinese people throughout the world. Some of us have had an opportunity to visit that country and to talk to and to get a feel for what the people really believe. By opposing MFN, we are not trying to attack the Chinese people.

And I know, from my experience there and from Chinese people whom I have met throughout this country and those who have relatives and contacts still there, that there is still a hope within the people of China for democracy and that they are literally physically and emotionally crushed by this military government which ignores their human and civil rights. A moral issue, indeed, is before us today.

I hope that we can rally support here to withstand the continued extension of preferential treatment to the Chinese Government by our own Government.

I thank the Chair.

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

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

The Senator from Arizona is recognized.

Mr. DECONCINI. I thank the Chair.

(The remarks of Mr. DECONCINI pertaining to the introduction of S. 1201 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. President, the Chair will remind the Senator from Pennsylvania that the time until 11 a.m. is under the control of the majority leader.

Mr. SPECTER. Mr. President, in the absence of any other Senator on the floor, I ask unanimous consent that I might be permitted to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. Without objection it is so ordered. The Senator is recognized as if in morning business.

FAIR STEEL TRADE

Mr. SPECTER. Mr. President, I have sought the floor to make available to my collegues a document published by the Cold Finished Steel Bar Institute, setting forth important considerations about the need for a U.S. policy to aid in the steel industry's quest for fair trade, entitled "Life After VRA's" or voluntary restraint agreements.

Mr. President, there continues to be an urgent need for reciprocity and fairness in the international steel market. This is a subject that I have addressed on this floor on many occasions in the 10½ years that I have been in the Senate. I am immediately reminded of the battles that I have fought in collaboration with our late colleague, Senator John Heinz, who was a leader for the steel industry. He and I worked shoulder to shoulder to protect the interests of the Pennsylvania steel industry.

The voluntary restraint agreements, Mr. President, were formulated by President Reagan. As a candidate for Vice President, President Bush agreed to the proposals at a very interesting meeting which Senator Heinz and I had with him at a campaign stop in 1980 in Chester, PA, not too far from a major steel installation.

The voluntary restraint agreements were significant in giving the American steel industry a fair opportunity in the world market. They are to expire in March 1992. It may be that the VRA's will be extended. That will certainly be an option and might be a very good option. It may be that the VRA's will be supplemented by multilateral steel agreements. But, Mr. President, we do need to be sure the American steel industry gets a fair shake in the world market. The United States must work to maintain a steel industry which can respond to the defense of this country in times of national emergency.

It is an unthinkable proposition for the United States to allow its steel industry to flounder while at the same time allowing Japan, Taiwan, China, Brazil or other countries to take over world markets with subsidized products.

I remember well, Mr. President, the incident of 1984 when the International Trade Commission made a finding in favor of the American steel industry and the President had the option of overruling that ITC finding. Senator Heinz and I visited all of the Cabinet members at that time who had any relationship, directly or indirectly, with the steel issue. We received strong support from then Secretary of Commerce Mac Baldrige, and Trade Representative Bill Brock and others. However, when we had our talks with then Secretary of Defense Caspar Weinberger, and then Secretary of State George Shultz, we found a strong inclination to sacrifice the American steel industry for defense and foreign policy reasons. That should simply not be repeated.

So at this time, I ask unanimous consent that the full text of this document published by the Cold Finished Steel Bar Institute be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, in the moment that I have left, I would add a word about the legislation which I have pursued for most of the 10½ years I have been in the Senate. This legislation would provide for a private right of action enabling injured parties to sue for damages and injunctive relief to stop subsidized steel from coming into the United States, stop dumped steel from coming into the United States, and to stop steel from coming into the United States which violates our customs law. The bills which I have introduced are broader than coverage of steel, but would cover any American products which are disadvantaged by foreign subsidies, foreign dumping, or violation of our customs laws.

These trade issues are very important, Mr. President, as we continue to pursue the GATT Uruguay round talks and as we look forward to negotiations on the Mexican trade agreement. Certainly there ought to be fairness for steel and really for all U.S. products. I believe that this document, which will appear at the conclusion of my remarks, will set fourth in some detail a strong case for fairness for the steel industry and, as it says, for life after the voluntary restraint agreements.

I thank the Chair and yield the floor.

EXHIBIT 1

[From the Cold Finished Steel Bar Institute, June 1991]

LIFE AFTER THE VRA'S: STEEL'S QUEST FOR FAIR TRADE

The United States will soon mark an important milestone: barring a last minute change, the steel voluntary restraint agreements ("VRAs"), which were begun in 1984 and extended in 1989, will expire on March 31, 1992.

The Cold Finished Steel Bar Institute and its member companies support efforts to replace the VRAs with strong and enforceable

rules against government subsidies, dumping, protected markets and excess production capacity. Despite their many successes, the VRAs were not a panacea. By design, they protected U.S. producers from many of the harmful effects of dumped and subsidized steel but did nothing to eliminate those unfair trade practices. World trade in steel is still characterized by massive government subsidies, market access barriers, widespread dumping and excess capacity.

Thus far, U.S. efforts to find more lasting solutions have met with resistance. In the Uruguay Round of GATT trade talks, for example, attempts to strengthen the Antidumping and Subsidy Codes with tighter controls on diversion, circumvention and repeat offenders, have not been accepted. Many of the participants want to significantly weaken U.S. antidumping and countervailing duty laws. In the Multilateral Steel Agreement ("MSA") talks, where the United States is seeking tighter controls on government subsidies and market barriers, other countries have tried to loosen existing controls on those practices.

In spite of these problems, America's cold finished steel bar ("CFSB") producers continue to believe that free and fair trade in steel can become a reality. We also believe initiatives such as the Uruguay Round, MSA and the proposed North American Free Trade Agreement ("NAFTA") with Mexico and Canada, provide the best opportunity for achieving that goal.

THE TURBULENT YEARS: 1980–1989

As U.S. policymakers struggle to find permanent solutions to steel's troubles, one thing is certain, the price of failure will be high. Analysts need only look back a few years to see the economic and human consequences of a national steel policy that relies solely on unfair trade laws.

In the four years before the VRAs took effect, over 50 percent of America's CFSB workers were unemployed and more than 60 percent of all production capacity lay idle. For the steel industry as a whole, the period between 1982 and 1986 saw over 25 producers, including LTV and Wheeling-Pittsburgh, go bankrupt and operating losses total a staggering $12 billion.

Of all the factors that contributed to this crisis, one was paramount—imports. Between 1983 and 1985, for example, imports of CFSB from the European Community almost tripled from 3.2 to 9.0 percent of domestic consumption. During the same period, total CFSB imports almost doubled from 12.7 to 20.3 percent. Today, the United States is the only major western steel producing nation that is a net importer of steel and lacks the capacity to meet its own needs.

Between 1982 and 1985, many of the integrated mills fought back by filing a multitude of trade relief actions against the major steel producing countries. Not surprisingly, these cases produced numerous findings of illegal dumping and subsidization, often at substantial levels. However, in most cases, these findings did not result in the imposition of additional duties, but a political decision to terminate the cases in favor of VRAs.

In retrospect, the VRAs were the right thing at the right time. In 1984, the industry was in chaos. Neither antidumping nor countervailing duties could be counted on to stem the flood of imports, and limited restraints on imports were the only way to guarantee the survival of the industry. The VRA program provided the industry with the breathing room it needed to rationalize production, rearrange workforce levels and invest in capital improvements.

THE CHALLENGES THAT LIE AHEAD

The impending termination of the VRAs comes at a critical point in the history of the U.S. steel industry—demand is weak, profits are down, foreign unfair trade practices continue, and U.S. trade laws are under attack. If we are to avoid a return to the chaotic market conditions of 1982–1984, when hundreds of trade cases disrupted steel producers, distributors and consumers alike, U.S. policymakers must obtain specific commitments from the other steel-producing nations to eliminate their trade distortive practices without sacrificing U.S. unfair trade laws.

1. VRAs and the Multilateral Steel Agreement

The centerpiece of the President's effort to find a permanent solution to steel's trade problems is the MSA. Still in draft form, the MSA portends new disciplines on government subsidies and market access barriers (both tariff and non-tariff) that would supplement those found in U.S. trade laws. From the beginning, the Cold Finished Steel Bar Institute has supported this "trade laws, plus" approach. Indeed, we have worked closely with the U.S. Trade Representative to craft a balanced and effective agreement.

Despite this support, certain developments cause us to question the willingness of other steel producing countries to break with the past and, to begin a new era of free and fair trade in steel:

Several trading partners want to permit government subsidies for R&D, worker adjustment, plant closings and environmental programs. They also want to "green light" these subsidies under U.S. countervailing duty laws.

Some countries are attempting to restrict the use of U.S. antidumping laws.

2. GATT Uruguay Round talks

The Uruguay Round was scheduled to be completed last March, but the talks stalled over agriculture. At this point, the United States intends to redouble its negotiating efforts, hoping to reach an agreement by the end of the year. These efforts are desirable, but they continue a danger to the manufacturing sector (including CFSB) that GATT rules against unfair trade practices may be traded off to achieve U.S. goals in agriculture or other areas.

CFSB producers, along with most other manufacturers, have vigorously opposed weakening the trade laws. With the VRAs set to expire on March 31, 1992, it is imperative that these laws be maintained and, indeed, improved. Of particular concern to the Institute's member companies is:

Many of the newly industralized countries seek to restrict U.S. antidumping and countervailing duty procedures and methodology (e.g., more difficult injury test and automatic sunset requirement).

Many of these countries oppose tighter controls on diversion, circumvention and repeat offenders.

3. North American Free Trade Agreement

In recent years, Mexico has made significant progress to expand its economy and reduce its barriers to imports and foreign investment. As a result U.S. exports to Mexico soared from $12.4 billion in 1986 to almost $29 billion in 1990. We believe a free trade agreement with Mexico will not only further that trend, but it will encourage reforms and progress in Mexico across a wide range of social, political, economic and environmental issues.

As America's cold finished steel bar producers follow the NAFTA negotiations, several issues will be important.

Whether current U.S. trade laws will continue to be available to combat unfair imports from Mexico.

Whether country of origin standards will prevent backdoor attempts by third country producers to enter the U.S. market.

Whether tariff reduction schedules will meet the special needs of import sensitive industries.

PROPOSALS

The Cold Finished Steel Bar Institute and its member companies are prepared to compete in the period following the VRAs. We welcome the opportunities and challenges presented by the GATT Uruguay Round. MSA and NAFTA. However, in order for America's steel producers to realize the full benefits presented by these initiatives, the United States must pursue the following course of action:

1. VRAs and the Multilateral Steel Agreement

It is unfair to expect our private, non-subsidized, steel producers to compete with government-sponsored imports. The trade distorting practices of foreign suppliers must be abolished and effective disciplines under the MSA should be established, preferably this year, but certainly before March 31, 1992.

If the steel-producing countries of the world are truly serious about making fundamental reforms in how steel is traded, then the MSA can be a "trade laws, plus" arrangement. The MSA should not restrict the rights of injured domestic producers to seek relief from unfairly traded imports.

If the American steel industry is to rely on our trade laws, rather than VRAs, then the strength and integrity of those laws must be maintained.

2. GATT Uruguay round talks

With the VRAs set to expire in March, 1992, this is no time to weaken our trade laws. Once the export ceilings are gone, and should the MSA fail, these laws will be the only protection America's steel producers have against a return to the crisis-days of the 1980s.

Under no circumstances should provisions that were considered and rejected by the Congress in 1984 and 1988 become part of the final Uruguay Round agreement. Instead, this is the time to strengthen the GATT rules by adding effective provisions dealing with diversion, circumvention and repeat offenders.

3. North American Free Trade Agreement

No trade-offs should be accepted that would weaken U.S. antidumping or countervailing duty laws.

The free trade benefits of the NAFTA must be limited to Mexican goods and services and not the products of third countries that use Mexican labor to assemble previously manufactured items.

Given the huge disparties between the U.S. and Mexican economies, longer tariff reduction schedules than those provided for under the free trade agreement with Canada will be required in many instances.

4. Competitiveness for American manufacturers

Domestic policy on all fronts must take into account the multiple demands now placed on American industry and adjust those demands to increase our country's competitiveness.

MEMBERS OF THE COLD FINISHED STEEL BAR INSTITUTE

*American Steel & Wire Company, Joliet, IL
*Atlantic Steel Company, Atlanta, GA
Atlas Specialty Steels Division, Welland, Ontario
Baron Drawn Steel Corporation, Toledo, OH
*Bethlehem Steel Corporation, Bethlehem, PA; Johnstown, PA
Bliss & Laughlin Steel Company, Harvey, IL; Medina, OH; Batavia, IL
*Chaparral Steel, Midlothian, TX
Charter Wire, Milwaukee, WI
Cincinnati Cold Drawn, Inc., Hamilton, OH
Corey Steel Company, Cicero, IL
Cuyahoga Steel & Wire, Solon, OH
Daley Services, Inc., Newbury, OH
Fort Howard Steel, Inc., Green Bay, WI
*Inland Bar & Structural Co., East Chicago, IN
*Kentucky Electric Steel, Ashland, KY
La Salle Steel Company, Subsidiary of Ouanex Corp., Hammond, IN
Laurel Steel Products Ltd., Burlington, Ontario
LMP Steel & Wire Company, Maryville, MO
Moltrup Steel Products Company, Beaver Falls, PA
Nortec Specialty Steels, Lubbock, TX
*North Star Steel Company, Monroe, MI
Precision-Kidd Steel Company, Aliquippa, PA
Sauk Steel Company, Inc., S. Chicago Heights, IL
*Sheffield Steel Corporation, Joliet, IL
Taubensee Steel & Wire Company, Wheeling, IL
*USS/Kobe Steel, a division of USX Corporation, Pittsburgh, PA; Lorain, OH
Western Steel Group, Inc., Elyria, OH; Gary, IN; Harford, CT

*Indicates an Associate Member.

A PATTERN OF DEFENSE BASE CLOSURES

Mr. KERRY. Mr. President, for nearly 20 years now, the New England area has been subject to a pattern of defense base closures which together have had an enormous impact on our communities. From the closing of the Boston Naval Shipyard to the Boston Army Base, the Chelsea Hospital, Westover Air Force Base, to turning Hanscom and Otis into nonactive air bases, to closing Pease, New England has been disproportionately hit by base closings.

There is a significant impact on our region from these closures. But what I want to focus on is the impact that these closings cumulatively have had and will have on the veterans of our region who served their nation so well.

There are some 93,000 veterans who live and are served by Fort Devens today. By Fort Devens' Hospital, by its pharmacies, by its PX commissary, by its administrative support. They have relied on Devens for these services as part of their nation's commitment to them for their services to it.

Following the closing of so many other bases, Fort Devens has come to represent the last military site within a reasonable distance for these service men and women. To close it, after closing Pease, after closing Westover, after putting the Weymouth base on the closing list, after eliminating Otis and Hanscom as active bases, is to break faith with these veterans.

I have spoken of this closing as treachery, because under the base closing legislation, Devens was selected to remain open as the site for military information systems. That was the plan that was agreed to. That was the plan that was submitted to the Congress. We viewed that plan to be a continued commitment to our region by the Army, and to our veterans. It made sense, and we believe that the only reason that decision was changed was politics.

The decisions made under the original Base Realignment and Closure Act would actually have increased Fort Devens' role in the U.S. Army. That added mission has basically been stolen away from the base now.

Today, many of these men and women who gave their nation so much—risking life and limb to fight for their country and what we believe in—are being abandoned by this decision. Already, medical benefits for veterans are being cut all across this country. Testimony before the Veterans' Committee by VA officials has demonstrated that money shortages have degraded the quality of VA medical care, forcing the VA to curtail staff and eliminate hospital beds year after year. Chronic shortages of essential supplies like gauze pads, urinals, thermometers, toothpaste, and even soap, prevent VA nurses to provide veterans with even basic care.

The hospital at Fort Devens represented an important part of the health care opportunities for veterans in Massachusetts. Its closure will consign more of them to the conditions of the remaining instructions run by the VA.

Veterans from our region literally will have nowhere to turn if you agree to let this politicized decision go forward. That would be an affront to the American spirit, and a breach of the contract we made with those veterans.

I urge that the decision by the Army to close Fort Devens be reversed and that Fort Devens be maintained as recommended by the original nonpartisan base realignment and closure panel.

ONE HUNDRED DOLLAR DREAMS THAT WORK—AND COME TRUE

Mr. HELMS. Mr. President, how long will it be before the U.S. Congress finally learns from its mistakes? The U.S. taxpayers are tired of billions of their tax dollars being wasted on a multitude of big-ticket foreign aid programs.

The pattern is always the same: Congress creates lavish grants and then creates commissions to find out why these programs have not worked. Then the commissions recommend more of the same.

Mr. President, there is a better way, a wiser way, a less expensive way, a more effective way. The answer, not surprisingly, lies in the private sector. The May issue of Reader's Digest contains an article describing how one American couple truly make a difference by using private money to help the truly needy people around the world.

It is the story of Glen and Mildred Leets, two innovative philanthropists in New York with distinguished careers in international development, who have provided modest $100 grants to more than 130,000 desperately poor people in more than 90 countries.

How did Glen and Mildred Leets do it? They helped people to help themselves by encouraging them to start small businesses.

After witnessing development plan failures operated by corrupt officials and inefficient bureaucracies, the Leets came up with a better idea: Offer small startup grants for cottage industries and let the dollars trickle up. Moreover, the Leets' program has built-in incentives and training in business practices.

Mr. President, about a month ago, the Senate debated the Central America Economic Recovery Act introduced by a well meaning Senator who stated that he was eager to help development in those countries. In reality, his proposal was scarcely more than a first step toward another massive foreign aid giveaway program.

The legislation would do nothing to help free enterprise, not even on a small scale. It is clear that Latin America is suffering from an economic crisis resulting from inefficient socialist programs, widespread corruption, and Government regulation of the private sector, despite the fact that the U.S. taxpayers have donated more than $7 billion for economic development in Latin America during the last 10 years.

The Senate obviously has much to learn from practical self-help programs such as the Leets' project. There are lessons we can learn from Glen and Mildred Leets. Their program is simple, yet effective. It focuses on needy people who really need help. It provides incentives. And because it is limited, it does not foster dependency on the donor.

Mr. President, all of us should learn from successful alternatives—like the Trickle Up Program—before we rush into yet another $15 billion foreign aid program that is doomed for failure.

Mr. President, I ask unanimous consent that the article, "$100 Dreams," from the May Reader's Digest be printed in the RECORD at the conclusion of my remarks. I hope Senators and others will take the time to read it.

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

[From the Reader's Digest, May 1991]

$100 DREAMS

(By Carolyn Males)

Three and a half years ago Pancha Maya, her husband and five children lived in a ramshackle flat in southern Nepal. Every morning the parents walked the dirt roads, seeking work in the rice fields. After the harvest, the family went begging for food.

Today the Mayas own a small paper-bag-making company. Their work space is the front yard of the new bamboo house they own. With the money they've earned, the Mayas have purchased a small plot on which they grow vegetables and raise goats for additional income. In fact, the family has saved 1700 rupees ($68), remarkable in a country with a per-capita income of $160.

Grace Mbakwa, her husband and eight children once lived hand-to-mouth in the cattle town of Tugi, Cameroon. Today the Mbakwas run a clothing-manufacturing business and own a home. They are able to send their children to school—at a costly annual sum of $2800.

The idea of starting her own business seemed impossible to Pilar Moya, a poor woman from Atahualpa, high in Ecuador's Andes Mountains. Today, however, she is one of the proud owners of a bakery specializing in sweet cakes.

These businesses are part of an economic revolution sweeping the developing world. The catalyst is the Trickle Up Program (TUP), an ingenious nonprofit organization founded by New Yorkers Glen and Mildred Leet, that offers people like the Mayas, the Mbakwas and the Moyas modest $100 grants. Since 1979 the program has helped over 130,000 of the world's neediest people in 90 countries win small, life-saving victories over poverty. And it has turned conventional thinking about foreign aid on its head.

POOR PLANNING

During distinguished careers in international development, the Leets had seen that billions of dollars pouring into Third World welfare programs were not reaching those who needed help. Corrupt officials took their cut, then bureaucracies devoured the rest. What money the poor did get only made them more dependent.

Even well-intentioned projects were often poorly planned and executed. The Leets once visited a Caribbean-island place-mat factory, expecting to see the much-touted modern machinery purchased with foreign aid. Instead they found ten workers huddled in a vast room, stitching the coconut fiber by hand. Dozens of new sewing machines nearby lay idle, covered with dust.

"Why aren't you using your machines?" Glen asked the women. "We have electricity only one day a week," they replied. Planners hadn't considered the cost of gasoline to power the generators. So the plant's output remained the same.

The Leets concluded that there must be a better way. Wouldn't it make more sense to offer small grants to start cottage industries and services and let the dollars "trickle up"? Then, step aside as individuals use their own skills and initiative to pull themselves out of poverty. That would cut out the fat-cat middlemen as well as the complicated grant applications and regulations that drain resources, energy and enthusiasm. Skeptics jeered. Fight global poverty with $100 grants? Ridiculous! It was like aiming with a pea shooter at a giant.

HEADS UP

Undaunted, the Leets put their theory to the test on the Caribbean island of Dominica. They outlined TUP's requirements to a group of locals:

Get five or more people together, decide what kind of a business you want, and draw up a marketing plan with a TUP coordinator's assistance. TUP will send a $50 start-up check. Within three months, put 1000 hours of work into your company, keeping records of sales. Reinvest 20 percent of the profits and fill out a one-page business-report form. TUP will mail a second $50. After that, you're on your own. No more money. No exceptions.

"Some listeners looked incredulous," Millie recalls. "But there were two or three whose eyes lit up." At the port town of Marigot, the Leets met with five poor women who were eager to start their own business. Marigot, one woman explained, had a big plant where South American bananas, bound for Europe, were crated. "If one banana is spoiled," she said, "they throw out the entire bunch."

"Is there anything you can make with the bananas?" the Leets asked.

"We thought we might make dried banana chips to sell in grocery stores," another replied Strangely, even as the conversation grew more animated, the women kept their heads down.

"How much is your work worth per hour?" Glen asked. The group seemed baffled by the question. "It's not worth anything," murmured Myld Riviere. Millie persisted. "Okay, if someone paid you for this work, how much would it be? About one dollar, Myld estimated. "Well, if you put in a thousand hours in your business, that's $1000," Glen pointed out. Suddenly the women's eyes lifted. A thousand dollars? Their time had value!

Soon the Leets, who still take no salary, moved on to Jamaica, Montserrat, St. Kitts and Barbados. They set up office in their New York apartment, filling file cabinets with TUP business plans and reports. By 1981, TUP was incorporated. Fired by the couple's successes, government and social-development agencies, corporations, philanthropic foundations and friends began sending contributions. With the money came volunteers—nearly 3000 since the program began.

Once a project is deemed doable, the coordinator forwards the business plan to the Trickle Up offices in New York, and the Leets send the aspiring partners their first check. Along with encouragement, coordinators coach the new entrepreneurs in setting up business procedures, bookkeeping systems, or in developing a new skill.

But advice is given sparingly. "We've found that too much handholding results in dependency," Millie explains. "We want the new entrepreneurs to fly free and learn from their own mistakes."

RIPPLE EFFECT

Has TUP made a difference? Simply put, Trickle Up, the new kid on the foreign-aid block, runs rings around other programs. It generally costs $20,000 to create one formal job using the traditional foreign-aid methods. For the same money, Trickle Up can create 1000 grass-roots jobs.

The program makes wide ripples in local economies as well. Entrepreneurs and their families eat more nutritious food and live in better housing. They can now pay for their children's schooling and medical care. And they can also afford to buy goods and services from neighborhood bakers, butchers, potters and carpenters.

As one person sees another climb out of poverty, he, too, dares to dream. In Ubate, Colombia, Drigelio Perdomo began a family-operated hair-roller factory. Impressed by his accomplishments, neighbors started five other enterprises—three wool-knitting businesses, a pants-manufacturing factory and a hydroponic vegetable farm.

By requiring a 20-percent reinvestment of earnings, the Leets encourage people to save. Apparently, the entrepreneurs have taken the money-management lessons to heart, for they plow an average 52 percent of their profits back into their businesses.

Success is measured not just in money, but in the new self-confidence on the faces of TUP's beneficiaries. It's dressmaker Grace Mbakwa from Cameroon pointing with pride to her Paid Business License on the wall of her shop. It's 50 women from a squatter settlement near Nairobi, Kenya, marching en masse to open savings accounts. It's Pancha Maya, who once wore rags, standing tall in her lovely red sari among neighbors in Nepal. Even the names many TUP grantees choose for their businesses—The New Hope, Marching Together, The Progressive Five—reflect their new-found strength.

In 1989, when Millie returned to Dominica, she found the banana-chip company company still in business, although much had changed after almost ten years. It was now housed in a two-room factory. When Millie knocked, Myld Riviere opened the door, a broad smile on her face. Boldly extending her hand and looking Millie in the eye, she was no longer the shy, unskilled woman who valued her labor at nothing.

REPORT CARD

The Leets estimate that more than two-thirds of businesses begun with TUP funds are still thriving. But even if a business folds, much is gained, for entrepreneurs take the talents they've developed to start new ventures.

Over the past 12 years this learn-by-doing attitude has earned TUP a good report card and a cornucopia of awards. One of the most memorable awards was presented to the Leets on a warm night in a small wooden church outside Nairobi.

The building was packed with 150 TUP entrepreneurs from a squatter settlement. After TUP coordinator Rev. Humphrey Sikuku ushered Glen and Millie through the crowd, many of the 40 group leaders stood to explain how TUP had changed their lives. They no longer had to worry about survival, they told the couple. Now they could focus on their future. Proudly, the group handed over a packet of money that they had collected. "This is to help people in other countries as we have been helped," they said. Millie counted out 500 shillings (then about $31)—the equivalent of 500 days' work.

Clearly, Trickle Up has helped the destitute dare to dream. One of the destitute dare to dream. One of the best illustrations of this occurred in the Philippines when Millie visited a sausage-making company headed by Carlota Yambot. Just before leaving, she asked Carlota's children what they wanted to be. "A lawyer," said the 17-year-old daughter. "A pharmacist," said the 15-year-old son. "A foreign-service worker," said the 13-year-old. Clutching Millie's arm, Carlota smiled and said, "We all have dreams, but now because of Trickle Up, we have hope."

THANK YOU

Mr. ROCKEFELLER. Mr. President, I rise before the Senate today to recognize a unique contribution that has been made for all of us who have struggled to find a way to appropriately express our enormous gratitude to the young men and women who served their country so valiantly in the Persian Gulf. I had the opportunity recently to hear a song written in tribute to our troops which, in my judgment, provides a fitting tribute and expresses a depth of emotion worthy of the sacrifice made by so many of our soldiers and their families.

This song was written by Bobby Nicholas, who lives in Morgantown, WV. Like most Americans, Bobby and his wife, Doris, watched the television reports of the opening shots in Operation Desert Storm erupt on January 16.

And, like more than 500,000 American families, they were thinking of their own son, Robert Jr., who had recently finished basic training at Fort Gordon, GA, and was a prime candidate for the Persian Gulf. This son, Robbie, so much on their minds, is the second of five children, ages 8 to 24.

On that first day, Bobby's thoughts were mixed. He supported the initiative to liberate Kuwait and the attempt to oust Saddam Hussein—as did most of his friends. But he dreaded the thought that his own son might be one of the young persons called upon to risk life and limb.

Bobby watched the news of the Persian Gulf crisis each day with pride in the ongoing success of the American and coalition forces, yet ever mindful of the dangers facing America's youth.

He continued to watch as the events shifted to the stage when most experts were saying that the use of ground troops would be necessary. The ferocious reputation of the Republican Guard had become familiar to Americans. The apparent possibility of a prolonged ground war made Bobby even more fearful that his son would see action and perhaps harm.

Then, as if a miracle had occurred, the war was over, and Bobby thought about the many anxious wives, husbands, mothers, fathers, children, and other relatives—across West Virginia and the country—who had gasped at every report of lost aircraft and ground warfare.

The news filled with pictures of happy children and jubilant adults, all now anticipating the homecoming.

And, unlike the day the conflict started, when he had called his employer at a Morgantown night club and said he just did not feel like singing that night, Bobby felt like singing and singing out.

Bobby Nicholas felt greatful to those who had been there and to the families who had waited and worried and prayed. He remembered his frantic drive to Fort Gordon in late January to visit the son he feared he may never see again. He remembered seeing there the faces of soldiers, young men and women, some of whom would go to the gulf and risk their lives. He remembered those who had suffered and those who had died.

And he reflected on the near-universal support and unification of the American people and their commitment to the cause of freedom in a distant land.

Those images and his wish to make a statement, to cry out with relief and gratitude, haunted him until the words started to come. And come they did. This man who had sung in church choirs since childhood and who had been a professional singer for all of his adult life put his words on paper and then quietly sang the tune. He had written the song, "Thank you," in one afternoon. And, though a singer of immense talent, Bobby Nicholas had never before written a song.

I cannot predict with certainty that "Thank you" will become the enduring anthem of our Nation's gratitude to those who sacrificed to defend international order and decency. But, when another individual wrote the words to the Star Spangled Banner one morning in 1814, to express his joy that the country still existed and its flag was still flying, that now legendary figure, Francis Scott Key, a lawyer, had never written a song either. He could not have known then that his words would become the symbol of the celebration of our great nation.

And when Julia Ward Howe wrote the words to "The Battle Hymn of the Republic" that day in 1861 as McDowell's troops crossed the Potomac to fight the Confederates in the first battle of Bull Run, she could not have known that her words would become a song representing the righteousness of the unity of the United States and the cause of freedom. She, too, is not known to have ever before written a song.

Bobby's song, "Thank you," came as an inspired surge of emotion that, in its own way and in its own time, is as heartfelt and as appropriate as the works of Francis Scott Key and Julia Ward Howe in their own anxious times of national crisis.

Listen to Bobby's own description of how he came to write "Thank you":

> The song was meant to be an open letter to the men and women who served in the Persian Gulf. I thought of it as my way to say thank you for a job well done. My son was in the Army Reserve, and I knew what every mother or father, brother or sister, husband or wife in any conflict must have felt.
>
> The sense of helplessness and worry, of just wanting to do something and not being able to, became prayers that they would all return home safely. I strongly believe that "we must all remember so we don't forget that the price we pay for freedom isn't over yet".
>
> Looking at my eight year old, I could only wonder if someday he, too, would be called to serve his country. But we have to hope that this will be the last time that we have to fight for what we know is right. I guess that the lesson to be learned is that when the time came to stand together as a nation, we did it, without reservation. Side by side, North and South, black and white, we showed a new spirit of unity to make this nation what we know it can be. This is just my way of saying, thank you to all the people of this great country.
>
> BOBBY NICHOLAS.

It is with great pride that I can report that this humble citizen from Morgantown, WV, has been invited to sing his song at the Desert Storm celebration for our troops and their families here in Washington, DC, on June 8. On behalf of his fellow West Virginians, I salute Bobby Nicholas for his patriotism and compassion.

Mr. President, I ask unanimous consent that the lyrics of that song that so eloquently expresses the feelings all of us hold in our hearts be printed in the RECORD.

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

THANK YOU

(By Bobby Nicholas)

It's such an inspiration, to see a nation sing
America the Beautiful, just let our freedom ring
To see little girls and little boys
Waving the flag instead of toys
To see moms and dads joining hands
In celebration of common man

Chorus:
We just want to say thank you
For all that you have done
You made us proud to be an American
We as people stand as one
And we must all remember so we don't forget
The price we pay for freedom isn't over yet

We just want to say thank you
For now you let us see
That we can live together, in peace and harmony
From Fort Bragg to Chicago
From sea to shining sea
We did it all together, my brother, you and me

We just want to say thank you
For the sacrifice you made
We know it wasn't easy
Far away from home each day
From Spokane down to Galveston
From Boston to L.A.
You pulled it all together
To brighten up this day

I can only wonder, what old Abe would say today
To see the north and south, fighting together
From Gettysburg to Atlanta GA
To see men and women, black and white
Standing side by side for freedoms right
Oh, if he were here today, I'm sure this is what he'd say

To be spoken—
That this nation under God
Shall have a new birth of freedom
And that govenment, of the people
By the people, and for the people
Shall not perish from the earth

We just want to say thank you
For we can hold our heads up high
Yes you have brought us all together

Under one big sky
We thank you Norm and Colin
You showed our nations pride
That we will all remember, until the day we die
So let sing . . . God Bless America

A COMMUNICATION TO THE PRESIDENT OF NICARAGUA

Mr. MCCAIN. Mr. President, today Senators DOLE, KASTEN, MACK, CRAIG, DURENBERGER, SMITH, SYMMS, HATCH, and I sent a letter to the President of Nicaragua, Dona Violeta Barrios de Chamorro. We wrote to inform President Chamorro of our concern over her government's recently concluded contractual arrangement with Reichler and Soble, attorneys at law.

I ask unanimous consent that the letter be made a part of the RECORD following the conclusion of my remarks.

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

U.S. SENATE,
Washington, DC, May 24, 1991.

Her Excellency DONA VIOLETA BARRIOS DE CHAMORRO,
President, Republic of Nicaragua.

DEAR MADAME PRESIDENT: We have recently been informed that the Nicaraguan Ministry for the Presidency has concluded a contract with Reichler and Soble, Attorneys at Law for the expressed purpose of representing Nicaragua's position on the civil war in El Salvador to members of the United States Congress. As members of Congress, we wish to make clear how disturbed we are that the freely elected government of Nicaragua would seek the services of Mr. Paul Reichler, principal partner of Reichler and Soble, and formerly the de facto spokesman of the Sandinista National Liberation Front.

We are among the most faithful supporters of Nicaraguan democracy. For many years, in a variety of public fora, our support of Nicaraguan democrats, as well as our personal support for you, required us to endure Mr. Reichler's unswerving defense of the Sandinistas' brutal repression of the cause for which you have dedicated your life. We are gravely disappointed that your government would now engage Mr. Reichler to represent to us your position on the question of El Salvador.

Of all the issues of mutual interest to the United States and Nicaragua, we cannot think of one where Mr. Reichler would be a less credible spokesman. We understand that Mr. Reichler has the right to represent your government, and that your government has the right to employ Mr. Reichler. We do not wish to interfere in the sovereign affairs of your country.

However, as your supporters, we feel obliged to advise you that, at a time when you are seeking additional economic assistance from the United States, Mr. Reichler's representation of your government will harm rather than enhance your government's image with members of the United States Congress.

Sincerely,

John McCain, Robert Kasten, Larry Craig, Robert Smith, Orrin Hatch, Robert Dole, Connie Mack, David Durenberger, Steven Symms.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. LIEBERMAN). Under the previous order, the hour of 11 a.m. having arrived, morning business is now closed.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 173) to permit the Bell Telephone Co. to conduct research on, design, and manufacture telephone communications equipment, and for other purposes.

The Senate resumed consideration of the bill.

Mr. HOLLINGS. Mr. President, let me first thank my distinguished colleague, the senior Senator from Kentucky, Senator FORD, a very able member of our committee who took the floor in presenting this measure on yesterday. We appreciate his strong statement and understanding of the issue at hand and his tremendous help on yesterday in presenting it to the Senate.

I rise today to speak in favor of S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act. This legislation is essential to the future competitiveness and economic security of the United States.

Mr. President, that is not a light statement. We have tried this approach of restrictions and often it is that we in the U.S. Congress think that when we get the domestic crowd controlled and restricted that we have control. We are not in control at all. And it becomes more and more dramatically demonstrated each day that passes.

I want to emphasize this to bring into focus the particular issue at hand because we are not running pell mell for a monopoly. In essence, we are going to be really struggling with the various amendments of a monopoly; namely, AT&T, which has been the principal opponent. They have a good deal going. They have long distance, almost exclusively.

What they do is, they manufacture and they deal with themselves, and all these amendments about self-dealing, all these amendments about content and various other things do not apply to them at all. And all the concerns of my consumer friends about the adverse effect if this bill passes on consumers has not occurred, of course, with AT&T and long distance rates which are regulated both at the Federal and State level, obviously regulated at the State level in the main and at the Federal level for the regional Bell operating companies.

But more than that, there is a tremendous dynamic competition, if you watch these Bell Cos. compete against each other. If I could, I would have changed the name of the Bell Cos.' to the Different Other Cos.' Let one be Bell and another one be Horn, and every instrument in the band, and call one the Drum Co. and one the Saxophone Co., to get the mentality of the U.S. Congress changed to the particular issue at hand.

We have tremendous competition going on. So much so, that with all $80 billion in the revenues of the seven operating companies, they go pell mell overseas, investing like gang busters, buying up New Zealand, buying up Mexico, buying up Argentina. They are putting in optic fiber from Moscow to Tokyo, and cellular phones in downtown Hungary.

And we are sitting back here in the U.S. Senate, saying, We are in charge, we know what we are doing and we have control of the market. No, market forces operate.

I had that debate here only last week with respect to fast track. And it was very difficult to get that idea through everybody's mind. As long as they understand that the Government is the most important element in that market force in international competition. Domestic content, for example. There will be many, many amendments made about domestic content. And we are forced, under the circumstances, on the one hand to meet that kind of competition.

They have domestic content in the home countries of all these foreign entities doing business in the United States. They have the domestic content provisions there. On fast track most people, as a result of the diligent work by the White House over a 7- to 8-month period, came with mind sets to this floor and they did not understand that what we had, in essence, was not a debate about free trade but fee trade. The fees are being paid as I am talking about free Mexico. And the foreign entities are moving in and paying the fees. It is an accepted procedure.

We have a Foreign Corrupt Practices Act. But that is the rule of the game. If you are a member of the Diet, you not only get your stipend, you have three or four companies that pay you on the side. That is not a Congress. Americans think everybody is just like us. You have to pay the mordida, in downtown Mexico now. And they are all doing it and they are all locating there. We are not losing jobs, we are losing entire industries. It was not free trade, it was fee trade. And all the reports said the little South Carolina Senator was worried about his textiles.

That worry is practically gone. We have passed the textile bill four or five times and it has been vetoed each time. And we still struggle along.

Learning from that experience, I think it is very important, in this particular measure, to bring right into sharp focus what the situation is. The

situation is, due to a consent decree back in 1984, the divestiture of American Telephone & Telegraph, we had eight companies, seven Bells and AT&T, and all were separated out under a modified final judgment, the MFJ.

It is very interesting to note, that AT&T at that particular time said they did not want to have any restrictions on any of the companies. I quote the AT&T general counsel. I also have a statement of Charlie Brown, the chairman of AT&T at the time:

> I am against restrictions. I will be happy if nobody is restricted on anything. After this divestiture occurs, let the regional Bell Operating Cos. do what they want.

Well, the Justice Department did not agree with that. They had misgivings on antitrust, and they forbade the seven operating companies to get into information services, into long distance, and into manufacturing. This bill, S. 173, has no concern with information services and long distance. Long distance is out there and being operated and there is no petition or desire to get into that. Information services would be too complex and I do not think we would advance very far in all reality. But in manufacture, this Senator, and many of our other colleagues in the body, are very much concerned about the ineffectiveness, in fact, the reverse effect of this legislation on our economy, our investment, our research, our development—our remaining on the cutting edge of communications technology.

If you cannot make money out of it, then why invest in it and why not go to New Zealand, and go down to Argentina, and go down to Mexico, and go anywhere else? After all, you have stockholders and they are looking for returns. You want to be a forward-looking executive, a corporate head, and you want to make sure you get the best returns. And it is mandatory you do so in order to keep your rates down. So that is what we are doing.

Here is an entity; namely the U.S. Senate, with a Budget Committee and Finance Committee doing this, while everybody else is looking around for investment dollars. I have described the competition down in Mexico on fee trade already, investing $1 billion, Nissan announced; $1.5 billion for Volkswagen, $400 million from Hyundai—you can go right on down the list. Corporate America is on its financial heels. They are not investing. They are overextended at this particular moment.

Here we have some of the strongest corporate entities, financially strong, with money to invest, that are being forbidden to do so by a rather fanciful restriction that has not proved out. It cannot be restricted because others are coming in here and taking over the market, buying up the companies, advancing in the technology because they can do the research—we cannot do the research and development—and literally taking the remaining thing we have left with respect to our technology.

At least the Senators can concentrate on one. They cannot seem to get the broad picture of international trade. Let us hope they can get at least a picture with respect to communications technology, communications trade, communications manufacture, research and development, and keeping America strong; and, yes, keeping the consumers properly serviced with the advanced technology.

This bill is not against the consumers, as they are going to try to charge in some of these amendments. This is a proconsumer bill if there ever was one, if we want to really satisfy the consumers as they watch these other developments in France and everywhere else tie these things in and wonder why.

It is like our late friend, Senator Robert Kennedy said, "Some men see things as they are and wonder why, I see things that never were, and ask why not."

Here we are going out of business because of this restriction enforced by the Justice Department, in the original instance now, has gone by the board. The foreign entities have gone around the end. And it is not a small advance. I want the colleagues to understand. Here are the companies with home markets which have domestic content provisions, with financing and all.

We know the cartel provisions in Japan and the government-supports in all these other countries. They do not have a Glass-Steagall Act in Germany. The bank can be part of the business. The business is part of the bank. And we are losing construction contracts the world around.

Similarly, the aircraft industry is learning what France and the rest of them do over there, and the Europeans. EEC 1992, incidentally, is not orchestrating and organizing for free trade, they are organizing for the trade battle. As we are sitting back here, fat and happy, and dumb to boot, here is exactly what is going on.

I will take a little time of the Senate because this is the alarm that sounded to me when I realized how pervasive the invasion and takeover of our communications industry in America is, almost like fleas on a dog: Hitachi, Japan, manufacturing computers and telecommunications equipment in numerous facilities around the country. In April 1990, Hitachi announced their intention to acquire the U.S. computer peripheral maker, data products, for $160 million.

Matsushita operates eight plants in the United States. It expects to add more. It opened a seventh research laboratory in September of 1990 to develop airline passenger information and communications equipment. The ruling of Judge Greene, who has been administering this modified final judgment, has been interpreted on numerous petitions that we have made before the judge, to forbid, in reality, any research work.

Because if you do it, you can combine with some entity outside, but then you cannot test it, and whoever is doing the research work you cannot tell them why it did not test good, it was faulty, and they have to guess again and come back again. Of course, industry and business are too dynamic to put up with that nonsense, and they just do not have research.

So the research moneys are coming right in here from the foreign entities who are taking over. Fujitsu has a commitment and they capture a share of the U.S. digital central office switch terminal equipment market. They have developed a switch and advanced broad band capabilities. They want a 10-year, $17 million contract with the Telecommunications System of California, in Fresno. They have six research and development centers as well as manufacturing facilities in the United States. They have an $80 million telecommunications plant in Richardson, TX. Fujitsu North American Communications Manufacturing Operations will employ up to 4,500 by the year 2000, and they want to increase the product demand in the United States from 20 percent to 50 percent.

I ask unanimous consent, Mr. President, to print this summary of foreign investment and control in the RECORD.

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

FOREIGN COMPANIES ARE DOING WHAT AMERICAN COMPANIES CANNOT

Examples of foreign activity in U.S. markets closed to the Bell Holding Companies by the MFJ restrictions:

Hatachi (Japan), is implementing strategy designed to significantly increase its information systems manufacturing base in the U.S. Is manufacturing computers and telecommunications equipment in several facilities around the country, and has plans to begin extensive research and development activity by 1990s. In April 1990, announced intention to acquire U.S. computer peripheral maker Dataproducts for $160 million.

Matsushita (Japan), operates eight plants in the U.S. and expects to add more. Since 1983, has developed/acquired U.S. facilities to produce cellular mobile telephones, pagers, and computer systems components. Opened seventh U.S. research laboratory in September 1990 to develop airline passenger information and communications equipment. Other facilities are conducting research in areas such as speech recognition and synthesis, digital image processing and high density data recording, communications systems, advanced computers and high definition television.

Fujitsu (Japan), has recently made commitment to capture share of U.S. digital central office switch and ISDN terminal equipment market. Has been running U.S. trials on terminal equipment since 1986 and

purchased U.S. computer peripheral maker Intelligent Storage in 1988. A Fujitsu digital switching system is currently undergoing beta testing for U.S. market compatibility. Aiming for Bell operating company business in the ISDN and post-ISDN marketplace, Fujitsu has developed switch with advanced broadband capabilities. Fujitsu recently won a 10-year, $17 million contract to build integrated telecommunication system for California State University at Fresno.

Fujitsu has six research and development centers as well as communications equipment manufacturing facilities in the U.S. Began construction in Fall 1989 of $80 million telecommunications plant in Richardson, Texas scheduled for completion in 1992. New plant will be base for all Fujitsu North America's communications equipment manufacturing operations; will employ up to 4,500 by year 2000. Fujitsu wants to increase its product demand in U.S. from 20 percent to 50 percent by 1992. Company is also considering entering U.S. market for UNIX-based software applications; tentatively plans to open software development center in U.S. by mid-1991. Fujitsu is reportedly among several companies negotiating with AT&T to acquire minority stake in Unix Systems Laboratories, AT&T subsidiary that develops Unix computer operating systems and software.

Nippon Telegraph & Telephone (Japan), Japan's domestic telephone company, announced its entrance into rapidly growing $40 billion U.S. data communications services market in February 1990. Subsidiary, NTT Data Communications Systems Corporation, has opened offices in Jersey City, NJ; initial target will be Japanese companies doing business in U.S.; future targets are likely to be U.S. companies. NTT Data will manage, data transmission facilities, office phone systems, and develop private data network software for customers. Project is NTT's largest investment in U.S.; will initially be about $100 million. NTT Data employs 7,000 worldwide and had 1989 revenues of $2.7 billion. NTT also owns over 50 percent of NTT International which established Dynamic Loop Corporation in Delaware to invest in communications projects in U.S.

NTT is also the major investor in Alcoa Fujikura, a Spartanburg, SC joint venture that produces fiber-optic hardware for assembling communications networks.

NEC (Japan), has about 8 percent of North American office telephone switch/equipment market. It is dedicated to worldwide development of products and services that integrate computer and communications technologies. Operates four manufacturing plants in U.S. and in 1988 increased the capability of its specialized semiconductor design centers and added new facilities for developing communications systems software and home information systems technology. Opened new research facility in Irving, Texas in November 1989, the Advanced Switching Laboratory, that will develop broadband hardware and software for central office and customer premises equipment. ASL employed about 50 doctorate level engineers by mid-1990 and plan is to double that number. Lab is intended to become key source of software that drives NEC's advanced communications equipment; was based in U.S. because NEC believes U.S. still has superior software technology and wants to take advantage of it. NEC is reportedly among several companies negotiating with AT&T to acquire minority stake in Unix Systems Laboratories, AT&T subsidiary that develops Unix computer systems and software.

In May 1990, NEC opened a $25 million research facility in Princeton, NJ, where mostly American scientists will concentrate on basic research in physics and computer science, areas that are the foundation of advanced communications technologies. Facility is expected to employ about 100 persons, about half of whom will be researchers; several scientists already hired were previously with AT&T's Bell Labs.

Kokusai Denshin Denwa (Japan), established first U.S. subsidiary to market telecommunications products and services to American firms in Fall 1989. In addition to seeking new business, KDD America will coordinate operations of Telehouse International, New York-based firm of which KDD is largest shareholder with 25 percent. Telehouse is leading provider of super-secure, disaster-proof computer, communications, and data processing centers to the financial industry. It recently opened second facility, a $35 million center on Staten Island. (Except for 12 percent interest purchased by AT&T in May 1989 the rest of Telehouse is held by other Japanese firms.) KDD is also part owner of Infonet, California-based packet switch network company that provides value-added network products and services to global data communications market.

Nintendo (Japan), is developing interactive videogame and information service network for introduction into U.S. market by 1991. Network would link already popular Nintendo Entertainment System (NES) videogames for long distance game playing and access to other information services. Users would access main computer and software from anywhere in U.S. AT&T is expected to be partner in venture.

Ricoh (Japan), has aggressive plans to expand its U.S. business to point where 25 percent of its revenues are from this country. Company, which makes copiers, facsimile machines and other automated office and communications equipment, now does 15 percent of its business in U.S. Ricoh opened $2.5 million plant outside Atlanta, GA in October 1990 and plans to increase its manufacturing presence in U.S. over next few years.

Recruit Company (Japan), provides information management and telecommunications services in New York City area through subsidiary Recruit USA. Operates super-secure, disaster-proof data service centers in Newport, NJ and Staten Island serving customers primarily in the financial and banking industries. Dedicated fiber-optic network links centers to Manhattan.

Toshiba (Japan), began manufacturing telecommunications equipment for U.S. market in Irvine, CA in October 1989. Decision to move manufacturing from Japan is largely effort to avoid imposition of import duties if company is named in anti-dumping suit. Toshiba added 103,000 square feet to its plant in Irvine, CA to accommodate manufacture of PBXs and key systems. Irvine plant is also Toshiba's major U.S. personal computer assembly facility. In October 1990 Toshiba announced goal to assemble all computers it sells in U.S. in Irvine by 1993 and to increase local content from 25 percent to 40 percent. In effort to strengthen software development, particularly for its lap-top computers, Toshiba also plans to more than double number of software technicians in Irvine to 160 by 1993. Toshiba is reportedly among several companies negotiating with AT&T to acquire minority stake in Unix Systems Laboratories, AT&T subsidiary that develops Unix computer operating systems and software.

In April 1990, Toshiba America Consumer Products Inc. announced plans to open research center in New Jersey to develop high-definition television technology.

Mitsubishi (Japan), manufactures mobile telephones in U.S. through its subsidiary Mitsubishi Consumer Electronics, Inc. In November 1990, announced plans to double annual output at its Georgia plant to 40,000 mobile phones by March 1992.

Siemens AG (W. Germany), has launched concerted effort to increase its presence in U.S. by acquiring over 30 U.S. companies. Is concentrating on five high-growth areas: factory automation, office automation, telecommunications, semiconductor technology and diagnostic medical equipment. Major communications deals: purchased 80 percent interest in GTE's Communication Systems' Transmission Product Division (1986); acquired, for $165 million, full control of Tel Plus Communications, the largest U.S. independent interconnect company (1987); paid almost $1 billion for ROLM, IBM's telephone equipment manufacturing arm (1988). Purchase of ROLM increased Siemens' share of North American office-telephone equipment market from about 4 percent to over 20 percent; almost doubled its share of world market. Efforts to increase share of U.S. digital central office switch market are backed by 500-engineer research facility devoted to specialized software development.

In November 1990, Siemens and U.K.'s GPT Ltd. announced intention to merge the two companies; public telecommunications operations in the U.S. Joint venture between Siemens Communications Systems, Inc. of Boca Raton, FL, and Stromberg-Carlson Corp. of Lake Mary, FL, will be known as Siemens Stromberg-Carlson and will be North America's third largest public network supplier. Venture, which will have about 4,000 employees based largely in Florida, will design, develop, produce and market computerized public telephone switches, packet switching and transmission systems.

Deutsche Bundespost Telekom (Germany), will open U.S. office to spearhead effort to transfer its already successful German videotext and value added network services to U.S. market. Is part owner of Infonet, California packet switch network company that provides value-added network products and services to global data communications market.

France Telecom (France), provides long distance data communications through Minitel Services Company (MSC is joint venture between Minitel USA and Infonet); MSC's "videotext network" is slated to eventually serve 150 cities in U.S. and Canada. Through U.S. subsidiary Minitelnet, France Telecom is offering over 10,000 videotext information services to U.S. including electronic directory services it publishes.

Alcatel NV (France), is launching strategy to develop and market intelligent network products worldwide. Gaining ground in American market is Alcatel's top priority; plans to reenter U.S. public switching market with broadband ISDN technology in mid-1990s. Recent acquisition of U.S. fiber and cable business makes Alcatel third largest supplier in U.S. In 1987, Alcatel NV began manufacturing key systems and PBXs in Corinth, MS.

Groupe Bull (France), agreed to purchase Zenith Data Systems for up to $635 million. Zenith Electronic's successful computer unit, Zenith Data Systems had 1988 sales of $1.4 billion; is largest seller of battery operated laptop computers in U.S. Acquisition will make Bull largest European computer company; it will gain market share in U.S. and Europe and be positioned to compete on global scale.

British Telecom (U.K.), wants to become leading information services company in U.S. by providing videotext and other information services through BT-Tymnet, company formed by consolidation of BT's Dialcom unit and recently purchased Tymnet, Dialcom, Rockville, MD-based operation with marketing arms in U.K. and continental Europe, was purchased from ITT in 1986 and ranked as third largest e-mail provider in U.S. in 1987. BT has invested over $40 million to add new databases and advanced 2-mail services to Dialcom service. It has enhanced service offerings by linking its U.S. and U.K. data centers via long distance communications; arrangement allows BT to offer all services to all users (whether in U.K. or U.S.) without incurring cost of duplicating software or databases. Dialcom counts among its customers the U.S. Congressional Correspondence System which provides electronic mail service to the Hill.

In July 1989, BT reached agreement with McDonnell Douglas to purchase Tymnet, the second largest U.S. provider of value-added network services with annual revenues of about $250 million. Purchase price was reportedly $335 million. The acquisition of Tymnet gave BT a vast U.S.-based network linking over 750 U.S. cities and more than 30 countries. In addition to the network, sale also included McDonnell Douglas' e-mail and electronic data interchange systems, which substantially strengthened BT's already formidable position in the U.S. electronic services market.

BT is also aiming to penetrate North American computer/communications systems integration market. It plans to develop, manufacture and market broad range of data communications equipment through Herndon, VA based subsidiary BT Datacom. (Formerly Mitel Datacom, unit of Mitel, Canadian company in which BT has 51 percent interest). Products will include fiber optic LANs, computer integrated telephony products, PCs and terminals. BT is backing entry into U.S. data communications market with over $20 million research and development effort.

BT's purchase of 22 percent stake in McCaw Cellular Communications Inc. gave it access to 30 percent of U.S. mobile communications markets, including cellular radio, paging and digital cordless communications. Through this venture BT can offer statewide automatic cellular services, a service Bell company cellular operations cannot provide, at considerable competitive disadvantage, due to MFJ interLATA restrictions. BT also purchased 80 percent of Metrocast paging from Metromedia Telecommunications and plans to spend over $21 million in system expansion, operations and marketing plans.

Cable & Wireless (U.K.), provides long distance telephone service throughout U.S. through owned and leased facilities. By almost doubling capacity of U.S. portion of its "Global Digital Highway," Cable & Wireless has coast-to-coast network that is more than 90 percent fiber optic and has access to 80 percent of U.S. business population with equivalent of 27 million miles of high quality circuit capacity. Long distance traffic over this network increased by 21 percent to over 630 million minutes. In December 1989, C&W began 100 percent digital end-to-end private line service in California for in-state data transmission. Company has been targeting services primarily to business customers, but plans to begin marketing more aggressively to residential customers.

In November 1990, Cable & Wireless reached an agreement to acquire Washington, D.C.-based Alba Data Technology, also known as DataAmerica. Acquisition of DataAmerica network will enable C&W to offer services such as electronic mail and electronic data interchange. C&W also purchased long distance portion of GTE Telemessengers voice messaging business in January 1991. Together, acquisition move C&W closer to goal of offering end-to-end enhanced data networking services in U.S. and globally.

Hawley (U.K.), paid $715 million for American District Telegraph (ADT), leader in U.S. security products and services (including remote electronic security information services).

L. M. Ericsson (Sweden), has assets in U.S. of only about $320 million but has about 5 percent of U.S. PBX equipment and multiplexer market and is aiming for 10 percent. Ericsson is becoming player in integrated communications systems business. In Spring 1989 was awarded $3 million contract to install integrated voice and data transport network for State University of New York health center; other installed systems include California State University and University of Massachusetts.

Ericsson is very active of U.S. market for cellular system infrastructure equipment, primarily switching. In 1989, formed joint venture with GE to produce cellular phones, mobile radio products and Mobitex mobile data communications systems. Venture, known as Ericsson GE Mobile Communications, Inc., is 60 percent owned by Ericsson, 40 percent by GE. In late 1989, Ericsson established new company, Ericsson Mobile Data, Paramus, NJ, to supply, install and maintain Mobitex system. Ericsson is partner in American Mobile Data Communications venture to build and operate first nationwide 2-way all-digital Mobitex mobile radio network, linking top 50 U.S. specialized mobile radio systems.

October 1990 announcement of major order received from McCaw Cellular and Lin Broadcasting made Ericsson leading supplier of cellular equipment in U.S., surpassing Motorola and AT&T. With new order, to replace Motorola equipment in New York-New Jersey area, Ericsson will have cellular systems in nine of America's 13 largest cellular markets; approximately 2.3 million U.S. cellular subscribers will be served by Ericsson equipment.

Ericsson GE Mobile Communications opened research and development center in Research Triangle Park, NC in late 1990. R&D center will develop and commercialize digital cellular telephones and base stations for the North American market. Initially employing about 50 American and Swedish engineers, center is expected to grow over next several years.

Elsevier (Netherlands), owns several traditional and electronic publishers in U.S. Holdings include Congressional Information Service, which specializes in U.S. government and congressional information publications and databases, and real estate data companies Real Estate Data and Damar. Growth of U.S. operations (32 percent increase in American publishing revenues between 1987 and 1988) prompted formation of two new business groups: Elsevier Information Systems and Elsevier Business Press.

VNU BV (Netherlands), owns Disclosure, one of largest and most widely available U.S. business information database publishers.

N.V. Philips (Netherlands), generates 20 to 30 percent of total revenues through U.S. sales, mostly of consumer electronics. Plans to aggressively increase its stake in U.S. to about 50 percent by concentrating on improving its standing in information technologies markets; will increase already significant U.S. manufacturing base accordingly. Philips is largest European manufacturer of semiconductors and has healthy stance in U.S. market via acquisition of Signetics.

Thyssen-Bornemisza Inc. (Monaco), owns Predicast, one of largest and most comprehensive U.S. business and defense information database publishers.

International Thomson Organization Ltd (Canada), established presence in U.S business information services market through acquisition of U.S. service and software firms. In 1986, acquired Business Research Corp. developer of IvestText and First Call (leading on-line financial database and equity research network) and Technical Data Corp., publisher of financial information and developer of software for institutional investment community. Companies are grouped with other holdings under "International Financial Networks Group" known as "Infinet."

EXAMPLES OF FOREIGN COMPANY ACTIVITY IN U.S. MARKETS CLOSED TO THE BELL HOLDING COMPANIES

Company, country, U.S. business activities

Hitachi, Japan, manufacturing computers and telecommunications equipment.

Matsushita, Japan, manufacturing electronic and communications equipment; research and development of computer & communications technologies.

Fujitsu, Japan, research and development of digital central office switch technolog; manufacturing communications equipment; software development.

NTT, Japan, data communications services; fiber optic hardware.

NEC, Japan, manufacturing computers, semiconductors; communications equipment, and integrated systems; research and development of communications systems software and home information systems technology

KDD, Japan, telecommunications products and services; secure computer, communications, data centers; packet switch network, value-added network services.

Nintendo, Japan, interactive information service network.

Recruit, Japan, information management and telecommunications services.

Toshiba, Japan, manufacturing telecommunications equipment sofware development.

Ricoh, Japan, manufacturing office & communications equipment.

Mitsubishi, Japan, manufacturing telecommunications equipment.

Siemens AG, Germany, manufacturing of wide range of telecommunications/automation equipment; communications research and development.

Deutsche Bundespost, Germany, marketing videotext packet switch network, value-added services.

France Telecom, France, long distance data communications; videotext information and directory services; packet switch network, value-added network services.

Groupe Bull, France, manufacturing computer equipment.

Alcatel NV, France, manufacturing telecommunications equipment.

British Telecom, U.K., electronic database/information services; nationwide value-added network; computer/communications systems integration and equipment manufacturing; interLATA automatic cellular services.

Cable & Wireless, U.K., long distance telephone service throughout U.S.; enhanced data network services.

Hawley Group, U.K., remote electronic security services.

L.M. Ericsson, Sweden, manufacturing of communications equipment; integrated communications network systems; digital public mobile data network; digital cellular research and development.

Elsevier, Netherlands, electronic and traditional publishing; U.S. government/congressional information online databases.

VNU BV, Netherlands, electronic and traditional publishing; U.S. business and; financial databases.

N.V. Philips, Netherlands, manufacturing of electronic/microelectronic equipment and components.

Thyssen-Bornemisza, Monaco, electronic publishing/information services; U.S. business and defense information database.

Int'l Thomson Org., Canada, electronic and traditional publishing; on-line financial database and equity research network; software development for institutional investment community.

Mr. HOLLINGS. I thank the distinguished Chair, and I will continue to highlight.

Fujitsu is among several companies negotiating with AT&T to acquire minority stake in Unix Systems Laboratory, an AT&T subsidiary. I emphasize that because AT&T is wheeling and dealing free as the evening breeze with market forces. They are the ones coming in and saying, oh, boy, you have to watch those Bell Cos. They are the ones who testified, do not control them, let the market forces operate.

Now they have a so-called monopoly. In essence, because of their very size, financial worth, they want to continue it and deal with themselves. Whereby, this particular bill has provisions against self-dealing, auditing, and everything else of that kind. But they do not want that for themselves. They just want that for the Bell Operating Cos.

NT&T, that is Nippon Telephone & Telegraph, employ 7,000 worldwide. They had $2.7 billion in revenues in 1989. They own 50 percent of NT&T International which established the Dynamic Loop Corp. in Delaware. We have to search these things out and find out where they have their communications projects. But they are heavy in here. They are a major investor with Alcoa Fujikura, in my back- yard, Spartanburg, making fiber optic hardware for assembling communications network.

NEC Japan has 8 percent already of the North American office telephone switch equipment market. NEC operates four manufacturing plants in the United States. Not long ago, they increased their capability of specialized semiconductor design centers. They opened up a research facility in Irving, TX. In November 1989, the Advanced Switch Laboratory developed broad band hardware and software for the central office and customer premises equipment. Of course, they also are working with AT&T for a stake in the Unix Systems Laboratory.

In May 1990, they opened a $25 million research facility in Princeton, NJ, and they have already employed 100 persons there. Half will be researchers, several scientists already hired from AT&T's Bell Labs. You will hear Senators from time to time say we still have Bell Labs. It is being denuded; it is being taken away; it is being hijacked by the foreign investors coming into this country and NEC is one of them. They are starting it right next door and giving the scientists better conditions, I take it, better pay, what have you. They will be running it right here under our noses. But we are in charge; we have antitrust provisions; we do not want any predatory practices, and we do not want any price fixing. The dummy Congress is sitting around losing the industrial backbone of the United States of America while we think we are in charge, and we are not.

Kokusai Denshin Denwa from Japan, has 25 percent of the New York-based firm of Telehouse International. Telehouse is the leading provider of super secure disaster-proof computer, communications, and data processing centers for the financial industry. They have a $35 million center on Staten Island. I will leave the rest of the summary.

Ricoh, of course, from Japan, has opened a $28.5 million plant outside of Atlanta, GA last fall, and they plan to increase their manufacturing presence.

The Recruit Co. are also in New York City. Toshiba of Japan began manufacturing telephone and telecommunications equipment for the United States market in Irvine, CA. They just moved their manufacturing from Japan in an effort to avoid imposition of the import duties and the antidumping suit that had been brought. They added 103,000 square feet to their plant in Irvine to accommodate the manufacture of PBX's and they are the major U.S. personal computer assembly facility. So they are working with AT&T on the UNIX Systems Laboratories. They are also into high definition television, as we all know, and this arrangement was made in April 1990 under the name of Toshiba American Consumer Products, Inc.

Mitsubishi Japan, a subsidiary of Mitsubishi Consumer Electronics, that particular subsidiary manufactures mobile telephones. They have a plant in Georgia and the output is expected to be around 40,000 mobile telephones by March 1992.

Siemens, Germany has launched a concerted effort to increase its presence in the United States by acquiring over 30 United States companies. They took over 80-percent interest in GTE's Communications Systems Transmission Product Division. They acquired for $165 million full control of TelPlus Communications, the largest U.S. independent interconnect company back in 1987. Then they paid $1 billion for ROLM, IBM's telephone equipment manufacturing arm in 1988. Siemens Communications, Inc., of Boca Raton got into a joint venture with Stromberg-Carlson, that has gone British, and they will have 4,000 employees down there. They will develop, produce, and market computerized public telephone switches, packet switching, and transmission systems.

Mind you me, Mr. President, none of this separate subsidiary, none of this provision of you have to have domestic content manufactured all here unless you can prove it is unavailable, nothing like that. They can do as they will, finance as they will, buy from each other as they will. We have a highly restrictive measure in S. 173 on seven very, very competitive entities.

These that I list have none of that. They are into the open market and have taken us over and are sending us to the cleaners. Deutsche Bundespost Telekom in Germany; France Telecom. They provide long distance data communications. Minitel Services is a joint venture with Minitel MSC and Infonet.

Alcatel of France—their recent acquisition of the United States fiber and cable business. It makes Alcatel of France the third largest supplier in the United States. It began manufacturing key systems in PBX in Mississippi and a memo here outlines its particular endeavor.

Groupe Bull of France—they purchased Zenith Data Systems for 635 million bucks.

You can go down and see how they are gaining U.S. market share.

British Telecom—Dialcom of Rockville, MD, providing even services to the United States congressional correspondence system, is into the market correspondence.

British Telecom reached agreement with McDonnell Douglas to purchase Tymnet, the second largest provider of value-added network services with revenues of $250 million. They say they purchased it for $355 million. They have plans to develop and market and manufacture a broad range of data communications equipment.

BT is backing its entry into the U.S. data communications market with also a $20 million research and development effort.

I keep mentioning research and development. You will find in my formal statement that the average investment in R&D is somewhere around 8 or 9 percent. And the Bell Cos., since it does not pay 1.3 percent, our competition is doing it because they can profit by it. They can explore, they can get those particular advanced services. They can serve themselves with it and everything else.

But we are stultifying, putting a wet blanket, if you please, on research in America with this continued practice of the modified final judgment of forbidding manufacture. It is as simple as that. That is why all these large entities that are coming in are also setting up their research facilities to get into that particular market and be downfield of the competitive curve so they can maintain in that market.

Of course, BT purchased a 22-percent stake in McCaw Cellular Communications and they have 30 percent of the U.S. mobile communications market including cellular radio, paging, and digital cordless communications.

We have L.M. Ericsson from Sweden. They have assets in the United States of about $320 million, and have about 5 percent of the U.S. PBX equipment market, and are aiming at 10 percent. They are becoming a major player here in integrated communications systems business. In the spring of 1989 they were awarded a $3 million contract to install integrated voice and data network with the State University of New York, California State, and University of Massachusetts. The venture known as Ericsson GE Mobile Communications, Inc., is owned 40 percent by GE, 60 percent by Ericsson. And they are buddy enough, trying to replace Motorola.

I can tell you here and now, as long as we can continue it, we ought to call the modified final judgment, a foreign takeover entity act, to put the United States out of business.

It is not complicated at all, but the colleagues have not noticed this. We are letting it pass by, all in the name of not having any antitrust practices or self-dealing or predatory prices.

The FCC now does have computers. They have a system that the telephone companies have to comply with. They can easily, with their computers and their new systems now for auditing—which we could not get heretofore before the 1980's—because I worked in this field for the last 24 now going on 25 years as a member of the Communications Subcommittee of Commerce—we could not get anything out of AT&T. Now we have the rules, the systems, the regulations, the computers. They can have the audits. They are audited. The States can audit and should audit, and everything should be aboveboard and could be seen and observed, audited and complied with.

But while we have all of that going on, trying to get our own companies in the manufacture under those particular restrictions, very severe restrictions, foreign entities continue on like gangbusters.

They also, Ericsson GE, opened a research and development center in the research triangle in North Carolina last year. They will develop and commercialize digital cellular telephone base stations in the North American market. They employed initially about 50 American and Swedish engineers and, of course, it will go and grow as you can see.

So, Mr. President, you have Hitachi in manufacture, Matsushita, Fujitsu, NTT, NEC, KDD, Toshiba, Ricoh, Mitsubishi, Silmens, Groupe Pull, Alcatel, Cable & Wireless, L.M. Ericsson, M.V. Philips from the Netherlands manufacturing electronic and microelectronic equipment. The list is replete.

When we understand this, Mr. President, we begin then to take the cloud from our eyes and the bit from our teeth, bent going down the road to antitrust, antitrust, antitrust, like we are regulating business for consumers, and begin to sober up and understand that we are the ones denying the consumers the advanced technology because we are denying the American entities a chance to do research, develop, and manufacture. They are the ones that have been built up by the American consumers, by the American taxpayers and otherwise and by this blinded policy, forced to go overseas and develop Hungary and Moscow and New Zealand and Argentina, and all the other countries.

Yes, we had a good debate last week, and we are going to continue with that debate because we do not have a trade policy in the United States. More than that, we do not have a research and development policy in the United States because there is a mindset over the administration about industrial policy.

When I come here and the President signs a minimum wage bill, he no longer is pure. He went along with industrial policy. What he said was, I do not care what your capability, capacity or talent is; in America you are worth so much per hour. We invaded the market with our tax provisions. We invaded the free market with the Export-Import Bank and so forth that we set up. We invaded in various other ways.

So we are not invading the market. What we are trying to do is meet market forces and let us unleash their dynamic capability both financially and talent-wise to manufacture.

AT&T our opposition—we might as well identify it in the first instance, because we can tell it. You see this bill was reported out last year, again this year by our committee, after all the hearings, on a vote of 18 to 1.

My understanding in coming to the floor now is that perhaps Members would have a stretch-out kind of policy of amendment after amendment after amendment to try to bog it down so nobody would be for the bill with all kind of nit-picking things like looking for rural amendments. Everybody wants to do something for rural areas. We have looked out for the rural telephone operatives in this country. This particular Senator has. You want to look out for the matter of audits. Let the States audit.

If we want to go further about the cross-subsidization, let us look at it and see that it is iron clad.

No one else is forbidden from buying for themselves. We put restrictions in here that you should have it open and aboveboard, offer in any purchase you make, all other manufacturers to come in, and buy and sell on the same basis that you sell to any other competitor and so forth.

So all of those have been worked out in the committee, but they will try to revisit them like they have thought of a new idea. Their new idea is to kill the bill. We know that. We understand it. We will be as tactful as we can and as deliberate as we can. But I do not think we ought to be taking up the time of the Senate revisting time and time again a measure we have worked on now for many years and reported out not only last year but again this year.

I would like to emphasize at this particular point, Mr. President, the various restrictions we have here on safeguards in S. 173. My colleagues will not think we have a bill and we are going to ram the bill through, and we are not looking out for consumers and the rates might go up, and all of those particular arguments be made.

We have in here "no joint manufacturing." In other words, RBOC's cannot manufacture in conjunction with one another. All of these entities I have listed can and do and continue to do so. I have listed those coming in with AT&T, who is opposing this bill. They are coming in time and again, wheeling and dealing, buying out each other, and everything else like that.

We say that these Bell Operating Companies cannot manufacture in conjunction with one another. They must create seven independent manufacturing entities and compete with each other, as they are doing right now in world market business the world around.

They must have separate affiliates. The Bell Operating Cos. must conduct all of their manufacturing activities from separate affiliates. The affiliates must keep books of account for its manufacturing activities separate from the telephone company, and must file this information publicly. How are you going to beat that?

We debated that out in the committee. We want to make sure they were not going to play games and cut corners. Nippon Electric financed, subsidized, and protected. Try to get in over there and compete with any of these entities. They are competing.

No, this is not going to really forestall entirely foreign investment in the United States of America. They will still come, because they will still have many advantages; because we will have

these kinds of safeguards. I would like to clean them all out and let it all go.

Yes, we do have common carrier requirements of these Bell Operating Cos. Each Senator—and this Senator—wants to make certain that we are not paying the bill for manufacture, venture, and subsidizing particular entities through increased telephone rates.

We have another provision in here against self-dealing. No self-dealing. Bell Operating Cos. may not perform sales advertising, installation, production, or maintenance operations for its affiliate. They cannot advertise, they cannot install, they cannot produce or maintain for its affiliate.

They must provide opportunities to other manufacturers to sell to that telephone company that are comparable to the opportunities that it provides to its affiliates. RBOC may openly purchase equipment from its affiliate at the open market price.

And we have one thing in here and, of course, under the law, on a private cause of action, it ought to be mentioned at this point that all of our laws say go to the particular administrative body. You go and apply, if there is a violation, and exhaust your administrative procedure at the Federal Communications Commission, in this particular discipline, to make certain that we do not turn the courts into an administrative body. That would apply, ordinarily, to all of these.

We went one step further with the manufacturer, if they thought they were being discriminated against and not being applied to, the manufacturer—not an individual fellow who is mad with his telephone rates, because we would clutter up the courts and get nothing done—can proceed with a private cause of action.

That was the one exception we made. We are not making the exception, of course, for the individual private right of action.

It sounds petty, but if you think on it, after a while, you will understand that the orderly procedure is to make your complaint, and the FCC follows it up, and you have the expertise paid for by the taxpayers, and the investigation and the proceeding itself taken care of by the public. You do not say: I am a little individual citizen and do not have money enough for a lawyer. The procedure is there in every instance.

We have even gone further here with respect to manufacturers. No cross-subsidization. Bell Operating Cos. are prohibited from subsidizing its manufacturing operations with revenues from its telephone service. Those records are kept, and they are public and subject to audit.

Domestic manufacturing requirement. The Bell Operating Cos. must do all of this manufacturing within the United States.

Remember the thrust; remember the intent of this particular measure: To come home to America. We are now opening up the market and giving you a level playing field as best we can. We still have it somewhat tilted in favor of the consumers and in favor of antitrust concerns, and those things. We do not totally level it.

But they must do all of their manufacturing here, because we are trying to create that manufacturing capability in the United States. There is no question about that. That is the way it is.

As old Walter says: The world around, everybody else is doing it. Everybody else is taking these national entities, from Siemen's, from Ericsson, and all of these other particular companies who are all taken care of by their country, and say at least we want to get the manufacturing done here in the United States. We do not want to take all of this and let them setup over in Singapore.

This Senator is particularly sensitive. I competed, as Governor, on Western Electric, in making the telephones, with my distinguished former colleague, Gov. Luther Hodges of North Carolina. We competed on two of them: Western Electric and Eastman Kodak. I won out on Eastman Kodak and got it in South Carolina, and he won out on Western Electric.

I am the ultimate winner, because I saw Western Electric in downtown Singapore when I visited over there. That is where they are making all of this hand telephone equipment. So the idea here is not to further subsidize manufacture out of the United States, but rather to reverse that particular trend.

Limitation on equity ownership. The Bell Operating Co. fought like a tiger, and I guess they might still fight. They would like to own all of the company, and they do not like to have anybody have outside investors, or anything else of that kind. But we say that they may own only 90 percent of the equity of its affiliate. That is, 10 percent must be made available to outside investors.

Of course, I cannot do that, as a member of the Commerce and Communications Subcommittee. I would like to have part of that 10 percent. I know how these people operate. They are the best of corporate citizens. I know my opposition here will start to point to a couple of infringements that came out in the news in the last 2 years. All America, when they get competitive, get competitive. That is, all we politicians singsong. They overstep, from time to time, the bounds. But there is no question that these seven companies are about the seven finest operating companies you are going to find in all of the United States. If you get them setting up a separate subsidiary, they know that they can move forward in the development of the technology and in the advancing of those particular services through technology to the consumers.

We have to complete the loop and change the mentality of the senatorial mind here that this is something against consumers; this is for consumers. We are lagging behind in many services in this country of ours, because it does not pay to get into them. That is all it is.

Even though you have common carriers, the common carrier requirement does not say, now you put in advancements, and so forth. You can sit there and get your rate and continue to sit there and get your rate, and nobody else is going to come in because it does not pay for them to come in.

Limitation on debt. The affiliate only may secure debt from the financial markets separate from the Bell Operating Co. No creditor shall have recourse to the assets of the telephone company.

We consider the telephone company as common carriers and books and financial worth and everything else separate from that affiliate and its manufacturer. If it goes broke and everything else, it does not reflect on my telephone rates and my telephone company.

Protections for the small telephone companies. The Bell Operating Cos.' manufacturing affiliate must make its equipment available to other telephone companies without discrimination or self-preference as to price, delivery, terms, or conditions.

And then, disclosure of network information. The Bell Operating Cos. must file publicly all technical information concerning that telephone network.

You cannot get any more open than that. Someone may want to come and say you could not buy at all from an affiliate. I hope it is not the AT&T crowd coming around here that buys from itself regularly. The majority of its equipment is bought from itself, and it has not affected the long distance rates, and so forth. So we can watch those; they are set.

But what we require here is, as stated, that the Bell Operating Cos. must file publicly all the technical information concerning their telephone network. And those are the particular safeguards that we have included in there.

Mr. President, I see a distinguished colleague perhaps want to take the floor.

Mr. GRASSLEY. No.

Mr. HOLLINGS. Mr. President, I do not want to start a quorum call. There are a lot of other things we can explain. Let us see, Mr. President, while we are putting our colleagues on notice. Let me discuss practices in other countries; the requirements of other countries. Under a new EC directive, the European Community origin preference excludes bids with less than 50-

percent European Community content in telecommunications.

These are the foreign trade barriers. This is your competition. Do not come around here acting like you are running the little U.S. market and it is all insulated and you have control. The foreigners have control, I tell you that right now. They have their own FCC they call MITI and all those other entities that you will find in Europe, and now we will call it the EC. The European Community talks about free trade with Europe. Try to get in over there. They have 50-percent European Community content in telecommunications. We would not dare countenance that kind of thing for all of our telecom market, but that is what they have and that is our competition.

The Canada procurement policy, is the preferred supplier relationship between Bell Canada and Northern Telcom. We have Northern Telcom. It has plants here. On the increased export market, the diminution in the balance of trade that is down to a $700 million deficit in the balance of communication trade. We should hail it. We should understand it. And the reason we hail it is because we do not understand it. If we understand it, that is what happened with all these foreign entities coming in.

For agencies not covered by the free-trade agreement, Canada maintains a 10-percent price preference for Canadian content in telecommunications. Members ought to understand that. This is a very dynamic, very competitive, very subsidized, very controlled international market with the Government on the side of the communications industry in that country. We have a very controlled communications market in the United States of America with the Government against the telecommunications companies in this country.

We are trying our best to get the Government on the side of manufacture, on the side of industry, yes, on the side of jobs, yes, on the side of economic security, and prevailing in the economic war. We have gone, with the fall the year before last of the Wall in Europe, from the cold war to the economic war, the trade war, the industry war, the production war, not just a little bit here jobs, a little bit there jobs; they are basic industries. Let me start with textiles.

I started with this in the fifties when 10 percent of the clothing in this Chamber would have been represented by imports. Now more than 60 percent is represented by imports. It gets to the point where it does not pay to invest and be competitive. You know, we smart politicians running around beating on peoples' heads, got to be competitive and more productive, we continue to appoint 10 more committees; we are about the most unproductive, uncompetitive entity you are going to find, falling over each other around here. Eighty-two percent of the shoes on the floor here are imported.

We are going out of business also in communications, and I am trying to stop it. I am trying to get us competitive here, and I am looking at my competition. The provincial quasi-government corporations follow a "buy Canada" policy. Unfortunatley we do, too. We have a "buy Canada" policy with Northern Telcom, a very fine company, very fine executives, very friendly people. I would be friendly people if I was making out like Gangbusters like they are, I tell you that right now. They do not have anything to gripe about.

But with a measure of this kind and the sobering up of Government in Washington, DC—what is not producing and not competing is not the hinterland. I can give you example after example of the highest technology; I know it, I see it, I have been visiting with it, and yet we still continue to go out of business on account of us right here in Washington. I visited week before last T.M. Brass in magnetic resonance in my own backyard. They export 50 percent of what they make.

I can go right on down the list. They talk about how the Japanese work harder, they have a work ethic. You cannot beat the American production worker; I do not care what they say. I have watched them; I have seen them. I have seen the Japanese come, Japanese and West Germans, for automotive electronic engineering, study 22 countries, and, bam, come to South Carolina, not to Japan, not to Germany, because of the productivity and the skills we have in my own backyard. And in this past year now we have taken over from Toshiba the magnetic resonance indicators, the MRI, the health equipment, where we have now a GE plant in Florence, SC, and we export over 50 percent of it. We are going to take over the Japanese market—until they get into the health market like they are getting into the communications market. Where the Government has not gotten into it yet, we are still surviving and beating them. But bit by bit, step by step, takeover by takeover, they are moving very quietly, very effectively into my backyard, into your backyard, and we are inviting them in. Any Governor of any State in America worth his salt has an office in downtown Tokyo. It is delightful to visit, on the one hand, you are out there trying to get the investments. We have many fine Japanese industries, and I emphasize we are not bashing Japan or Germany or the Swedes. We are not bashing anybody foreign; we are bashing Washington, DC, trying to wake them up, give them a wake-up call.

The United States is under siege by a host of Japanese, European, and other multinational firms who are exploiting the openness of the United States market to our great disadvantage. These foreign companies recognized some time ago what the United States has not—the market for communications equipment is now a global one, and we are not in it. In this high-stakes battle over world market share, the United States has only one major participant—AT&T.

At the same time, the United States bars seven of its largest and most productive companies from designing, developing, or manufacturing any form of communications equipment. These companies have tremendous assets, experience, and expertise that could bring enormous benefits to U.S. workers and consumers if they were allowed to manufacture. To continue this restriction is simply contrary to America's best interests. It is time for the U.S. Congress to take control of our economic destiny and lift the manufacturing restriction on the Bell Operating Cos.

This legislation has tremendous bipartisan support. S. 173 now has 25 cosponsors, including Members from both sides of the aisle. The Commerce Committee reported this bill to the full Senate by a vote of 18 to 1. Last year, the committee also voted a similar bill to the Senate by voice vote. It is clear that an overwhelming majority of the Senate is prepared to take up and pass this legislation.

Further, almost every sector of the American public believes this restriction should be lifted. The Communications Workers of America support the bill and believe that this legislation will provide thousands of jobs for Americans. Organizations representing the deaf community, the disabled community, and older Americans support the bill because it will lead to greater innovation and better products to suit their communications needs. Over 40 small manufacturers believe that allowing the Bell Cos. to provide funding to start up manufacturing companies will promote economic development and small business opportunities. A number of policymakers and scholars support lifting this restriction, including Henry Geller, the former General Counsel of the FCC, and Alfred Kahn. The consumers who have written to my office in support of this bill outnumber those who oppose it by 10 to 1. Clearly, the public is demanding that Congress lift this restriction.

Mr. President, the current manufacturing restriction on the Bell Cos. is an old-fashioned policy that has outlived its usefulness. The manufacturing restriction originates from an antitrust case that was filed against AT&T 17 years ago. In that case, the Department of Justice alleged that AT&T had used its monopoly over telephone service to discriminate against competing equipment manufacturers. While the case was being tried, the Department of Justice and AT&T reached an out-of-

court settlement under which AT&T agreed to relinquish control over the 22 Bell Operating Cos. This settlement agreement, which became known as the Modification of Final Judgment, or MFJ, also banned the 22 Bell Cos. from manufacturing communications equipment. The district court accepted the agreement and has continued to enforce it.

THE MANUFACTURING RESTRICTION IS UNFAIR

There are several problems with continuing this manufacturing restriction in place, but one of the most obvious is its unfairness. Indeed, one must question why the manufacturing restriction was allowed to stand in the first place. The Bell Cos. were barred from manufacturing even though the district court never ruled that AT&T had, in fact, committed any violation of the antitrust laws. Further, the Bell Cos., which had not yet been created, had no opportunity to comment on the proposal to ban them from manufacturing before the agreement became effective. AT&T, a major manufacturer and one of the two parties responsible for imposing the restriction, had a clear self-interest in keeping the Bell Cos. from competing with it in the manufacturing market. Meanwhile, the Department of Justice has changed its position and now supports lifting the restriction.

Furthermore, no other telephone service provider in the world is similarly barred from manufacturing. AT&T, the dominant provider of long distance service in the United States, is one of the largest manufacturers in the world and buys almost all its own equipment from itself. There are 1,400 other telephone companies in the United States; not one of them is barred from manufacturing. In fact, no other country bars its local telephone companies from manufacturing communications equipment.

THE COURTS, NOT THE CONGRESS, ARE IN CONTROL

The enforcement of this manufacturing ban is inconsistent with the traditions of American Government. Because of the peculiar history of the MFJ, a single Federal court judge is now responsible for setting U.S. communications policy. Congress is not in control, and neither is the President. A single Federal court judge, with a few law clerks and a large case load, dictates the use made of over one-half of the communications assets in this country. At the same time, foreign companies, backed by their governments, are buying American companies and taking an increasing percentage of our market share.

THE MANUFACTURING RESTRICTION IS UNREASONABLE AND ARBITRARY

Furthermore, the manufacturing restriction imposes unreasonable and arbitrary limits on the Bell Cos.' ability to manufacture. These restrictions prevent the Bell Cos. from taking advantage of the efficiencies between providing telephone service and manufacturing telephone equipment. As a result, the Bell Cos. cannot bring new and better products to the market that will benefit all Americans.

The practical effects of the manufacturing restrictions are almost ludicrous. For example:

First, under current law, the Bell Cos. can manufacture telephone equipment in foreign countries for sale overseas. But the law bars them from performing any manufacturing in the United States for domestic customers. This forces the Bell Cos. to invest their capital overseas, as they have done in Europe, Mexico, New Zealand, and elsewhere.

Second, current policy allows these companies to engage in the design and development of the telephone network, yet they cannot design and develop equipment to be used in that network. This removes any possible efficiencies of operating in these two markets.

Third, the success of most high-technology industries is founded on strong research and development activities that usually comprise between 6 and 10 percent of revenues. Under current law, the Bell Cos. can perform research but they cannot engage in development. The uncertainty of the line between research and development and the fear of sanctions discourages the Bell Cos. from performing any research at all. As a result, the Bell Cos. spend only about 1.3 percent of their revenues on research.

If there was any justification for banning the Bell Cos. from manufacturing 10 years ago, they have long since disappeared. The manufacturing restriction makes absolutely no sense in today's world. Let me outline briefly some of the benefits of allowing the Bell Cos. into manufacturing:

1. AMERICAN COMPETITIVENESS

The U.S. competitive position in high-technology markets is severely at risk. This decline is apparent in almost every sphere of the market. In research and development, patents, trade, and world market shares, Japanese, West German, and other foreign companies are outcompeting the United States in the international market. The United States faces a challenge to its world leadership position as never before.

Some basic facts bear out this point. Seven years ago, there were 15 major switch manufacturers in the world market, 3 of them American. Today there are only eight—three from Japan, three from Europe, one from Canada, and only one from the United States, AT&T. From a $1 billion surplus in 1981, the U.S. trade balance in communications equipment has now dropped to a $700 million deficit.

Total U.S. spending on research and development lags far behind other developed nations. According to the National Science Foundation, the United States spent 1.8 percent of its GNP on nondefense R&D last year, while West Germany spent 2.6 percent and Japan spend 2.8 percent. In communications, the largest European and Japanese firms have increased their research and development spending by 18–20 percent per year. AT&T has increased its spending by about 6 percent per year.

While the U.S. standing has declined, our foreign rivals have prospered. Annual foreign investment in U.S. high-technology industries has increased from $214 million in 1985 to $3.3 billion in 1988. In the 6 years since the divestiture of AT&T, 66 different U.S.-based computer and telecommunications equipment companies have been bought by or have merged with foreign firms.

This decline in the U.S. leadership position has tremendous consequences for all Americans. The erosion of critical U.S. industries means fewer jobs for American workers. Increasing investment in the United States by foreign companies means that profits from American activities flow overseas. The lack of an industrial and high-technology base within the United States threatens our military capabilities and our national defense. The economic, social, and political ramifications of the continued deterioration of U.S. strength in these crucial industries could be devastating.

Lifting the manufacturing restriction on the Bell Operating Cos. will help to reverse this decline. The Bell Cos. are among the top 50 corporations in America. Together, they earn about $80 billion in annual revenues, employ almost 2 percent of the American work force, provide telephone service to 80 percent of the Nation's population, and control over one-half of the United States telecommunications assets. They have the knowledge, the resources, the experience, and, perhaps most important, the desire, to be strong players in the world manufacturing market. How could the United States allow its world leadership in high technologies to run aground while 7 of its largest and most capable companies are kept out of the game?

2. JOBS

Since the divestiture, AT&T has closed down or reduced its work force at 33 manufacturing plants, resulting in a loss of 60,000 manufacturing-related jobs. At the same time, AT&T has signed 18 joint venture agreements with foreign manufacturers and has opened 7 new manufacturing facilities overseas. This drain of American jobs not only harms the American worker, it also harms our industrial competitiveness. Trained and skilled workers are essential if the United States is to continue its role as the world's technological leader.

The Communications Workers of America firmly believes that lifting the manufacturing restriction on the

Bell Cos. will promote thousands of new job opportunities in the United States. The domestic manufacturing provision requires the Bell Cos. to conduct all their manufacturing here in the United States. Whether the Bell Cos. begin to manufacture on their own, whether they provide seed capital to small entrepreneurial businesses, or whether their manufacturing activities increase the demand for domestically made components, lifting the manufacturing restriction is certain to result in significant numbers of new jobs.

3. RESEARCH AND DEVELOPMENT

The manufacturing restriction places a significant constraint on the Bell Cos.' willingness and ability to engage in research and development. As interpreted by the courts, the manufacturing restriction allows the Bell Cos. to engage in research but not design or development. The line between research and development is so arbitrary and unclear that the Bell Cos. are afraid to engage in any research at all for fear of crossing that line.

Further, because the Bell Cos. cannot turn the fruits of their research into a marketable product, they cannot earn a profit from that research. Thus, the Bell Cos. have little incentive to conduct any research at all. As a result the Bell Cos. spend only 1.3 percent of their revenues on research, while most foreign manufacturers spend between 6 and 20 percent of their revenues on research.

Lifting the manufacturing restriction will give the Bell Cos. incentives to conduct research, since they will be able to turn that research into profitable products. Lifting the restriction will also eliminate the arbitrary, unclear, and unnecessary boundaries between research and design and development.

4. INCREASED INVESTMENT IN THE UNITED STATES

Foreign firms have dramatically increased their purchase of U.S. high-technology firms. Since the divestiture, foreign firms have purchased or merged with 66 different high-technology U.S. firms. In just the last 2 years, the percentage of U.S. manufacturing employees working in foreign-owned companies grew from 8 percent of the U.S. population to 11 percent.

Many of these companies could have been purchased by the Bell Cos. if not for the manufacturing restriction. The manufacturing restriction bars the Bell Cos. from owning any equity interest in a manufacturing concern. Further, it is unclear whether a Bell Co. can loan capital or have any financial relationship with a manufacturer. As one manufacturer testified at the hearing before the Commerce Committee, the manufacturing restriction implicitly restricts the business activities of every telecommunications manufacturer in America.

As a result of the manufacturing limitations, small, entrepreneurial companies must often turn to foreign-based companies for necessary capital. Most of these small manufacturers would rather work together with American-based Bell Cos. if they were allowed to do so. For this reason, over 40 small manufacturers of communications equipment have expressed support for this legislation. Lifting the manufacturing restrictions would free up the Bell Cos.' capital sources and encourage greater U.S. investment by U.S. companies.

5. INCREASED SHARE OF THE INTERNATIONAL EQUIPMENT MARKET

The U.S. share of the international equipment market is in severe decline. Even the opponents of this legislation acknowledge that the U.S. market share has declined in almost every sphere of communications equipment. The U.S. manufactures no fax machines and controls less than 20 percent of the world market for central office switches, and these figures include equipment manufactured in the United States by foreign-based companies.

The Bell Cos.' entry into manufacturing should have a positive impact on the total market share controlled by U.S. firms. The BOC's have an intimate knowledge of the U.S. market, telephone standards, and business economics. Further, there are substantial efficiencies between the operation of the telephone network and the design of equipment to be used in that network. Such efficiencies include the sharing of joint costs, the knowledge of the networks and the needs of customers. The entry of the Bell Cos. will undoubtedly stimulate greater innovation and customer demand for communications products in a way that will advantage all equipment manufacturers.

THE DOMESTIC MANUFACTURING PROVISION

Some may ask how we can be sure that this bill will benefit the United States? How do we know that the Bell Cos. will not go overseas to conduct their manufacturing? The answer is that this bill includes a strict domestic manufacturing provision. If they manufacture, the Bell Cos. must conduct all their manufacturing activities within the United States. Further, the Bell Cos. cannot use more than a certain percentage of foreign-manufactured components in the products they manufacture. This provision was negotiated by the Bell Cos. and the Communications Workers of America and has the complete support of both groups. I believe that a domestic content provision such as this is essential to ensuring that the Bell Cos.' potential manufacturing activities benefit the U.S. worker and economy. I applaud the representatives of both organizations for reaching this agreement and have included their agreement in this bill.

INCREASED SAFEGUARDS HAVE REDUCED THE THREAT OF ABUSE

Let there be no mistake, however, about the premise on which this bill is based. I fully understand that these Bell Cos. continue to exercise a substantial degree of market power over local telephone services. Many persons are concernd that the Bell Cos.' dominance of these markets could give them incentives to engage in unlawful cross-subsidization and self-dealing.

For these reasons, I have included in my bill a host of safeguards designed to prevent any kind of unlawful and anticompetitive activity. In conducting their manufacturing activities, the BOC's must comply with the following safeguards:

NO JOINT MANUFACTURING

To prevent collusion, the BOC's cannot manufacture in conjunction with one another. The bill requires that, if the RBOC's decide to manufacture, they will create at least seven independent manufacturing entities that will compete with each other as well as with existing manufacturers.

SEPARATE AFFILIATES

The BOC's must conduct all their manufacturing activities from separate affiliates. The affiliate must keep books of account for its manufacturing activities separate from the telephone company and must file this information publicly.

NO SELF-DEALING

First, the BOC may not perform sales advertising, installation, production, or maintenance operations for its affiliate; second, the BOC must provide opportunities to other manufacturers to sell to the telephone company that are comparable to the opportunities it provides to its affiliate; and third, a BOC may only purchase equipment from its affiliate at the open market price.

NO CROSS-SUBSIDIZATION

The BOC is prohibited from subsidizing its manufacturing operations with revenues from its telephone services.

LIMITATION ON EQUITY OWNERSHIP

A BOC may own no more than 90 percent of the equity of its affiliate. The remaining 10 percent must be made available to outside investors.

LIMITATION ON DEBT

The affiliate only may secure debt from the financial markets separate from the BOC. No creditor shall have recourse to the assets of the telephone company.

DISCLOSURE OF NETWORK INFORMATION

The BOC must file with the FCC full and complete information concerning the telephone network immediately upon revealing any such information to its manufacturing affiliate.

I believe these safeguards are important and necessary, and I fully intend to oversee the FCC's efforts to enforce these safeguards fully.

THE DEPARTMENT OF JUSTICE, THE FCC, AND THE STATES CAN PROTECT AGAINST ABUSE

The combined resources of the Department of Justice, the FCC, and the state regulatory agencies are certain to prevent cross-subsidization. The Chief of the Antitrust Division, for instance, testified before the Communications Subcommittee that antitrust abuse was unlikely to occur if the manufacturing restriction were lifted.

Some persons assert that the BOC's will subsidize their manufacturing operations by recovering their manufacturing costs through higher telephone rates. These people ignore the testimony of the Chairman of the FCC, Al Sikes, who testified that "claims that the FCC's safeguards are ineffective are badly outdated." He also stated that "I believe the [Communications] Subcommittee can be confident that any risks associated with Bell Co. manufacturing are both manageable and small." The FCC is the expert agency handling communications matters and is most directly responsible for protecting the public interest. If the Chairman of the FCC is convinced that this legislation will promote the public interest, the Congress can be confident that this legislation is wise.

The FCC Chairman can make this claim because of the enormous improvements that have occurred in regulation. For instance, the FCC, for the first time ever, has implemented a detailed cost-accounting system that bars the Bell Cos. from engaging in cross-subsidization. These part X accounting rules require the Bell Cos. to file with the FCC detailed cost allocation manuals, along with certification from an outside auditor that the information in the manuals is accurate. These manuals break down costs between regulated and unregulated activities. The Bell Cos. have filed these manuals for the past 3 years. This history gives the FCC and the auditors a history with which to compare future cost allocations to ensure that costs are allocated properly between regulated telephone service and unregulated activities.

Further, these cost data are now submitted in computer format that gives the FCC greater ability to monitor and evaluate changes. The Automated Reporting and Management Information System [ARMIS] computer system installed by the FCC a few years ago significantly increases the FCC's ability to oversee the telephone companies' activities.

Moreover, the FCC has expanded its own auditing capabilities. The Commission conducted 21 full-scale audits over the past year, double the number conducted in 1987. This does not include an additional 12 attestation audits of Bell Co. cost allocation manuals. In addition, the FCC has nearly tripled its budget for conducting field audits since 1987, increasing its travel budget from $35,000 to $105,000 in 1991.

In addition to these regulatory changes made by the FCC are the substantial changes made by the States. The FCC has worked hard to develop strong relationships with the State regulatory commissions that have oversight authority over the Bell Cos.' intrastate activities. Further, the Communications Subcommittee of the National Association of Regulatory Utility Commissioners supports lifting the manufacturing restriction by a vote of 13–5. These Commissioners are the State officials most directly responsible for the welfare of the telephone consumer.

CONCLUSION

In my view, lifting this manufacturing restriction is vitally important. This bill is critical to the future of the Nation's telecommunication industry and this Nation's economic future. I urge my colleagues to support this measure.

So there you are. We have the various issues covered. We will be glad to entertain the amendments as they come to the floor, and perhaps, Mr. President, if I hush a moment, we will attract some folks. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DANFORTH. Mr. President, I want to compliment my chairman, Senator HOLLINGS, for doing what has been a long time coming and that is bringing to the floor of the Senate a bill to at least partially lift the court order with respect to the telephone companies.

Many people have commented for quite a period of time that the idea of a Federal judge operating a major sector of our economy from his courtroom is crazy and that we should do something about it. And yet, because of the size of the interests involved and the importance of the issue, it has become very, very difficult to legislate.

Senator HOLLINGS has done the seemingly undoable in bringing this legislation to the floor, and I want to compliment him for his contribution.

National communications policy should not be set by one Federal judge. The judicial process involves delay and leaves uncertainty in the communications industry. Detailed regulation of this industry should be the responsibility of the FCC, not a court construing an antitrust decree.

The time is right to lift the manufacturing restriction imposed on the Bell Operating Cos.

Lifting the manufacturing restriction will improve the ability of the United States to compete internationally in the telecommunications equipment market. The seven Bell Cos. represent one-half of the U.S. telecommunications industry's human and financial resources. The Bell Operating Cos. employ between 1 and 2 percent of the entire U.S. work force. They average $11 billion each in annual revenues. S. 173 will allow the Bell Operating Cos. to use their vast resources to enter into equipment manufacturing. I share the view of the Department of Commerce that the Bell Operating Cos. "can make a difference, and they ought to be offered the freedom to do so."

Moreover, the need for the manufacturing restriction no longer exists. The restriction was intended to address three specific forms of anticompetitive behavior associated with the Bell System's predivestiture manufacturing practices. S. 173 incorporates safeguards to protect againt each of these three potential abuses.

The first is the alleged effort to impede competition by giving the manufacturing subsidiary an advantage through privileged access to the technical specifications of the Bell network. S. 173 prevents this activity by requiring each Bell Operating Co. to file such technical information with the FCC anytime such information is given to its manufacturing affiliate.

The second problem is the possibility of cross-subsidizing manufacturing efforts with funds derived from the local telephone monopoly. Such cross-subsidies could create an unfair price advantage while passing on losses to the Bell Co. local customers. S. 173 requires the Federal Communications Commission [FCC] to promulgate regulations to prohibit cross-subsidies. The FCC has already implemented new accounting and affiliate transaction rules which eliminate or significantly reduce the likelihood of cross-subsidization. S. 173 requires the manufacturing affiliate to secure debt from financial markets separate from the Bell Operating Co. and prohibits any creditor of the manufacturing affiliate from having recourse, upon default, to the assets of the Bell Operating Cos. telephone company.

The third potential abuse is the possibility that a Bell Operating Co. would buy its affiliate's products instead of cheaper, better products manufactured by its competitors. S. 173 requires each Bell Operating Co. with a manufacturing affiliate to provide sales opportunities to manufacturing competitors comparable to those afforded to the affiliate. When a Bell Operating Co. purchases equipment from its affiliate, it must pay the open market price.

S. 173 does not stop here. The bill provides additional protection for manufacturers, for small telephone companies, and for ratepayers. The Bell Oper-

ating Cos. cannot manufacture in conjunction with one another and must conduct all their manufacturing from separate affiliates with separate books of account. The Bell Operating Co. may not perform sales, advertising, installation, production or maintenance for its affiliate. At least 10 percent of the equity ownership of the affiliate must be made available to outside investors. The Bell Operating Co. manufacturing affiliate must make its equipment available to other telephone companies without discrimination or self-preference as to price, delivery, terms, or conditions.

The telecommunications industry, both in the United States and worldwide, has undergone tremendous growth since the divestiture. S. 173 will allow seven of our greatest companies to use their vast resources to compete, while ensuring that no harm is done to competitors or to consumers. I support S. 173 and urge my colleagues to vote for this important legislation.

Mr. HOLLINGS. Mr. President, let me thank my distinguished colleague from Missouri, Senator DANFORTH. He has been a leader in telecommunications, both as a ranking member on our Commerce Committee and particularly as a senior member of our Finance Committee. It was because of his concern about this advanced technology and losing our leadership position in this regard that he took over and was the leader in our institution on Sematech, which was a move, as a stopgap, to try to maintain this technology. We particularly appreciated his leadership on this measure.

Once again, we emphasize this bill's balanced nature. Looking it over and studying it, I guess, yes, there has been a difference between the colleague from Missouri and this particular Senator from South Carolina, whereby I have not been enthused about what they call free trade, whereas my colleague from Missouri has been a leader for free trade. Yet we both studied this bill from every angle and made sure it had balance.

Yes, we open up the role of manufacturer to the several Bell Operating Cos. but we have strong safeguards. In essence, both the FCC—we will get it in the RECORD and refer our colleague to that—both the counsel at FCC and at the Justice Department said that the safeguards were too restrictive. But I went along in order to ensure a balanced approach.

Incidentally in 1984, the Justice Department advocated the imposition of this restriction prohibiting manufacturing by the Bell Operating Cos.—now the Justice Department supports manufacturing by the Bell Cos. In fact the Justice Department believes that this bill is going too far the other way by imposing too many restrictions. But said, no, the Congress is concerned and feels there is a need for safeguards. We are looking out for consumers.

We also look out for antitrust issues and concerns. The wisdom of all the antitrust law is not necessarily vested in the Judiciary Committee. This particular Senator is chairman of the Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, and the Commerce Committee. We have tried to beef up and update the Antitrust Division over at the Justice Department.

I am dismayed that there are cases that sit in the Antitrust Division for 13, 14, 15 years expending huge amounts of money, and still not reach a conclusion. We have tried to be more effective and more responsive to the concerns about antitrust issues. So I do not yield to other colleagues on antitrust concerns. I too, have not only that concern, I have that responsibility.

Because we are approaching the hour when both sides of the aisle will recess for their caucus'. I want to take time to address my trade concerns. The U.S. spending on research and development is actually in decline.

The United States spends only 1.8 percent of its GNP on nondefense R&D, and Japan and Germany spend between 2.6 and 2.8 percent in communications. The budgets for research of the Bell Operating Cos. and AT&T combined grow at a rate of 9 percent but their competition in Europe is growing at 19 percent, and Japan's R&D budget is growing at 23 percent over the same period. We just combined the research budgets of AT&T and the Bell Cos. so the opponents would not say, oh, no, you have looked at the Bell Cos. but you have forgotten AT&T. We take them both together and you can see the trend concerning actual research and development compared to our foreign competitors and how we lag behind.

Most telecommunications firms spend between 6 and 10 percent of their revenues on R&D, and some spend up to 12 percent. As I pointed out earlier, and I emphasize again, our Bell Operating Cos. are only spending 1.3 percent of their revenues on R&D because if they did get into research they could not profit from it. They cannot sell their results to anyone. They cannot manufacture. They cannot profit from it, so why go down that particular road, even though you are in that particular discipline?

You would like to always do a better job but as a result of this particular national policy we guarantee that our telephone companies, as we know them, are not going to do a better job. There is no financial attraction to do a better job.

The modified final judgment prevents the Bell companies from having any incentive to engage in research and development. Under the MFJ, as they call it, the term "manufacturing" includes design and development. Thus, the Bell Cos. may currently engage in research but as a practical matter cannot engage in design or development of equipment.

This line creates a number of problems. We have the problem of uncertainty. The line between research which is permitted and development which is prohibited is an unclear line.

They fear sanctions. Researchers are afraid to get anywhere close to the line. They do not want to get into that research and find out something they worked on for a year or two or more is, all of a sudden, legally forbidden.

There is a matter of inefficiency. The Bell Co. researchers must stop their work whenever they get close to a design stage because they must turn over their work to an unaffiliated entity. This creates tremendous inefficiencies and new researchers will not have the experience and know-how on the research that has already been done.

Arbitrariness is really a concern. The MFJ permits the Bell Cos. to develop generic product standards but bars them from developing products to meet those standards. They design the company telephone network but they cannot design or develop the equipment to be used in the network.

The fear of sanctions is strong. The line between research and development is so unclear, inefficient, and arbitrary, that the Bell Cos. are afraid to do any research at all and as a practical matter, cut back and do not engage in it. The penalty for violating it can be very, very severe.

Of course, research is unprofitable. If the Bell Cos. researchers come up with a new idea, as I stated, they cannot produce a product for sale to the public. There is little potential, in other words, to recover your costs of doing research.

Industry experts believe that the path to competitiveness is toward a dynamic production mode that involves increased sharing of knowledge between researchers, manufacturers, and marketers. We in the Congress are constantly repeating that, yes, we do well, we win the Nobel prizes; but they win the profits. Supercomputers and the other things, superconductors down in Texas and the other examples that we can point out—the fact of the matter is the Nobel prize we might win here in 1990 or 1991 was for research work done back in 1978–80, 10 years ago. You are going to find by the end of the century we are not winning any Nobel prizes, they are all going to be won by our foreign competition.

Robert Reich said:

> This quiet path back to competitiveness depends less on ambitious Government R&D projects than on improving the process by which technological insights are transformed into high quality products.
>
> U.S. companies must link their own R&D efforts more closely to commercial production. Compared with Japanese firms, most

American firms draw a sharper distinction between research and development on the one side and production and marketing on the other. This division prolongs product development times, causing marketing opportunities to be lost.

Again, in Business Week, and I quote:

A decade ago Japanese companies stunned their U.S. rivals by spewing out products of ever higher quality at ever lower and lower prices. This stemmed largely from the fact Japanese, emulating the way American companies operated prior to World War II, don't have separate design and manufacturing functions. Their product engineers are equally adept to both. Using concurrent engineering to harness the ingenuity of America's small manufacturers could spark an industrial renaissance.

That is the article in Business Week entitled, "A Smarter Way To Manufacture," in April 30 of last year, at pages 110 to 117.

Mr. President, I referred earlier to the testimony of Antitrust Division Chief James Rill. He said in his testimony:

We are concerned that statutory provisions mandating structural separation and requiring comparable opportunities in the Bell operating purchasing decisions may not be necessary to achieve this objective and could foreclose many of the pro-competitive benefits the bill seeks to provide.

He is right. That could occur. That bothered this particular Senator. But this bill was not arbitrarily drawn. This bill was drawn with balance in mind, to allow the best of the best to come into research, the best of the best to come into development, the best of the best to come into manufacture and commercialize and thereby bring the best of technology and the best of technologically advanced services to the consumer. Yet, we put in some of these statutory provisions to make sure that we would not be charged with a disregard for antitrust.

Chairman Sikes, the Chairman of the Federal Communications Commission, stated:

Adding new statutory requirements could frustrate the basic goal of this bill, which is more U.S. manufacturing. We would welcome the chance, Mr. Chairman, to work with the subcommittee and its staff to ensure that legislative rules and our rules are in harmony and that we do not unintentionally create a regulatory morass.

We have it. It has not been easy. Justice and the FCC now go along, saying this is a good bill, excepting of course the administration. And that should be pointed out. The administration does not go along with the domestic content provision. But that is the responsibility of Carla Hills. We dealt with her all last week.

We really have the tail wagging the dog around here. The Europeans all sit there in the EEC—and I pointed it out—and emphasize just exactly what the content provisions are for all of the European Economic Community. And then the administration comes up and says, look, we better not put in a domestic content provision. That will ruin one of our arguments in our trade negotiations.

It should not be an argument. The best way to remove a barrier is to raise a barrier and remove them both. Market forces, that I believe in; market forces operate. Unless and until you can bow and scrape to the Japanese with all of this special relationship nonsense you are not going to get anywhere. But unless and until you can make it in the economic interest of the Japanese, they are not going to deal, and I would not if I were them.

Business is business. As a result, we have to meet this particular competition to try to level out the field and if there comes a time then in negotiating where both sides can remove, let us say, the agricultural benefits, have them in both sides, not just remove them for the one. Similarly, if both sides can remove them with respect to telecommunications and domestic content, we can do so.

Let me read what Henry Geller stated on this.

It is simply wrong to suppress the competition of over one-half of the United States telecommunications industry in this important sector. Further, without manufacturing facilities, the divested regional companies cannot reasonably be expected to engage fully and effectively in the R&D that is vital to this dynamic area. There is simply no need to protect AT&T and the foreign manufacturers from the competition of the Regional Bell Operating Cos.

That is really what you have. He is a former general counsel of our Federal Commission and head of NTIA, and Geller knows this field better than any, in my opinion. What the opponents of this bill are really insisting on with amendments that will be presented here is let us protect NTT and the foreign manufacturers, all under the auspices of looking out for the consumers and for antitrust law. All of a sudden we have all become Justice Department lawyers.

The Justice Department endorses this bill with that regard, not with respect to domestic content. The administration opposes it. But otherwise they are the ones that said, look, we required the manufacturing restriction 7 years ago, and now we know definitely it has not worked. It is a bad provision, and we support its removal.

Janice Obuchowski, Administrator of the National Telecommunications Information Administration on behalf of the administration stated this:

In continuing to bar the Bell Cos. from manufacturing, we are, in effect, handicapping the ability of the United States to meet aggressively the competitive challenge presented by foreign commercial interests. The administration believes that lifting the manufacturing restrictions will have a significant positive impact on the operation of the U.S. telecommunications industry. This important growth industry will better be positioned to thrive and to serve the American public as the United States strives to maintain its competitive edge globally.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

Mr. BAUCUS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

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

EXTENSION OF FAST TRACK NEGOTIATING AUTHORITY

Mr. BAUCUS. Mr. President, just before the Memorial Day recess, this body cast one of the most important votes of the year.

The Senate voted 59 to 36 to extend fast track negotiating authority for 2 more years.

Coupled with a similar House vote, this vote will allow the administration to conclude two critical international trade negotiations: the Uruguay round of GATT negotiations and the free-trade negotiations with Mexico and Canada.

I have spoken at length on the benefits of both of these negotiations, but I will briefly recap.

The Uruguay round alone has the potential to create more sustained economic growth than any proposal that will come before the Congress in the foreseeable future. The North American Free-Trade Agreement could create a secure market for U.S. business of 360 million consumers—the largest in the world.

These are the kinds of opportunities that the United States must grasp if we are to remain an economic superpower and a great Nation.

THE RIEGLE RESOLUTION

Unfortunately, despite an overwhelming vote for the fast track, some wish to once again bring this issue before the Senate.

Apparently, opponents of the fast track have decided that if they cannot kill the fast track outright, perhaps they can cripple it with a flank attack.

The most recent proposal would undo the fast track for the North American

Free-Trade Agreement by allowing amendments relating to Mexico and requiring another extension vote next year.

I strongly oppose this effort. After months of debate, the Senate has spoken on the fast track—and spoken strongly.

I see no reason for more of the Senate's valuable time to be spent considering the fast track.

Let us stop debating procedural issues and allow our negotiators to get down to business.

THE ADMINISTRATION'S BURDEN

That said, I must confess to some serious doubts about the outcome of both the Uruguay round and the NAFTA talks.

The negotiations will be tough.

The United States must set high goals in the talks; U.S. economic security is at stake.

In the Uruguay round, our negotiators must negotiate pragmatically.

Our major objectives—liberalizing agricultural and services trade and protecting intellectual property—are sound; indeed, they are imperative.

But the U.S. negotiators also must work for progress in other areas. For example, they must work harder to eliminate or lower tariffs in sectors where the United States has export opportunities.

In the agriculture sector, U.S. interests would be best served by focusing on the biggest problem—export subsidies—rather than promoting the abstract principle of free trade.

If it is to win congressional approval, the Uruguay round must include provisions, like these, that are of concrete benefit to United States exporters.

The administration has an even more difficult job in the NAFTA negotiations. Negotiating a free-trade agreement with a developing country, like Mexico, is an extraordinarily complex task.

Numerous economic studies confirm that a free-trade agreement between the United States and Mexico could be a boon to the United States economy. But if the agreement is negotiated poorly or ignores critical issues, it could cause severe dislocations in our economy.

Unfortunately, I still fear that some in the administration are inclined to negotiate an agreement that is disguised foreign aid for Mexico, not a sound trade agreement.

Let me be absolutely clear. I would strongly oppose an agreement with Mexico that did not provide significant economic benefits to the United States. I believe such an agreement should and would be turned down by the Senate.

Further, because of the wide disparity in development between Mexico and the United States, a trade agreement with Mexico must address issues not covered in past trade agreements.

For example, a trade agreement with Mexico must ensure that economic growth in Mexico does not occur at the cost of the environment. Unless sound and enforceable provisions to address the environment are included in the trade agreement or in a parallel agreement, I will work to defeat it.

It is possible to conclude an agreement between the United States and Mexico that creates jobs in both countries and protects the environment. For this reason, I supported granting fast track negotiating authority for the North America Free-Trade Agreement negotiations.

But unless the final North America Free-Trade Agreement meets both of these objectives, I will oppose it.

CONCLUSION

During the debate on extending the fast track, many—including myself—spoke of the partnership between the administration and Congress on trade policy.

The administration's toughest work is ahead of it in both major trade negotiations.

I can only hope that the rhetoric on partnership is a reality during those negotiations.

Otherwise, the trade agreements that are negotiated will not win congressional approval.

Mr. President, I yield the floor.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, momentarily, we are awaiting to check the unanimous-consent agreement to adopt the committee amendments en bloc. They are simple amendments—capitalization of various words—and if we check it on the other side, which I am sure will be all right, we will ask for these amendments to be adopted.

Mr. President, I see we have that consent now.

I ask unanimous consent that the committee amendments be agreed to en bloc and considered as original text for the purpose of further amendments.

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

The committee amendments were agreed to en bloc.

Mr. HOLLINGS. Now, Mr. President, I think perhaps the Senator from South Dakota, our colleague on the committee, Senator PRESSLER, may have an amendment. I think he is checking now on whether to call it up.

I would just like to take one moment with respect to the statement by our distinguished colleague, Senator BAUCUS of Montana, relative to the flank attack, that we have seen concerning the fast-track bill. We had several months of fixing the jury. The White House worked about 8 months with all the lawyers. Our distinguished colleague from North Carolina could not be present due to a personal loss in the family. They were working on him last Thanksgiving down in North Carolina.

It was not a question that they could move forward. Let us get this thing in perspective. We had a measure still in the Finance Committee that they continued to negotiate, concerning both the Uruguay round and the Mexico-Canadian Free-Trade Agreement or North America Free-Trade Agreement as they describe it. We are not against negotiations. We just want to look at what they negotiate. I like the attitude they have in Missouri, show me. Let us see any trade agreement first before we agree to it. But what the White House wanted to do is to move a trade agreement pellmell with no amendments, up and down, and move it through committee. The administration will call it up on the floor at a propitious time when then they can swap off the Members and their votes, and then the industrial backbone of America will further erode.

I yield to my distinguished colleague from North Carolina.

Mr. HELMS. I do not ask the Senator to yield. I commend him for what he said.

I would ask if he agrees with me that we hear all the time around this place about the authority and the rights of the legislative branch being usurped by the executive branch. And we handed this to them on a silver platter.

Mr. HOLLINGS. Exactly.

Mr. HELMS. Took away from ourselves and at a cost to the Senator's State, my State, practically all States in terms of unemployment and other disadvantages.

I appreciate what the Senator from South Carolina has done on this matter, and I have been proud to stand with him. I am just sorry the sadness of my family prevented my being here for the vote and for the debate. But I think everybody knows where I stand. But I cannot imagine anybody who wants to defend the prerogatives of the legislative branch voting to giveaway this absolute built-in right of the legislative branch.

What are we here for if we are not here to examine every treaty? And we gave it away on this. I think that the taxpayers and all other citizens will feel the brunt of this in the years to come.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. HOLLINGS. Mr. President, I commend the distinguished Senator from North Carolina. He is right on target. We all knew where he stood with regard to our responsibility under article I, section 8 of the Constitution, which reads "the Congress shall regu-

late foreign commerce"—not the executive branch, not the courts but the Congress shall.

Within that responsibility, it is quite apparent you are going to have to have a negotiator, and the administration negotiates these particular agreements and treaties. But that is not to say that you should put a gun at your head when you do not know what they are going to negotiate long before they negotiate it and say that the administration has the complete authority. That is a total sham. That is not the way they do it any other countries.

The other countries stated they would be delighted to continue to negotiate. Certainly, Mexico would. Mexico does not have a concern about whether to negotiate a Canadian-Mexican, North American-United States Free-Trade Agreement. We allow fast-track authority for multinational treaties, such as the Intermediate Nuclear Force Treaty, ABM treaties, and everything else. Many countries join in, and since we passed that fast track in 1974 there have been 90 agreements overall and only 1 of the 90 under fast track was a bilateral treaty and that was the Tokyo round. That treaty came out exactly the opposite of what was represented. It resulted in about a million dollars more in markets for the Japanese and, actually, the deficit balance of trade zoomed up to over $100 billion. There is no education in the second kick of the mule.

Mr. HELMS. The Senator is correct.

Mr. HOLLINGS. We learned from the Tokyo round and, having learned, we ought to be stepping very carefully and cautiously. Yet the administration is again asking, if you please, to continue to allow it to negotiate. They did not want it that way at all. The sham of it all was the headlines and reporters covering it inaccurately as if President Bush finally got authority away from the special interests so that we could go ahead. You think the AFL-CIO is a special interest? When they represent the working people all over America. You think textiles is a special interest? They are in 44 of the 50 States.

The special interests were the multinationals and the banks, the retailers, and the newspapers and they all collaborated together to get that free-trade authority.

The Senator from North Carolina was not here, but we had to finally get down to the real bottom line, free trade, because while we are up here palavering, the Japanese are already down there with the mordido, you call it, the payoffs, and everything else. They are operating willy-nilly down there taking over all the industries. They got several from Nissan, West Germany's Volkswagen, Korea's Hyundai, and all the rest, but they are there. We are not. We are losing jobs, too. We are losing the entire thing while they are getting set up.

As soon as that agreement is signed they will use their money, their organization, to take over the entire American economy. What we have done is get a free-trade agreement with Japanese financing and European financing and we are going to be a second- or third-rate nation.

It is a sad thing to watch this thing happen and say they have overcome the special interests when the special interests are those Washington lawyers downtown; they have been operating this thing fixing the vote for the last 8 months. When they finally get it fixed, they declare themselves innocent and they have had a victory over the special interests, and the Senator and I are running around here for the poor garment workers and a basic industry that takes all of the U.S. organized labor looking out for a general interest all over the United States and trying to hold on to some productive capacity. We are designated to be the special interest.

Mr. President, let me just yield now and say we have been on this bill since 3 o'clock yesterday, we have yet to have an amendment presented. We are going to deliberate procedure. We are not trying to rush anything, but then at the same time you cannot just stay away from the floor and run this thing into the night and into tomorrow night, and come around in the summer and wonder why we have not done our work. We have to move to third reading. We have to move to third reading, and I want to put everybody on notice we cannot get Senators to come and present their amendments. We want to hear their amendments. We want to debate their amendments. There is no time limitation on anything else, other than common sense. These things should not continue. We have 24 hours on this bill, and we have not had a single amendment proposed.

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

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

Mr. DOLE. Parliamentary inquiry, Mr. President. Was leadership time reserved?

The PRESIDING OFFICER. Yes. The minority leader is recognized.

Mr. DOLE. Mr. President, I will take 2 minutes not on the pending business. I appreciate the Senator from South Carolina letting me speak at this time.

MFN FOR CHINA

Mr. DOLE. Mr. President, a number of Senators met this morning with President Bush, to discuss the issue of most-favored-nation status for China. I know that, at the same time, a number of Senators from the other side of the aisle, including the distinguished majority leader, took to the floor to criticize the President's decision.

So, our debate on this very important issue has begun.

It is a tough call. It was a tough call for the President, and it will be a tough call for the Senate.

But I believe the President has made the right call, and I am hopeful that—when all is said and done, and all the votes are cast—the President's decision, and probably the President's veto, will be sustained by the Senate.

Let us be clear about one thing. This is not a dispute about the goals of our policy toward the People's Republic of China.

How many Senators were disgusted and sickened by the images of Tiananmen? One-hundred Senators—every single one of us—reacted that way.

How many Senators believe our policy toward China should aim to encourage that Government to end such disgusting human rights abuses, and resume a march toward greater democracy? One-hundred Senators believe that.

How many Senators believe our policy should be crafted to encourage China toward free market reform, respect for international economic norms such as copyrights and patents, and an end to the hideous practice of slave labor? One-hundred Senators believe that!

How many Senators believe we need to push Beijing, as hard as we can, to implement more responsible arms proliferation policies, particularly in regard to advance weapons such as missiles? One-hundred Senators believe that.

There is "no"—repeat "no"—dispute about what our policy toward China should try to accomplish. We all agree on the goals.

But there is a big, big disagreement about how we best achieve those goals we all agree upon.

The distinguished majority leader, and some of this Democratic colleagues, have said how they believe we can best accomplish our goals. With all due respect for their conviction and admiration for the energy with which they have stated their views, I believe they are dead wrong.

They are wrong for three basic reasons:

First, what they propose will not work. it will not achieve what we all want to achieve.

It might feel good. But it will not do any good.

Terminating MFN, or attaching conditions we know the Chinese will not meet in the timeframe they are allotted, will not free one political prisoner; will not put China back on the road to democracy and a free market economy;

will not end China's irresponsible arms sales policies.

If our long relationship with China—including those decades when we pretended we could get along without any relationship with China—if those long years yield any lesson, it is this: China's reaction to blatant and public pressure from any foreign power will not be concession, or compromise, but a new crackdown at home, and a return to the cocoon of self-imposed isolation internationally.

Second, terminating MFN will punish the very Chinese we do not want to punish: The young, looking for educational and job opportunities; the reformers, starving for more—not less—contact with the democratic world; the entrepreneurial class, the real engine of long-term economic and political reform; those living in southern China, where both the reform movement and the economic ties with the United States are the best established; and the people of Hong Kong, the democratic and free market enclave that China will swallow up later this decade.

The decaying party leadership, the aging military leaders, the oldest generations still clinging to a dying system—they will hardly feel the sting.

And let us not forget: Among those punished, too, will be thousands of American workers—and millions of American consumers—who rely on goods and material from China.

Third, terminating MFN will almost certainly spark a downward spiral of action and reaction in United States-Chinese relations, at the end of which we will face a new Bamboo Curtain around China; a curtain aimed at keeping China quarantined from all of the terrible germs which our presence—our diplomacy, our commerce, our tourism—spreads so effectively: The germs of freedom of thinking, and freedom of speaking, and freedom of acting. Those germs, which have proven terminal to the Communist regimes of Eastern Europe; those germs, which have Soviet communism on its death bed; those germs, which the sick old men in Beijing fear so much, and for such good reason.

Yes, Mr. President, ending MFN may feel good for a while. But, no matter how much emotional anesthesia that kind of act would produce, sooner or latter shooting yourself in the foot starts to hurt.

In this case, it would hurt everyone and everything we do not want to hurt.

In conclusion, I ask unanimous consent to have printed in the RECORD an op-ed from today's Washington Post entitled, "Favored Trade With China? Yes. Use It as Leverage." The op-ed is notable not only because of its uncommon common sense on this emotionally charged issue; but also because its author got his credibility the old-fashioned way: He earned it—by 6 months in a Chinese Communist jail. I hope all Senators will read this persuasive article, and will seriously consider the arguments it makes to support the President's decision.

I ask unanimous consent that article be printed after my statement.

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

[From The Washington Post, June 4, 1991]

FAVORED TRADE WITH CHINA?—YES; USE IT AS LEVERAGE

(By Gao Xin)

As one of the last hunger strikers on Tiananmen Square in 1989, I can understand the anger that many Americans feel toward China's hard-line rulers. I share that anger, but not the conclusion that the United States should cut off China's most favored nation trading status.

Canceling MFN would help the hard-liners in what they have been unable to achieve on their own—a reassertion of control over the non-state and more progressive sectors of China's society and economy.

In the two years since the Beijing massacre, the central authorities have been unable to regain control over reformist strongholds such as Guangdong province on China's southern coast. Chen Yuan, deputy director of the People's Bank of China and son of conservative leader Chen Yun, has publicly admitted this. If MFN is withdrawn, it will be areas such as these that will be most adversely affected.

It is clear that pressure from the outside world since June 4, 1989, has forced the Chinese government to soften its repressive tactics and ease up on its attempts to strangle certain economic reforms. Despite their hard-line rhetoric, the Beijing leaders have made compromises. They granted permission to astrophysicist Fang Lizhi and his wife to leave the country and have released a number of political prisoners, including "black hand" activists such as Liu Xiaobo. This is perhaps the first time in history that the Chinese Communist Party has responded to such pressures.

Had MFN been revoked last year, it seems to me inconceivable that any of this would have occurred. These concessions were due in no small part to pressure from the United States over the past two years.

Now China has reached a stalemate. The market economy has not yet developed to the point where the reformists can win over the conservatives. But if MFN is restored, it will boost the developing market economy in those areas of the country that are most open to the West. On the other hand, a withdrawal of MFN would give credibility to the hard-line propagandists who proclaim that only socialism and self-reliance can save China.

He Xin, de facto mouthpiece for the conservatives in the government since the crackdown, has virtually admitted that the hard-liners do not want to see any improvement in Sino-American relations. He has written that relations have been characterized by misperceptions on both sides. The Americans mistakenly assumed that China was turning capitalist, and the Chinese were fooled into thinking that the Americans wanted to help China modernize. From the point of view of some conservatives, MFN is part of an American plot to convert China to capitalism.

Of course, U.S. policy makers must address a number of tough issues. The selling of Chinese nuclear and missile technology cannot be condoned, and pressure should be brought not only on the Chinese foreign ministry but also on key military officers to limit such sales and bring China into international discussions to control nuclear and missile proliferation.

While the trade deficit with China is a growing problem, the Chinese have responded to this issue with a willingness to compromise and recently sent a high-level purchasing delegation to the United States.

The Chinese are also likely to compromise on the issue of prison laborers producing goods for export. From my own prison experience, I know that items produced in many prison factories are of such inferior quality that they are noncompetitive, even in the Chinese domestic market. The Chinese leadership will not risk losing MFN over products that represent only a small part of the country's exports.

Since the June 1989 massacre, Chinese intellectuals have placed great trust in the United States and appreciate the pressures placed on the Chinese government. The Chinese people on the whole probably feel more friendly toward Americans than at any time since the founding of the People's Republic more than four decades ago.

During my six months in prison, a sympathetic Chinese police guard assured me that the Chinese government would have to soften its treatment of prisoners because of the worldwide pressures on China. When I heard this, I was deeply moved. If not for such help from America and other democratic countries, I don't think that I, and hundreds like me, would have been released so quickly. And certainly without this outside pressure, I would not have been allowed to accept an invitation from Harvard University to come to America and thus have the chance to express my opinions freely.

There are, of course, limits to the effectiveness of international pressure and limits to how much the conservatives can, or will, back down. Wang Juntao and Chen Ziming were sentenced to 13 years in prison for their attempts to bring peaceful change to China. Many others are still imprisoned under harsh conditions. But in April of this year, two prominent leaders of the workers movement were freed. More recently, the government has permitted the wives of five "counterrevolutionaries" who escaped to the West to leave the country and join their husbands.

In the long run, as the reformers' positions are strengthened and a market economy is established, the system of ownership in China can be changed. Political liberalization will only come gradually and only after economic liberalization. Every step forward will depend on support from the world community. In this respect, American support is crucial.

The MFN debate constitutes a long-term means of continuing to pressure the Chinese leadership to improve its human rights record. If MFN is withdrawn, the United States will lose the critical leverage needed to help the Chinese people.

Mr. DOLE. I again thank the Senator from South Carolina and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

WHY WE REMEMBER: THE SECOND ANNIVERSARY OF TIANANMEN SQUARE

Mr. PELL. Mr. President, I rise today to join my colleagues in marking the second anniversary of the massacre of democracy's advocates in Tiananmen Square.

This day is more than a commemoration of an event which we all deplore. It also marks the beginning of a serious policy debate about whether or not to grant China an extension of special trading privileges.

Soon the Congress will be doing more than making speeches about China's behavior. Soon the Congress will be voting whether or not to grant most-favored-nation status to China. Yesterday, Senator CRANSTON introduced a resolution of disapproval—Senate Joint Resolution 153.

The arguments will be made on both sides of this issue. And a vote will be called as was not done at the first anniversary of the Tiananmen Square massacre.

One would have expected that 2 years after an event tempers would have cooled some, that the prospect of a defeat for the President is less likely now than 1 year ago.

But such is not so if I am accurately judging the temper of our colleagues. Concern over China is even greater today than yesterday.

Why is this? Why is China a "less-favored-nation" today?

I think two answers can be found: The first lies in China's behavior and the second lies in our own.

The hypocrisy of China's behavior has drawn it critics. China's policy has become "watch what we say, not what we do."

In human rights they continue to arrest and imprison those whose only crime is belief in democracy, whose only desire is political freedom, whose only hope is American support.

In an age in which there is a dangerous proliferation of weapons of mass destruction, in a time and in a place when we have just gone to war to destroy one nation's capability to develop and use such weapons, China has been caught red-faced selling missiles to the Middle East, aiding Libya in the development of chemical weapons, and aiding Algeria in the development of a secret nuclear reactor.

In trade, the very basis of this debate, China has quietly restricted imports from the United States, violated copyrights of American goods, and used slave and child labor to produce goods for exports.

Finally, China continues to provide military and financial support to the genocidal Khmer Rouge as they attempt to regain power in Cambodia.

The second reason for our concern over granting China special trading privileges, ones denied now to the Soviet Union, to Vietnam, and to Cambodia, I think lies in the Persian Gulf crisis when the world community joined to enforce the rule of international law.

China continues to be as guilty as Iraq was by its illegal occupation of Tibet. For decades now China has oppressed the Tibetan people, massacred almost 2 million, according to the Dalai Lama, and systematically tried to eradicate any vestige of Tibetan culture.

Our Ambassador to China, James Lilley, recently acknowledged that "Tibet is under occupation by China." This charge against China is being newly recognized again as a crime not just against the Tibetans but against humanity.

There needs to be a moral consistency in American foreign policy which is now apparently lacking in regard to China.

I could accept the President's objective if I thought our policy was fundamentally consistant. But why then do we insist on isolating Vietnam and Cambodia whose people hunger too for political and economic change? Why not lift our trade and aid embargo on those countries?

Why then do we not press China to end its illegal occupation of Tibet?

Our President, I am certain, has his reasons. We shall have ours when we vote whether or not to grant China a special status not granted to all nations.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I join my colleagues who have spoken in support of S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991.

I have been a long-time supporter of freeing the Bell Cos. from the manufacturing restriction dating back to my tenure of service in the House of Representatives. In both the 99th and 100th Congresses my fellow colleagues in the Republican leadership and I introduced trade and competitiveness legislation which included provisions to enable the Bell Cos. to manufacture telecommunications equipment in the United States.

Briefly, I would like to take this opportunity to outline several of the points that have been made by opponents of S. 173, with which I disagree.

First of all, opponents say over and over again that their concerns about the Bell Cos.' manufacturing "just can't be regulated." This, despite the fact that the Bell Cos. are some of the most heavily regulated companies in America. There are extensive State and Federal rules to prevent abuses—it is important to point this out, because it has been lost in the comments of the opponents.

Opponents also say the Bell Cos. will cross subsidize their manufacturing operations by shifting those costs to the backs of ratepayers. Any Senator who takes time to look at this will understand that in the current price cap regulatory environment where the incentive is to reduce, not increase, costs—any company that would attempt to cross subsidize or inflate its cost structure would be bent on self-destruction.

The most duplicitous argument by the opponents of S. 173 is the allegation of Bell Co. self-dealing, a practice of buying only from its manufacturing affiliates. The Bell Cos. have established supplier-contract relationships with, and purchase billions of dollars of equipment and products annually, from hundreds of different manufacturers.

The Bell Cos. also multisource each of their separate product lines—as a competitive procurement practice—to avoid dependency and ensure alternative sources of supply.

The telecommunications equipment market today is extremely diverse and characterized by niche suppliers, each of whom fills a particular need. Rapidly changing technology has created numerous supplier opportunities that were nonexistent in the predivestiture environment.

It is unsound, in my view, to think that the Bell Cos. would attempt to replicate what is now supplied to them by hundreds of different manufacturers with unique talents and proven expertise.

It is far more rational to view the Bell Cos. as having a strong business interest in seeing the U.S. equipment market remain competitive, and innovative—and therefore, capable of meeting the changing, increasingly sophisticated needs of their customers.

Some have suggested placing a restriction on Bell Co. manufacturing which would prevent the Bell Cos. from self-dealing. The problem with this approach, in addition to the unfairness of applying such a restriction to just these seven companies, is that it would deprive many of the Bell Co. customers—small businesses and residential consumers—from the benefits of Bell Co. manufacturing efforts.

If the Bell Cos. can produce something of value why should they not be allowed to sell it to their own customers and why should their customers not be allowed to buy it?

The administration is concerned that the domestic content language is contradictory to our established trade policy as expressed in our GATT talks and other trade negotiations.

I think it is important to realize that S. 173 in its current form improves our trade negotiating position because it brings more leverage to the table. En-

actment of S. 173 will enable the Bell Cos. to enter trade markets and develop an export capability for the first time.

The Bell Cos. will then be in a stronger position to assist U.S. efforts and obtain reciprocal opportunities to trade and invest overseas through private negotiations and contract agreements. Also, S. 173 sends the right signal to our trading partners that the United States walks like it talks in opening up our market and enabling a full complement of players to compete on equal terms and conditions.

The existing policy includes one set of rules for the Bell Cos. and a different set of rules for the rest of the industry. S. 173 would make everyone play by the same set of rules, and would also tend to ensure that new jobs created will be created in the United States, not overseas.

The current ban on manufacturing impedes the development of the U.S. telecommunications network. I feel very strongly that continued development is essential to continued economic growth and international competitiveness.

Entry by the Bell Cos. will give telecommunications equipment manufacturing in the United States a shot in the arm, and help to enable our domestic industry to remain healthy and vibrant.

This legislation is a jobs bill, domestically. It is a bill that is long overdue. The Commerce Committee has considered this legislation very carefully over the past, at least 4 years. We have worked on it. We have reported this legislation out, and I think it is very well crafted.

I hope my colleagues will not try to pick it apart piece by piece. We still have to go through the Senate, through the House, and go into conference. There may be some problems that can be worked out in the conference. To have it delayed by an inordinate number of amendments or stopped in the Senate by killer amendments I think would be a big mistake.

I say to my colleagues in the Senate, for too long the telecommunications systems in America have been run by the courts, specifically by one judge. It is time we begin to reverse that. Why in the world would we prohibit American companies from being able to compete domestically and in foreign markets? We do not allow the baby Bells to get in there and produce good quality equipment.

I am convinced American companies could produce better equipment at a better price.

This bill is long overdue from the standpoint of letting the courts run the telephone companies in America; it is long overdue from the standpoint of being able to have better equipment; and it is long overdue in terms of jobs in America and every region of the country.

I think that the domestic content part of the bill is one of its strengths. We say that foreign components cannot exceed 40 percent, but if there is an exceptional set of circumstances, you can go to the FCC and have even that waived. What do we want to do, guarantee that this equipment is made in some other country? Let us give Americans a chance. This should not be a killer amendment and if we knock that minimal domestic content language out of this bill, it is going to substantially reduce the likelihood that we would get a bill at all.

So I urge my colleagues to support this legislation. It is time we have a little more "made in America" in our telephone equipment. It is also time that we take this whole issue back away from the courts.

This is a classic case of where the system was not broke, and we fixed it anyway. It is about time we tried to level out the playing field and allow everybody to have a chance to compete in this very important area.

I want to commend the chairman of our committee, the distinguished Senator from South Carolina, and our ranking member, the Senator from, Missouri, for crafting this legislation and bringing it to the floor of the Senate. They have done a good job. Let us go ahead and have the votes we have to, and then let us report out favorably this very important legislation. I yield the floor.

Mr. HOLLINGS. Mr. President, let me thank the distinguished Senator from Mississippi and a fellow committee member who has worked hard on this particular measure. He really focused on the point. This bill is intended to change the full employment for foreign manufacturers policy.

At the present time, there is no question about where RBOC's are investing their resources. Every one of these so-called very financially strong RBOC's [Regional Bell Operating Cos.], are investing overseas. We are losing it all. That is why we put the domestic content measure in to bring back jobs, bring back the industry, and bring back technology to the United States. If we can get them into the research and development, then we can start developing the technology, build up our technological strength in America, which has always been our advantage.

Our standard of living is too high to compete with Singapore and other places of that kind. Knowing that, we have to have the advanced technology which Singapore does not have. If we are going to do that, we have to change this foreign-employment and full-employment policy for foreigners policy at the present time. That is exactly what we have with this bar on the RBOC's ability to manufacture.

I might say, while we are trying to work out the so-called rural amendment by our colleague from South Dakota, no one has been more concerned about rural America than this particular Senator. We are more rural than metropolitan or urban from whence I come. This bill does not discriminate against rule telephone companies at all.

What they really, in essence, have asked for is that the RBOC's and the small telephone companies shall jointly operate. When you say shall jointly operate your separate wholly owned subsidiary with the rural telephone companies, then the rural telephone companies have a veto over any plans of the RBOC they disagree with.

That is not required in business or industry anywhere. It is not required now. It would not be required of Northern Telecom, Fujitsu, Nippon Electric Cos., Siemens—just go down the list of all of these foreigners. We are not requiring it now. We are not requiring it of the 1,400 telephone companies. All of a sudden they want to come in and say if and when you get that independent, wholly owned subsidiary, we want another restriction that you shall operate with us, namely, giving us a veto, and that you shall deliver on demand the equipment. If you have software or hardware that separate subsidiary produces, if the software or hardware becomes archaic, extinct, inefficient, you have to still produce it.

For the Congress of the United States to pass a law that says a company has to produce and continue to manufacture archaic equipment and sell it at a loss—this crowd has gone loco long enough on a lot of policies, but heavens above, that does not make sense. Yes, one provision of the amendment would require RBOC's to manufacture and sell equipment, as long as small telephone companies want it, even if it means selling it at a loss.

I want my colleagues to read this amendment. I am going to try to look at it and be as reasonable as possible. But, we are not going to pass a provision that has the National Government telling a company to sell at a loss. The whole idea is to advance technology, not to establish one particular technology as of 1991 and continue to sell it so long as an REA or rural telephone company demand it.

The South Carolina rural telephone people would be the first to sort of smile and laugh at me as I talk because they know I am their best friend. I have supported all their measures, but we cannot support this amendment in its current form. It goes against the grain of common sense and business practices. The rural telephone co-ops, they have remained competitive. That is why they exist today. They are economically strong. I just have come from meeting with one company and heard their financial report. It is won-

derful to hear through the ears of a U.S. Senator that something is in the black; that they are operating within budget. I have not heard that since 1968 or 1969 up here. I commend them. I support the rural telephone co-ops.

I see others want to speak. I hope we can move along and get a compromise amendment addressing the rural telephone companies concerns.

I do not want any misunderstanding about the domestic content which the Senator from Mississippi has emphasized on the one hand. It is an excellent provision. If we were going to join EEC '92, we would have to do it. We are just emulating our competition. I yield the floor.

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

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

(The remarks of Mr. DANFORTH pertaining to the introduction of S. 1207, S. 1208, and S. 1209 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legisative clerk proceeded to call the roll.

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

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

The Senator from Florida is recognized.

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

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

The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 1211, S. 1212, and S. 1213 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. HATFIELD. Mr. President, I ask unanimous consent that I may proceed, with the permission of the manager of the bill, for 10 minutes.

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

The Senator from Oregon is recognized.

CIVIL RIGHTS LEGISLATION

Mr. HATFIELD. Mr. President, this morning I was privileged to join with eight of my colleagues on this side of the aisle in introducing a comprehensive civil rights bill.

Mr. President, we have chosen to put this bill into three parts as has been described by our colleague from Missouri, Senator DANFORTH. I shall not at this moment attempt to go into the detail of each of these three parts.

In effect, what we are trying to do is introduce in parts what were the fundamental components of last year's civil rights bill with modifications. I say with modifications on the basis that we are looking at the possibility of building on last year's experience. As you know, Mr. President, I, along with others, were original cosponsors of last year's civil rights bill and I voted to override the President's veto, the President of my party, or as a fellow Republican.

There were some 11th hour attempts to put together a compromise. The President of the United States called two or three Senators into the White House a number of times to try to help work out those hangups, those difficulties, that proved to be impossible at the last moment. But the good faith and the good effort of President Bush, I think is very evident.

Those of us who have known President Bush for many years—and I count it a privilege to be one of his classmates in the 90th Congress when he came to the House from a district of Texas and I came to the Senate from Oregon—know that he has had a long commitment in the field of civil rights. And there is no exception to that long record of commitment and action in this particular day.

Mr. President, those who have raised great concerns and fears, as if this were a crowbar approach, ought to go back to the fact that in the States of the Union we have proven the case. A moment ago, when Senator GRAHAM of Florida was here on the floor, it was very interesting to note that all the Members of the floor, including the Chair, were former Governors. The Chair, as Governor of Nebraska; Senator CHAFEE was here from Rhode Island; Senator HOLLINGS, of course, the senior member of the Governors here at that moment, from South Carolina; and myself from the State of Oregon.

Mr. President, over 30 years ago, the two pioneer States that put together comprehensive legislation dealing with civil rights in the workplace was the State of New York and the State of Oregon. When you go back to that record, it is not something that is innovative in the sense of a brand new idea that is coming upon us that somehow is threatening the tradition or the establishment of whatever it may be, be it on the side of business or unions or whatever it may be. This is a proven concept that has been tested in the workplace in a number of States leading up to the first Civil Rights Act of 1964.

Now since 1964, like other comprehensive legislation of a pioneering character, there has to be fine tuning over a period of time of use. The court, in five cases, to many of us has not carried out—and no disparagement on the court—has not carried out what could be called legislative intent. And therefore the subsequent legislation that occurred since the act of 1964 we feel will be more in tune with the original intent of abolishing discrimination in the workplace by the 1991 bill.

You know, Mr. President, civil rights legislation has been a long time before 1964, but never could be enacted. We do not have to go back and recite the history. We know the history of why it failed. But the day came when the majority leader was joined by the minority leader. Senator Johnson from Texas finally achieved the kind of legislation that Senator Dirksen of Illinois, the minority leader, could support. And together they worked out the civil rights bill of 1964.

I do not believe the situation is that much different today in the sense that we have to have a bipartisan bill that will ultimately find support at the White House. That is the simple reason why we have come forth as what may be categorized as moderate Republicans or radical Republicans or leper Republicans or whatever you want to give us as a title or label to try to start this kind of bipartisan process as against a situation that is happening in the House legitimately.

And I am not being critical at all of what is called the Democratic bill of the House that will be coming over here. We joined the Democrats last year in making that effort of bipartisanship. And so we are trying to find a bill that will pass and be signed into law.

It may not please all of the people on either side but, nevertheless, let us take action where we can find the ability to take action and the agreements necessary to get a further step toward the elimination of discrimination in the marketplace.

I think, also, we have to understand that some of these things are very hard to define, whether in legal terms or other terms. One commentator said: Discrimination is like a hair across your face. You cannot see it. You cannot find it with your fingers. But your keep brushing at it because the feel of it is irritating.

We are in this status as far as discrimination. We hope to include women and minorities as well as the traditional focus on the blacks in our society.

So, Mr. President, as I may, I am delighted to be a part of this effort. We are very open to working with our colleagues on the Democratic side. We recognize we seven or nine Republicans, or however many will end up supporting and cosponsoring our bill,

are only a fraction of what we have to have to pass a civil rights bill. But we also realize that rhetoric has reached a level where with serious negotiations and people who are committed to the proposition, let us pass a bill, the best we can get, the strongest we can get, the most effective one we can get, rather than standing back and saying, well, we can put it to a vote and divide the sheep from the goats and see how it will play out in the 1992 elections. That is not helping the people we are trying to help. Nor is it righting the ills of our society.

I want to speak, again, to the fact that this is a tried and tested program, both in our Federal legislation and the State legislation that preceded it for many years. I am proud my State has been in the forefront of civil rights legislation. I consider it one of the great battles of my political career which I hope will be a legacy to the people of my State. We pioneered in migrant worker legislation, when people said it would wreck the agricultural community in my State, that the economy would be devastated. We passed it, and it did not wreck the agricultural economy in my State. And we are far from the goals, where we should be, in migrant worker legislation.

We have passed the point where civil rights should be a buzzword but let us look at human beings who are discriminated against, some by design, others unintentionally, and let us eliminate all discrimination in our society. This is part of the long-term effort, and I am proud to be part of it. I thank the Senator from South Carolina for yielding.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITON ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX, Mr. President, I rise in support of the bill pending before the Senate, and will make a few comments if those are in order.

I start by commending the chairman of our full Senate Commerce Committee for the effort he is making to put the Congress back in the position of making telecommunications policy in this country. Some would agree that that is almost a novel idea, in light of how communications policy in this country has been made, at least since 1984. It has been made, not by the House of Representatives, not by the Senate, nor by the administration.

Communications policy in this country, since the breakup and divestiture of the AT&T company, has essentially been made by one judge sitting in one court here in the District of Columbia. I refer to Judge Greene, who, because of a stituation regarding the legal suits that were filed, is in charge of following that decision and ensuring that the 1984 decision is continually being followed.

The result of all that, to anyone who is listening, is that the policy determining the future of telecommunications development in this country is not being made in open debate. It is not being made by a duly elected representative of the people of this country. But the policy is essentially being made by one judge sitting in one court, who just happens to be the person who is in charge of carrying out the dictates of a lawsuit, a decision which was rendered back in 1984.

It is clear, and I think everyone here will agree, Congress should make the policy; the courts should interpret that policy and should render decisions based on the policy set by the Congress. This legislation for the first time, really, since 1984, puts the Congress back into the decision on how our policy is to be made regarding an industry very important to the United States of America, the telecommunications industry.

This legislation essentially allows the Bell Operating Co. located throughout the United States for the first time since that decision was rendered to become involved in the manufacturing and the research and development of communications equipment in this country.

This is a tremendous industry for the United States of America. But we are losing it. We are losing it to foreign countries. We are selling them our technology and they, in turn, are selling it back to us in little boxes that they ship back to the United States of America. If we allow this to continue unchecked, this great, thriving industry that is now still an American industry will be an American industry no longer.

Some of the companies, AT&T in particular, say we oppose any changes; we do not want to make any changes in the current situtation.

I guess not, because they control it completely. But I suggest to them when they say if we pass this bill it will cost American jobs, that that loss pales in comparison to the American jobs that they are now exporting to countries all over the world.

Since the divestiture of AT&T, we have seen the elimination of over 60,000 manufacturing jobs nationwide, the startup of 10 major joint foreign production ventures, and the institution of four wholly owned offshore production operations in Europe and Asia alone by AT&T. We are talking about losing American jobs? They are exporting American jobs faster than any other company in the United States.

AT&T has steadily downsized their domestic manufacturing operations and have reduced their work force by a net 68,500 jobs through yearend 1988, not taking into account the years since 1988.

In January of 1989, AT&T announced an additional 16,000 jobs will be eliminated from its work force.

AT&T has closed five production plants: In Baltimore, MD; in Cicero, IL; in Indianapolis, IN; in Kearny, NJ; and Winston-Salem, NC.

In addition, the substitution of their domestic production and employment with offshore manufacturing has cost us jobs as in the case of our own city of Shreveport in Louisiana, where an entire equipment line was relocated in Singapore, because they feel they can do the work over there more cheaply.

I suggest to anyone who argues that this bill somehow will cost American jobs, I say just the opposite is true. By allowing American companies to engage in manufacturing that is now prohibited by an arbitrary decision by one single judge, to allow these new companies to engage in manufacturing which must be done in the United States, using component parts made in the United States, if such are available, is a move in the right direction to unchain these artificial shackles that are binding America's leaders of technology from doing what they can do best. It is high time that the Congress relieve them of those burdens and allow them to perform in a way that we think they will be able to perform, and in America, not in Singapore, not in Thailand, not in China, but in this country producing products for this market.

Some will say it is unfair to let these companies, which are monopolies, engage in manufacturing because they will just sell it to themselves and allow no one else to sell it to them. Or they will use their revenues from their telephone service to subsidize the manufacturing so that people who use the telephone will somehow be paying for the costs of manufacturing this equipment.

I congratulate our committee, and congratulate our chairman in particular, and others who support this legislation because of the built-in safeguards that this bill has which prevents that from happening, such as the requirement that the Bell Operating Cos., one, must conduct all of their manufacturing out of a separate affiliate; a totally separately instituted affiliate which cannot be run or operated or controlled by the Bell Co. In addition, they must provide to unaffiliated manufacturers comparable opportunities to sell their equipment to the telephone companies that they provide to themselves.

In addition, cross-subsidization—this use of revenues from the phone business to cross-subsidize the manufacturing expenses—is specifically and expressly outlawed, and penalties are provided for any violation of those prohibitions.

In addition, the Bell Operating Cos., through their affiliate, must make their equipment available to other telephone companies under the same prices, terms, and conditions.

I say to the Members, this, indeed, is a very important protection, to ensure that a manufacturing company under this bill must sell not only to themselves but must offer to other competitors at the same price, terms, and conditions those products. I think this is a built-in protection to make sure they somehow are not giving themselves some sort of a sweetheart deal, because this legislation requires that whatever they offer the Bell Co. for that equipment, they must offer it to all of the other telephone companies to ensure that everybody has an opportunity to benefit from this new technology and these new manufacturing techniques that the new companies will be able to bring to this business.

Mr. President, my own State of Louisiana has lost up to 7,500 jobs as a result of Judge Greene's decision in the manufacturing industry alone because of exports of American jobs to Singapore and other parts around the world. This is a jobs bill, that is correct, but it is an American jobs bill. It is also going to provide the technology so America can continue to be a leader in the free world in the telecommunications industry.

I wholeheartedly recommend my colleagues' affirmative attention to this legislation.

On a final note, it was interesting that I was handed a copy of a letter from a judge in the district, the judge I referred to, Judge Harold Greene, U.S. district judge from the U.S. District Court for the District of Columbia, which is about 10 pages of comments essentially on the legislation, essentially saying he does not like it. I appreciate the fact he does not like it because it is contrary to the decision they reached back in 1984.

But I also point out that the Congress makes the policy; courts interpret that policy. The Department of Justice enforces that policy if, in fact, there are violations of that policy with criminal intent.

I think it is highly unusual, and I think it is probably improper, in this Senator's opinion, to have the views of a judge on legislation that is pending before the Congress of the United States that affects decisions that he has rendered in the past. I think his role is a proper one in carrying out the intent of the Congress as expressed by the Congress and signed into law by the President of the United States. But certainly to provide the Members of Congress a very detailed explanation, it almost looks like, I say to the chairman, a witness' testimony before our committee when they come before our committee to testify and give their views on legislation that is pending. We now have the fact that Judge Greene does not like the legislation.

I submit it is the Congress who should determine the policy of the United States when it comes to telecommunications industries in this country, and it is the judge's appropriate and proper role to interpret that policy after we pass it, not during the process.

So I urge my colleagues to support the chairman's bill. I enthusiastically serve as a cosponsor to that legislation and hope it will be adopted.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from South Carolina.

Mr. HOLLINGS. Madam President, I want to thank our colleague from Louisiana. Senator BREAUX has been a leader in trying to develop a balanced approach to make this country competitive again and to regain our technical leadership in the communications field. We have a wonderful opportunity so long as we do not sit here blindly, thinking we are in control by forbidding the best of the best the seven Bell companies that we have built up over the years, companies that are now competing with each other. The competition is there. This is not the monolithic AT&T that existed in 1984.

Senator BREAUX has helped lead the way, and I think he has properly commented on the letter. I have just received a copy of this letter from Judge Greene. It seems our distinguished colleague from Illinois, Senator SIMON, had written Judge Greene for his opinion on this bill. Judge Greene responded in the first few lines by stating he would not express an opinion on the bill but I will write on for the next six pages giving a legal brief and argument against S. 173. It is totally uncalled for and inappropriate.

I want my colleagues to understand that we are not floating. I have been trying to be deliberate. We heard from Members on health, we heard from Members on China and civil rights and everything else while we have been trying to negotiate with our friend, the Senator from South Dakota.

One way or another, we are going to vote on that particular amendment. The distinguished Senator from Illinois is also working on a matter of an audit amendment. We do not need to include an audit provision in this bill because the States already have the authority to audit. We also provide in this bill under sections H and I on page 11 of the bill that the Commission shall promulgate the rules and regulations relative to the authority, power, and functions with respect to the Bell Telephone Cos. and their subsidiaries and prescribe the regulations for the audit to make sure that they do not cross-subsidize.

We are not playing games. If they want to try to specify even further, we will have to look at it.

But we do have concerns about language that could result in 50 States auditing 1 manufactory affiliate and the Bell Cos. having to pay for it.

With respect to the Commission itself, we have to depend on the Commission. They have attested to the fact that they can dutifully audit. They have the authorities now. Heretofore, when we had the monolithic, they had to visit the several States, go to the company, get its records, everything else. Now it is computerized. It is zipped out to their computers and reports are made and the audit is had. I do not see anything else is required.

I want to hasten colleagues to come on down with their amendments or, again, if we cannot get them and get a vote, we will have to go to third reading.

I appreciate the indulgence of the Senator from Rhode Island. He has been on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, I want to thank the distinguished floor manager, the senior Senator from South Carolina, for giving me a few minutes.

Mr. HOLLINGS. The senior junior Senator from South Carolina.

Mr. CHAFEE. That is right, he has been here a long time but he is still the junior Senator.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I thank the Chair.

(The remarks of Mr. CHAFEE pertaining to the introduction of S. 1207, S. 1208 and S. 1209 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Alabama.

Mr. HEFLIN. Madam President, the role of telecommunications in our daily lives seems to have few limits. Not long ago, we knew little of facsimile machines, voice mailboxes, call waiting services, or the ability to conduct banking transactions by phone. Yet today, these technologies are routine parts of our lives to which we have become quickly accustomed and on which we have become rapidly dependent.

The future undoubtedly holds increased innovation in telecommunications technology and increased reliance on these technologies in both our professional and personal lives. In light of these realities, I believe it is incumbent upon Congress to eliminate any unnecessary restrictions on our telecommunications industry so that we may compete in the global marketplace. In that regard, I want to commend my colleague, Senator HOLLINGS, for his efforts with regard to S. 173, the bill before us today.

Under this bill, the manufacturing restrictions placed on the Bell Operat-

ing Cos. by the Modified Final Judgment would be lifted while putting into place a variety of important safeguards to prevent anticonsumer and anticompetitive abuses.

Among these safeguards are: First, a prohibition on the Regional Bell Cos. from manufacturing in conjunction with one another; second, a requirement that the Bell Cos. manufacture only through affiliates that are separate from the telephone company; third, a requirement that manufacturing affiliates make their products available to other local telephone companies on a nonpreferential basis; and fourth, a prohibition against cross-subsidization between a Bell Co. and its manufacturing affiliate.

Another important feature of this legislation is a domestic content provision designed to protect the American worker. This provision requires that the Bell Cos. conduct all of their manufacturing in the United States—to me that is a very important provision—and that the cost of foreign components used in Bell equipment not exceed 40 percent of the sales revenue from that equipment during the first year, to be adjusted annually thereafter by the FCC. I believe that these requirements will help protect the American marketplace from unfair competition and from foreign competition for American jobs.

For several years now, Congress has followed the operations of the Bell Cos. in the wake of the AT&T breakup. Last year, this legislation was passed by the Commerce Committee by a voice vote, and this year, the bill was voted out of the committee on a 17-to-1 vote. The issues involved in this legislation are extremely complex and have developed over time. It is my belief that this carefully crafted bill both encourages competition and provides safeguards for the American public. For these reasons, after carefully reviewing the evidence, I believe that the time for this legislation has arrived.

I urge my colleagues to join Senator HOLLINGS and the other cosponsors, of which I was one of the original, in support of this much needed legislation.

Mr. GORTON. Madam President, as a member of the Telecommunications Subcommittee, of the Commerce, Science, and Transportation Committee, I have had the opportunity to talk with a number of people in the telecommunications business regarding S. 173.

As the chairman of the committee well knows, last year, when we considered a similar measure in the Commerce Committee, I initially had reservations about the chairman's proposal. I was concerned that allowing the Regional Bell Operating Cos. to manufacture equipment could pose a threat to an already competitive, vibrant sector of the telecommunications industry.

Therefore, over the course of the last year, I sought the advice and opinions of manufacturers of telecommunications equipment from Washington State. Contrary to my initial fears, the vast majority of the telecommunications businesses in my State favor the passage of S. 173.

I would like to briefly mention some of the comments in the letters I have received.

From Advanced Electronic Applications of Lynnwood, "The proposed legislation would liberate companies such as AEA, to participate in business partnerships with the Bell companies in the design and development of telecommunications equipment."

From Eldec Corp. also of Lynnwood, "Competitiveness cannot and should not be legislated. Our best customer, Boeing, has virtually all of the capabilities—including fabrication—of its vendor-base and could easily be our most serious competitor but the potential vendors to the telecommunications industry do not require or desire protection."

From Applied Voice Technology of Kirkland, "We believe the Regional Bell Operating Cos. to be an excellent source for outside capital financing and strategic partnering." From ICOM of Bellevue, "S. 173 would enable us to capitalize on the financial strength and the network and customer know how of Bell Cos. like US West. Those assets, combined with our manufacturing capability, would enable us to grow our businesses and add new jobs to the Washington economy."

Madam President, I believe in listening to my constituents. As their comments indicate, the small manufacturers from Washington State clearly support enactment of this bill.

I am, therefore, happy to join with the chairman, the distinguished Senator from South Carolina, in supporting the bill. I am also delighted that he has considered very thoughtfully some amendments around the edges of the bill like that proposed by the Senator from South Dakota, and I know I will give great weight to the recommendations of the Senator from South Carolina in that connection.

I suspect there will be other amendments. Some may be contested; some may not be. I will look at them but I will judge them from the point of view of considering that this bill moves us in the proper direction.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The manager of the bill.

Mr. HOLLINGS. Madam president, I think the Senator from South Dakota is momentarily coming to the floor with a compromise amendment relative to the rural local telephone exchange carriers, and the offering of equipment to those carriers, so long as there is a reasonable demand for that equipment, and that they do not, of course, require that that affiliate produce it on a nonprofitable basis.

The marginal cost standard would be implemented by the FCC itself. And I do not want to mislead, as I understand there is no agreement by the Bell Operating Cos., to that part of this particular amendment. Parts of this have been worked on for the past 3 weeks. The Bell Operating Cos., still have not agreed to that.

This Senator is studying it closely to see exactly what the Senator from South Dakota presents. And also with respect to planning and design, the amendment would require joint network planning of telephone companies operating in the same area of interest. You could not take 1,400 different little companies and require the Bell Telephone Cos., to come along and start negotiating with every little company. They would have to build mammoth office facilities to have the planning rooms and so forth at one time. So it would be restricted to those companies operating in the same area of interest.

We also remove the matter of requiring joint operations. Under the joint operations requirement as it appeared in the original amendment filed by Senator PRESSLER, that amendment would have required one telephone company to operate the phone system of the other company. Further, the joint planning provision originally would have provided one phone company with a right to veto the planning decisions of another company. As I explained earlier on the floor, we could not accept that. I think that has been clarified now where the operation is not to be included in the amendment of the Senator from South Dakota.

No participant in such planning should delay the introduction of new technology or the deployment of facilities to provide telecommunications services. They should not, in other words, have to require an agreement as a prerequisite for the introduction or deployment of new equipment.

We are trying to be considerate of the concerns that rural telephone opperatives have, that the distinguished Senator from South Dakota has, and we are still trying to be sensible about it. There is not a veto in it, and they could not veto the introduction of improved telecommunications technology. That is the whole idea. This thing changes overnight, and as we all know, that is competition, to come out with again the more improved telecommunications equipment and software.

I see that the distinguished Senator from South Dakota has reached the floor. I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The senior Senator from South Dakota.

Mr. PRESSLER. I thank the Chair.

Madam President, I rise today on behalf of Senators GRASSLEY, SASSER,

BAUCUS, BURDICK, CONRAD, DOLE, WELLSTONE, SIMPSON, BURNS, and myself to propose an amendment to S. 173, the Telecommunications Equipment Research and Manufacturing Act of 1991.

Madam President, this amendment had been expected to go to a rollcall vote, and we had expected a very close vote. But I and other Senators along with our staffs and the staffs of the rural telephone community have been meeting this afternoon, and we believe we have reached a compromise.

Our goal is uniform telephone service for all Americans. In 1988, I wrote an article in the UCLA Federal Communications Law Journal concerning this concept of universal service, which emphasized the need for a coordinated telecommunications policy for the Nation.

Without universal service as a fundamental premise of this national telecommunications policy, we in smaller cities and rural parts of our country would be left far behind in the advancing age. The legislation I now propose ensures that rural areas will be full participants in the information age.

The amendment would do the following: First, my amendment would require the Bell Cos. to make software and telecommunications equipment available to other local exchange carriers, without discrimination or self-preference.

Second, the amendment would require the Bell Cos. that manufacture equipment to continue making available the communications equipment, including software, to other local telephone companies, so long as the FCC certifies that manufacturing such equipment is profitable. Smaller independents and rural phone companies are concerned that if the Bell Cos. are allowed into manufacturing, they would be much more likely to buy existing manufacturing equipment than to start new ones. This is particularly true for switch manufacturing, which is capital intensive. If the Bell Cos. refuse to supply software, they could prevent the independents from providing new services. Then the Bell Cos. could market such services to the company's large customers, emphasizing that the independent company was unable to offer the service.

A Bell Co. also could use this leverage, if it wanted to acquire a neighboring small independent in a growing area. It could further its acquisition objective by depriving the target company of technology, stimulating the consumer complaints to regulators.

Small and rural companies are worried that a Bell Co. could acquire an existing manufacturer, change the product line to meet Bell plans and needs and cease to support equipment and software installed by small companies. If new software is not made available, a rural company might have to choose between installing a new switch or depriving its subscribers of new services.

Third, our amendment would require the Bell Cos. to engage in joint network planning and design. The legislation will lead to a nationwide information-rich telecommunication infrastructure that will include not exclude rural communities. To accomplish this goal, we offer this legislation to ensure that small and rural phone companies have a voice in the joint design of the telecommunications network to meet the goal of nationwide access to information age resources.

Finally, our amendment calls for strong district court enforcement procedures, including damages. This provision gives rural phone companies the confidence that the essential safeguards will be effective.

I thank my colleagues for joining me to ensure that rural companies and smaller companies have enforceable and continuing access to the equipment and joint network planning they need, so that all Americans, urban and rural alike, can share in a nationwide information-rich telecommunications network.

AMENDMENT NO. 280

(Purpose: To modify certain provisions of the bill).

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. PRESSLER] for himself, Mr. GRASSLEY, Mr. SASSER, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. DOLE, Mr. WELLSTONE, Mr. SIMPSON, and Mr. BURNS, proposes an amendment numbered 280.

Mr. PRESSLER. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, line 12, strike "and".

On page 8, line 15, insert "regulated" immediately after "all".

On page 8, line 18, immediately after "equipment", insert a comma and "including software integral to such telecommunications equipment including upgrades,".

On page 9, line 1, strike "other" and insert in lieu thereof "regulated local exchange telephone carrier".

On page 9, line 3, immediately after "equipment", insert a comma and "including software integral to such telecommunications equipment, including upgrades".

On page 9, line 3, immediately after "manufactured", insert "for use with the public telecommunications network".

On page 9, line 5, insert "purchasing" immediately before "carrier", and strike the period and insert in lieu thereof a semicolon.

On page 9, between lines 5 and 6, insert the following:

"(9)(A) such manufacturing affiliate shall not discontinue or restrict sales to other regulated local telephone exchange carriers of any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers; except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit, under a marginal cost study implemented by the Commission, on the sale of such equipment;

"(B) in reaching a determination as to the existence of reasonable demand as referred to in subparagraph (A), the Commission shall within sixty days consider—

"(i) whether the continued manufacture of the equipment will be profitable;

"(ii) whether the equipment is functionally or technologically obsolete;

"(iii) whether the components necessary to manufacture the equipment continue to be available;

"(iv) whether alternatives to the equipment are available in the market; and

"(v) such other factors as the Commission deems necessary and proper;

"(10) Bell Telephone Companies shall, consistent with the antitrust laws, engage in joint network planning and design with other regulated local telephone exchange carriers operating in the same area of interest; except that no participant in such planning shall delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment; and

"(11) Bell Telephone Companies shall provide, to other regulated local telephone exchange carriers operating in the same area of interest, timely information on the planned deployment of telecommunications equipment, including software integral to such telecommunications equipment, including upgrade;

On page 9, strike all on lines 20 through 24.

On page 10, line 1, strike "(4)" and insert in lieu thereof "(3)".

On page 11, line 7, insert "(1)" immediately after "(h)".

On page 11, between lines 13 and 14, insert the following:

"(2) Any regulated local telephone exchange carrier injured by an act or omission of a Bell Telephone Company or its manufacturing affiliate which violates the requirements of paragraph (8) or (9) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

Mr. PRESSLER. Madam President, I have given the arguments on the amendment. I know that I am told that some of my cosponsors wish to be able to come to the floor to speak or to place a statement in the RECORD regarding this.

Mr. BURDICK. Madam President, I am proud to cosponsor this amendment to add rural safeguards to S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991. These safeguards address

Act of 1991. These safeguards address many of the concerns about S. 173 that I have heard from rural telephone cooperatives and other small telephone companies. This amendment would ensure that these small companies have nondiscriminatory access to the telecommunications equipment and software they need to provide first-rate service.

As a lawyer during the depression, I helped write incorporation papers for several rural telephone cooperatives in my State. I remember what a difference telephone service, even party-line service, made to rural communities. Today, telecommunications services are vital to rural life, as well as to rural development. Without access to the latest telephone equipment and software, rural telephone cooperatives and the consumers they serve would be left out of the communications revolution.

One of the primary reasons for this legislation is to give regional telephone operating companies more incentive to develop exciting new products. Many young people in isolated rural areas now benefit from interactive learning, and this amendment is designed to ensure that rural residents not be cutoff from future innovations in telecommunications. Without rural safeguards, allowing the Regional Bell Operating Cos. to manufacture telephone equipment could cause the Nation to be split into the "information haves" and the "information have nots."

America's rural telephone cooperatives want Bell Cos. entering manufacturing to make telecommunications equipment and application software available to other local exchange carriers without discrimination or self-preference as long as reasonable demand exists. They want the Bell Cos. to work with other local telephone systems in network planning, design, and operations. And they want district court enforcement to ensure that these requirements are met. These rural safeguards seem extremely reasonable, and I urge my colleagues to support this amendment.

Mr. HOLLINGS. Madam President, our distinguished colleague, the member of our committee, the Senator from Washington is momentarily prepared to make a statement relative to the bill.

I hope that my colleagues are reading that amendment right through. I was looking at the early part and from what I understood, the amendment is properly reported as a compromise with the distinguished Senator from South Dakota.

My point here for the moment is, it is my understanding that there are those who would wish we would not compromise, that we would try to table this amendment. But I think in the spirit of trying to move this bill, and in the spirit of the concern that all of us have relative to rural America and the smaller telephone companies, we have agreed to that amendment with the following changes: With respect to the first parts on page 8, line 15, insert "regulated" immediately after "all." That next section on page 8, line 18, other early sections on page 9, are either technical or agreed to.

The Bell Cos. have been looking at the amendment of the Senator from South Dakota for quite some time during the past several weeks.

The objection, as I stated a moment ago, on page 9, lines 5 and 6 is where we would not discontinue or restrict sales as long as there was a reasonable demand. What we included in there "except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit under a marginal cost standard on the sale of the equipment."

That one would be in dispute, but the Senator from South Carolina, on behalf of our committee, would be ready to accept it. We have checked with the ranking member, Senator DANFORTH.

Specifically, the final section there, "Bell Telephone Companies shall, consistent with the antitrust laws, engage in joint network planning and design with other regulated local telephone exchange carriers operating in the same area of interest," we restricted it "in the same area of interest" so that the Bell Telephone Co. are not empowered by the measure here to engage with all local telephone exchange carriers over the United States. And in saying "that no participant in such planning shall delay the introduction * * *" of new technology we wanted to emphasize affirmatively that what we are trying to do is spawn, nurture, develop, and install new technology in the deployment of facilities and new telecommunications services. The agreement with such carriers shall not be required as a prerequisite of such introduction or deployment.

The original amendment implied a veto and we have eliminated that veto.

Then, the next section says that Bell Telephone Cos. shall provide to other regulated local telephone exchange carriers operating in the same area of interest timely information on the planned deployment of telecommunication equipment, including software. Then there is a provision with respect to these provisions of a company's right of action, not the individual right of action.

Those are the main points of compromise, and I sort of spelled them out in detail here. Obviously, I have bragged on and on about the character and capability of our Bell Operating Cos., but I do not represent them. I did not put in this bill for them. I put in this bill for the United States of America for the consumers, for the telecommunications industry, for trying to maintain the United States position on the cutting edge of telecommunications technology. So, at times there are things that I am convinced perhaps that the companies themselves, as worthy as they are, would differ with the Senator from South Carolina and if they think another Senator thinks I am totally mistaken I want them to have time to come to the floor and air that and make what motions they want to make before we join in, which I would love to do, with our distinguished colleague from South Dakota.

I yield the floor.

(The remarks of Mr. GORTON pertaining to the introduction of S. 1215 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GORTON. Madam President, I thank both the chairman of the committee and my dear good friend, the distinguished Senator from Montana, who was here ahead of me and could have taken the floor ahead of me, for their courtesy to me in this regard.

Mr. BURNS. Madam President, I do not want to stop the flow of conversation on the amendment of the Senator from South Dakota and would speak generally on this bill, S. 173, if that would meet with the approval of the Chair.

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

Mr. BURNS. Madam President, I wish to commend the distinguished chairman of the Senate Commerce Committee, Mr HOLLINGS, for the expeditious manner in which he has moved to build upon his efforts begun in the last Congress to provide relief from the manufacturing prohibition in the modification of final judgment [MFJ]. I applaud the chairman's leadership, foresight, and steadfastness in moving this important communications legislation to the floor of the Senate. I would hope this momentum will continue with speedy action by the Senate, and the House action will follow in timely fashion.

I do not know of anything we have talked about more in the Commerce Committee than communications.

Madam President, in my somewhat brief tenure in this body, I have been concerned that we have generally abdicated our responsibility over communications policy. Congress adopted the Communications Act in 1934, and then pretty much left it to courts and regulatory commissions to make policy within that framework.

When you stop and consider that the transistor did not exist in 1934, nor did fiber or digital switches, some might argue that we've been a little remiss in exercising our policy mandate. With S. 173, we have the opportunity to take a first step in correcting that.

I am an original cosponsor of S. 173 and of S. 1981, its predecessor in the

last Congress. From my perspective, this legislation is absolutly critical if we are to maintain our place as world leader in communications. And this legislation is absolutely critical if we are to rebuild our telecommunications infrastructure so that we can compete with the French, British, Japanese, and other countries in the European Community and Pacific rim in the information age and global economy of the 21st century.

While those countries have adopted the necessary policies to insure they're at the forefront of technological innovation, the United States, through a unique mix of action and inaction, has chosen to idle more than 50 percent of the telecommunications assets of this country. While Japan is on a path of fiber to the home by the year 2015, while France has gone from having a second-rate telecommunications system to being the world leader in video text, while the United Kingdom has recognized that telephone and cable television are converging technologies, the United States has been content to let a Federal judge decide the rules of the game, including who may play and who may not.

This is not a prescription for world leadership. On the contrary, if we want to fall behind—some would argue, stay behind—the French, British, Japanese, and others, we ought to stay the course, leave telecommunications policy to the courts, and keep valued assets on the sidelines.

That is obviously not what I am recommending. Indeed, I am pleased that at least on the manufacturing issue, the Senate stands ready to exercise its policymaking responsibility. It is only a first step, but a very crucial first step. I hope it serves as a precursor for debate on the telecommunications infrastructure.

By lifting the manufacturing provision with the adequate safeguards the bill provides, S. 173 recognizes the principle that Government should not decide what activities within an industry particular companies may perform. Simply put, the Government has no way to determine who the most qualified or most advanced potential competitor might be. We do know, however, that increased competition produces additional benefits, many of which cannot even be foreseen.

By removing the manufacturing curbs on the Regional Bell Holding Co., S. 173 will put more Americans to work, and put American capital to work in the USA. And I want to emphasize that. We need our capital working here in our own country. It is a sad paradox that a country which leads the world into one of the most dynamic technological fields of the 20th century should hamstring one group with the potential to help us maintain that leadership into the 21st century.

In the hearings on S. 173 and S. 1981 in the last Congress, concern was expressed that the telephone companies might try to hide some of the costs of their competitive manufacturing activities within the regulated local exchange sector, thereby transferring the costs to the local ratepayers. Or that they might also exploit their knowledge of the technical details of the local network, or design the configuration of the network to favor their product offerings in the telecommunications equipment.

These concerns are real and born of experience. But times have changed, and the ability to monitor regulated companies competing in unregulated markets has increased enormously. So much so, that the Government—the Department of Justice as well as the FCC and NTIA—testified that S. 173 had more than adequate safeguards against these and other abuses.

The alternative to S. 173 is to continue banning the Bell Cos. from participating in manufacturing without even attempting to make competition work. I believe such a "can't do" attitude is contrary to the spirit that has made our great country the leader it is.

I must temper my enthusiasm and support for S. 173, however, with the observation that the foresight and initiative which the Senate is showing has yet to be extended to another aspect of the telecommunications infrastructure. We continue to be reluctant to take the one step necessary to ensure the timely development of an advanced, interactive, broadband communications network.

The telephone companies are in the process of constructing such a network, but the economic pump primer needed to accelerate the process is the ability to provide cable service in competition with existing cable systems. The potential benefits to the American public and our economy are tremendous.

The Commerce Committee knows from its extensive hearings on cable that competition is sorely needed if consumers are to receive adequate service at reasonable prices. We also know that realistically the telephone companies are the only entities with the resources and expertise to compete with cable in the foreseeable future.

The same kind of legal and regulatory safeguards which the committee finds adequate with respect to the Bell Cos. entering the equipment manufacturing business, are obviously also adequate to prevent cross-subsidy and competitive abuses if telcos enter the cable business.

A little earlier I mentioned that history tells us AT&T did abuse its monopoly position with regard to equipment manufacturing. But as the Department of Justice has said, there was no evidence that AT&T did so with respect to information services.

Based on what the Department of Justice, the FCC, and NTIA have said about the adequacy of existing legal and regulatory safeguards and experience, I do not believe the distinction between our willingness to recommend S. 173 and our reluctance to support telco entry into cable is supported by logic or sound public policy considerations. If we retard the rapid development of our telecommunications infrastructure, the harm to our economy and the American people will, in my view, even exceed that which will occur if we fail to enact S. 173.

As a result, on Wednesday, June 5, Senator GORE and I will introduce the Communications Competitiveness and Infrastructure Modernization Act of 1991 which will advance the national interest by promoting and encouraging the more rapid development and deployment of nationwide, advanced broadband communications networks by the year 2015. My bill is designed to complement Senator HOLLINGS' efforts on S. 173 and to move America forward into the information age of the 21st century.

Again, Mr. President, I commend the extraordinary effort of Senator HOLLINGS and his staff. The chairman deserves credit for bringing to the Senate legislation which will move America forward in the information age of the 21st century. I strongly urge my colleagues to support this measure.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Who seeks recognition? The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I think we have arrived at a critical moment in the formation of our Nation's telecommunications policy. We will now have, for the first time, a requirement that there be planning in the formation of our telecommunications infrastructure that will involve Bell Telephone Co., small companies, and rural telephone cooperatives. It will be nationwide planning, not only for rural and small-town America, but for all America.

Indeed, we do need a nationwide infrastructure capable to bring advanced medical services to rural America. This infrastructure will allow smaller universities and small businesses, to access new supercomputer technology. This network planning will also speed fiber optic deployment throughout the Nation. This infrastructure will usher us into an era when people in small towns can video teleconference to their jobs in large cities.

Since 1978, I have served on the Communications Subcommittee. We have never had network planning until this legislation.

I think this amendment is an historic amendment in that sense. Many times in the Commerce Committee I have

pointed out it is not just rural America but also inner-city urban America that is left out.

The same thing is true of transportation in our country. I feel, since we have deregulated the airlines, and I was one who voted against this deregulation, we have had some very severe problems. We have some very great challenges to meet to preserve our airline passenger service in this country in a positive way.

That subject may seem separate and far afield, but the fact of the matter is, all companies want to serve the very rich areas and not serve upstate New York or the smaller towns of California.

The same thing is true of communications. My wife and I just recently had cable TV installed in our home here in Washington, DC. In our home in South Dakota we have also just recently had it installed, and this is 1991.

The point is, in rural areas and inner-city urban areas the companies are not so eager to provide the service. The very centers of our cities, and rural and small city areas are left out.

With passage of the Communications Act of 1934 we established that there would be a common carrier responsibility. That is, if you have some very rich routes, you also have to take some very poor routes. It was not a system of government subsidies, but a government system of assigning routes. If a company took some very lucrative routes they would also accept responsibility to expand their communication service to all areas of their franchise. That is how we built up our national system of communications.

Today we are in a situation that, if you live in a wealthy, densely populated suburb, you can get all information services. Fiber optic cable allows the suburban hospital to be connected with the Mayo Clinic and elsewhere. But that is not true if you live in a smaller city or rural area.

What we are doing here is very historic, because we are once again returning to the concept that there will be nationwide planning, that all the players will be at the table—and that is very important. I have long fought that fight in the Senate not only for communications but also for transportation.

I do not mean to say "I told you so" on airline deregulation, but I do not think that deregulation has resulted in everything positive. I think there have been many parts of our country that have suffered. I think now we are going to have to readdress it.

I make these points to pay tribute to Senator HOLLINGS for his concern about rural America. He has done a great job in leading our committee and in leading us on these issues.

I also pay tribute to my colleagues and cosponsors, Senator GRASSLEY, Senator SASSER, Senator BAUCUS, Senator BURDICK, Senator CONRAD, Senator DOLE, Senator WELLSTONE, Senator SIMPSON, and Senator BURNS.

I would like to thank Kevin Schieffer and Dan Nelson of my staff who worked very hard on this legislation. I also thank John Windhausen, of Senator HOLLINGS' staff along with Mary McManus and Mary Pat Bierle of Senator DANFORTH's staff. I also would like to commend the work of Sue Sadtler, Margot Humphrey, Shirley Bloomfield, Dave Cossen, Lisa Zaina, and other members of the Rural Telephone Coalition.

Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank our distinguished colleague from South Dakota. He has put his finger right on the pulse. We ought not work with total disregard to the small. The Office of Technology Assessment has reported that we could develop much better rural telephone services if there was better coordination.

The Senator from South Dakota has taken that charge and included provisions in here that the Bell Cos. would not necessarily support; namely, that the manufacturing affiliates shall not discontinue or restrict sales. They did not want provisions relative to the discontinuance or the restriction of sales. Once it was agreed to that it not only included the software integral to it, which was suggested by the Bell Cos. but we put in there that such sales may be discontinued if it is not profitable. That language is better than the original amendment.

Again, at the suggestion of the Bell companies, they wanted to move promptly with respect toward the termination. So we said the Commission shall, within 60 days, consider various facets; namely, that at the Bell Cos.' suggestion, whether the components necessary to manufacture the equipment continue to be available. We are trying to be reasonable, trying to act with common sense.

Otherwise, the Bell Telephone Cos. did not like a requirement that they engage in joint planning and design with the local telephone exchange carriers. We eliminated the idea of engaging in the same operations so there would not be any veto. We also specified that they be operating in the same area of interest. Wherein they operate in that same area of interest, the Senator from South Dakota had provided just that; that they do have joint network planning and design.

We have eliminated a particular objection of the joint operations provision that the Bell Cos. opposed, and also put in at their suggestion, that agreement with such other carriers should not be required as a prerequisite for the introduction or deployment of the new equipment.

Then we made a change at the suggestion of the Bell Cos. that any regulated local telephone exchange carrier, rather than any person could go to court. We did not want anybody who had a bad telephone bill run down and get a lawyer and just clutter the courts. If there is an objection, under the law, we are supposed to exhaust our administrative remedy; not from the courts, but; namely, the Federal Communications Commission. You exhaust your administrative remedy, and this puts the regulated local telephone exchange carrier in the stream court if it wants to challenge a manufacturing affiliate which violates that requirement.

That was included at the Bell Cos.' suggestion. And also the final phrase "or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 and 209." It is not totally what the companies want, by any manner and means.

I commend the Senator from South Dakota and join with him in urging the adoption of the amendment unless another member wishes to be heard on the amendment. The Senator from Iowa would like to speak on the amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to take the floor because I think it is necessary for us who are cosponsors of this amendment to express special gratitude and appreciation to Senator HOLLINGS and Senator DANFORTH for their cooperation with Senator PRESSLER, myself and other cosponsors of the rural telephone protection amendment.

I also want to commend the representatives of the Rural Telephone Coalition who have forcefully and effectively advocated the passage of these additional safeguards which are crucial to hundreds of rural independent telephone companies and their customers throughout the Nation. The coalition—consisting of the National Telephone Cooperative Association, the National Rural Telecom Association, and the Organization for the Protection and Advancement of Small Telephone Companies—did an admirable job and service to rural Americans.

Mr. President, the rural telephone protection amendment will provide America's rural telephone companies and their customers crucial safeguards against any anticompetitive activities which might result from the passage of S. 173.

This amendment assures that the benefits of the new manufacturing endeavors anticipated under this bill will be shared by independent telephone companies. They are guaranteed availability of telecommunications and equipment, including software. They will be assured coordination and joint

planning with the Regional Bell Telephone Co.

These protections are important and should help prevent any return to some of the unfair, discriminatory practices against independent telephone companies which occurred prior to the antitrust breakup of the AT&T Bell System a few years ago, which an administrative law judge found to be, and I quote, "adversely impacted the quality and cost of independent service."

Two weeks ago, the Office of Technology and Assessment released a study requested by myself and others which is entitled "Rural America at the Crossroads: Networking for the Future." The OTA made numerous findings that will help policymakers assure that rural economic development is encouraged, not discouraged, by advances in telecommunications. It was concluded that we need to recognize and accommodate the special needs of rural areas. It was also determined that we must have better coordination among telecommunication interests, businesses, and local, State, and Federal officials.

I believe that our amendment takes a major step in the direction recommended by this study.

On behalf of Iowa's 150 telephone companies, I want to again thank my colleagues for their support of this very important amendment.

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

Mr. PRESSLER. Mr. President, I ask unanimous consent to add as cosponsors Senator DOLE, Senator CONRAD, and Senator BURNS.

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

Mr. PRESSLER. I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 280) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent at this time to make a short statement to introduce legislation.

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

The Senator from Alaska is recognized.

Mr. STEVENS. I thank the Chair.

(The remarks of Mr. STEVENS pertaining to the introduction of Senate Joint Resolution 155 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I rise to support amendment No. 280 and to strongly support the underlying bill, S. 173, because I believe it is time to reconsider some of the arbitrary limits placed on the regional Bell Cos. and their abilities to compete in an increasingly complex and competitive world marketplace.

The chairman of the Senate Commerce Committee, our distinguished colleague from South Carolina, has built a truly impressive record of bringing this legislation to the floor. His leadership has enabled this body to address a relevant concern at a time when America's ability to compete in the world is really being challenged in an unprecedented way. There were serious concerns about the original bill, and the Senator from South Carolina has been diligent in addressing all of those concerns, both with substantive changes and with full consideration in committee hearings.

Manufacturers who fear competition from the Bell Cos. are justifiably concerned that potential self-dealing between the regional telephone companies and their affiliates could stifle competitors' ability to sell their biggest customers, the regional telephone companies.

In particular, I understand the independent and rural telephone co-ops fear that their marketplace for major equipment might be adversely affected by Bell Co. involvement in manufacturing. The bill goes a long way toward alleviating this concern. I am pleased that this amendment resolves all of the remaining problems, and again I compliment the sponsor of the bill for going to great lengths to ensure that the legislation contains adequate safeguards against any anticompetitive behavior by the Bell Cos.

I was especially pleased to learn during the committee markup that the National Federation of Independent Business has endorsed S. 173, expressing its satisfaction with the safeguards in the bill. Moreover, I want to report to my colleagues on the floor that I have personally heard from many business leaders across my own State of Tennessee that important new business and consumer services are now being held hostage to the current rules being administered by the Court under the consent decree. It is time for the elected representatives of the American people to set the ground rules and the framework within which competition can proceed.

Mr. President, it is significant that the organization representing the majority of our country's communications workers has enthusiastically endorsed this legislation noting its positive impact on U.S. jobs in an industry that has seen tens of thousands of jobs move overseas since the break up of AT&T.

Some opponents of this legislation have suggested that if Congress opens the door to the regional Bell Cos. to engage in manufacturing, then surely the barriers to electronic publishing and other information services will be certain to fall.

Mr. President, this bill, of course, in no way affects the MFJ restrictions on information services. Many of our colleagues who support S. 173 are equally concerned that we go slower in opening up information services to competition from the Bell Cos.

So again in closing, Mr. President, I congratulate the chairman of the Commerce Committee for his leadership on this important issue, and I urge all of our colleagues in the strongest possible terms to stand behind the leadership of the Senator from South Carolina to support this legislation and make the very needed changes embodied in it.

I yield the floor.

Mr. INOUYE. Mr. President, it is with deep regret that I rise today in opposition to S. 173. I have worked on countless measures with the chairman of the Commerce Committee over some 25 years, and there are only a few times that we have disagreed on a communications matter. I have great respect for the chairman and his in-depth knowledge of communications issues. However, after careful and painstaking consideration of this matter, I continue to feel strongly that this legislation will not achieve its objective of increasing American competitiveness in the international communications market. In fact, I believe it may do just the opposite.

The chairman of the Commerce Committee believes that the time has come to lift the communications manufacturing restrictions and institute a new series of administrative safeguards against anticompetitive behavior.

I believe that the modified final judgment is of great benefit to our telecommunications market, its businesses and users. Thousands of new manufacturers have entered the market since the AT&T divestiture. As a result, consumers have benefited from cheaper and more innovative equipment and many new services. The trade deficit in communications equipment has been reduced from $2.6 billion in 1988 to $0.8 billion in 1990 according to the Department of Commerce. In the area of research and development, spending by U.S. companies, including the BOC's, has increased, not decreased, since divestiture.

During the past 25 years, the U.S. Government has brought four antitrust actions against AT&T. In three of these actions, results in divestiture. In four of these actions, AT&T was prohibited from engaging in certain activities. The issues raised in S. 173 are not novel.

At the heart of the last two antitrust actions was the matter of AT&T improperly favoring its own manufacturing operations. The Government pro-

duced extensive evidence that AT&T purchased virtually all of its equipment from itself, regardless of cost or quality, and that the FCC and other regulators were unable to prevent AT&T from using its local telephone bottleneck to act anticompetitively. As a result, the 1984 modified final judgment prohibited those with the bottleneck facilities, the Bell Operating Cos. from manufacturing telecommunications equipment.

From an objective standpoint, the manufacturing remedy in the modified final judgment has worked. The BOC's are no longer captive of one supplier. They now purchase only about one-half of their equipment from their old relative, AT&T Technologies—the new Western Electric. The number of domestic manufacturers has grown tremendously. In addition, prices are down, and the rate of innovation is up. The BOC's are able to purchase the best equipment in the world at the lowest prices. In addition, on the matter of trade, the United States continues to have a trade surplus in the most important sector of the telecommunications equipment market, the higher value products.

Further, we simply cannot ignore the Regional Bell Operating Cos.' incentives and capabilities to engage in anticompetitive acts stemming from their control of the bottleneck over local telephone equipment. The recent violations by Nynex and US West are only the latest examples of the Bell Cos.' potential to cross-subsidize and engage in discriminatory practices.

Virtually all of the largest phone companies which have been audited by regulatory bodies have engaged in some cross-subsidization or unlawful behavior. For example, a 1986 NARUC audit of Ameritech found Ameritech was cross-subsidizing its regulated business through its procurement process; a 1986 audit of Pacific Telesis by the California PUC found that the company was cross-subsidizing by assigning personnel from the regulated company to the unregulated company, to the tune of $3 million; and a 1985 NARUC audit of Bellsouth found that the regulated business cross-subsidized new, competitive Bellsouth businesses. Finally, in a pending proceeding the FCC has proposed fining a GTE/Contel subsidiary for cross-subsidizing through a purchasing subsidiary. I could go on for quite a while like this, but I think I have made my point.

The primary issue before us is whether there are other safeguards adequate to prevent anticompetitive conduct. I am concerned about the FCC's ability to monitor these potentially anticompetitive acts. The Commission's accounting standard for monitoring cross-subsidization applies only to the plant used for interstate service, only about one-quarter of the total telephone plant. This means that the State regulators are key to ensuring against cross-subsidies, and they have not adopted standards similar to the FCC's. There are even some States which have deregulated all or part of the provision of telephone service, thus ensuring no oversight or cross-subsidies.

Equally troubling is the well-recognized fact that the Commission does not have the resources to conduct frequent audits. In 1987, a General Accounting Office study looking at ways to control cross-subsidies between regulated and unregulated telephone services found that the FCC only has the resources to audit one telephone company once every 16 years.

Three of the FCC's present Commissioners, including the Chairman, have expressed reservations about the ability of regulators to regulate telephone companies. Chairman Sikes has stated that he does not believe that:

> Career Government people or for that matter non-Government people can find out what the true cost of [telephone] service should be.

Similarly, in 1990, FCC Commissioner Duggan, speaking about the possibility of letting the telephone companies provide cable service, said that he has a "nightmare" about a:

> Sixty story building * * * filled with FCC accountants that would be needed to monitor [telephone company] cross-subsidies if they were in the cable television business.

State regulators also have limited resources and have not adopted standards similar to the FCC's. FCC Commissioner Barrett, a former State regulator, stated in 1990 that:

> In my years of rate regulation, I've only seen maybe two States that could recognize a cross-subsidy if it was staring them in the face.

As for the matter of discrimination or self-dealing, it is not clear that the FCC has the experience or resources to monitor such practices. There is no practical way for the Commission to monitor the many thousands, possibly millions, of transactions, to determine if the price, terms, and conditions are nondiscriminatory. The only way to address this problem it simply prohibit the Bell Co. from selling the equipment to themselves. They could still sell to other BOCs, other telephone companies, even companies overseas, just not to themselves. If you were to look at the total international market for telephone equipment, this would mean that they could sell to 95 percent of all purchasers.

While the alleged safeguards in S. 173 will do little to prevent anticompetitive acts, there are those who argue that the entry of the BOC's will do so much to improve our Nation's competitiveness that they still should be freed from the prohibition on manufacturing. Since the BOC's have little manufacturing experience, they are most likely to enter the market through the purchase of another firm. This would merely substitute another player for existing manufacturers. The only potential benefit of allowing a telephone company to purchase existing manufacturers would be if there were significant economies in being both a network service provider and a manufacturer. Again, the hearings produced no evidence to prove such large economies exist. In fact, almost every nation around the world separates its network provider from equipment manufacturers.

I am also concerned that this legislation does not prevent the BOC's from entering into joint ventures with foreign manufacturers, particularly foreign manufacturers from countries which are closed to U.S. companies. This bill would prevent a regulated monopoly to buy equipment from countries which do not permit other unregulated companies from competing in their countries.

I share the aim of S. 173. I believe that we must make the United States a strong and competitive force in the international markets. I do believe that this legislation takes the right approach. The remedies are founded more on faith than fact. Moreover, if we are wrong, it will do great harm to our Nation's and the world's top telecommunications equipment manufacturer as well as to other domestic firms. That price is too high to bear, especially in comparison to the speculative benefits. Thus, I must stand in opposition to this bill.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I really appreciate the statement of the distinguished Senator from Hawaii. He is the chairman of our Communications Subcommittee, and he has done the lion's share of the work on all of our communications issues. As was stated earlier by several of the committee's Senators, we have spent, I guess, 80 percent of our time on communications. On one particular measure mentioned by the distinguished Senator from Montana, I know we have had at least 12 hearings and the Senator from Hawaii has conducted each of those 12 hearings.

This Senator regrets that the committee does not have his support. But I have the full understanding of the position of the Senator from Hawaii. I appreciate his candor and the way he has presented it.

I am asking my colleagues to come forward with their amendments now. We did save, I am convinced, a good amount of time working out the rural amendment that I had been hearing about for over 3 weeks. The Senator from South Dakota is really to be commended for taking the lead on this particular matter.

However, now we hear suggestions of other amendments, but we are ready to move to third reading. Let us come for-

ward with the amendments, let us move on and get some votes this evening so we will be clear tomorrow. I know the majority and minority leaders have a backup of matters to be considered. We want to hear from other Senators. I do not know of anything else to do. We have been on this bill since 3 o'clock yesterday afternoon.

As the distinguished Presiding Officer knows, many Senators have made their statements either in support of or, as our distinguished chairman of the subcommittee, against this legislation.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you very much, Mr. President.

I rise in support of the legislation pending before the U.S. Senate on telecommunications. I would like to congratulate the manager of the bill on crafting legislation that once more restores the opportunity for jobs in the American marketplace.

Ever since I have been a Member of the U.S. Congress, and that goes back to my time in the House, I have been frustrated with the direction that our telecommunications policy has been going. I have been frustrated over the fact that telecommunications policy has essentially been drafted, directed, and implemented by the courts, particularly Judge Greene and his so-called divestiture legislation, and the consent agreement.

Way back when I was a Member of the House of Representatives and sat on the Energy and Commerce Committee, I opposed divestiture. I opposed divestiture because it meant the break up of AT&T. I happened to have liked AT&T the way it was.

Why? Because we had the Bell Laboratories that had a number of people working on it, some of whom were of Nobel Prize quality, and working, developing cutting-edge technologies in communications.

We had as part of AT&T something called the Western Electric Corp. that then took the ideas in a laboratory and converted them into telecommunications products. In the old days, they were simply called telephones. Now the array of products is wide ranging. I might add that the Bell Laboratories were not a government agency—absolutely private sector.

So we had the private sector doing the research, then we had Western Electric developing, manufacturing the products, and then those products were sold by little Bells, or local operating companies.

We have heard all kinds of language in this bill, Baby Bells, local operating companies. Back predivestiture they were simply called the telephone company.

Along came divestiture and we broke up the AT&T framework. And in breaking it up, we essentially have eliminated the job manufacturing part.

Yes, we still have Bell Laboratories. Yes, we still have the local telephone companies. But do you know what we do not have? We do not have the Western Electrics anymore. What is more, in my State Senator SARBANES and I, when we were both Members of Congress, each at various times representing the Third Congressional District, represented Western Electric in a corridor of employment called Bruening Highway. General Motors was there. Western Electric was there. Dundalk Terminal was there. And it was a beltway to Bethlehem Steel.

In that whole corridor, you had good people making good wages, making things, making products, and, overall, employing somewhere over 35,000 people.

Well, that is gone, Mr. President. Bethlehem Steel is down to 12,000. General Motors that once employed six is down to four. We are hoping they do not move out of town.

Guess what is gone completely? Western Electric, 4,000 jobs that employed men and women. I might add, a substantial number of women, long before there were equal opportunity provisions for women. Those jobs are gone.

What do we have now? Well, we were promised a cornucopia of competition; that only if we had competition, we would have cornucopia for the consumer. Well, this is one little consumer that never found that cornucopia. I found confusion in the marketplace. I have never received a break on my telephone bill. All these cheap, long-distance rates I was supposed to have, never, ever happened. I was deluged by Sprint, MCI, and all kinds of companies. But I only found high prices.

And then, to this day, I still get several different kinds of bills, one from AT&T and one from a local telephone company. It is now 5 years later, and I still do not know who to call if something goes wrong.

I think, if you do not get a dial tone, you call the telephone company. If you cannot trace it—what time do I have to trace? You have to go out and see if something is wrong with the pole. If something is wrong with this pole, it becomes AT&T.

So cornucopia competition has not meant anything for me. I will tell you what it has meant to me as a Senator: 4,000 men and women who worked at Western Electric Co. are gone; 4,000 people who got up every day and went to work, earned a living, earned livings at AT&T levels, working class people, and had the opportunity to even have a pension and stock options, and to this day there are people in my community that are on retirement from their Social Security, their Western Electric pension, and some of the dividends coming out of that stock.

So where are we now, and what does that mean? I have been carrying this frustration around for 5 years, ever since we lost the divestiture fight. This legislation is the first opportunity to give Americans a break to get back into the manufacturing business.

We have something in here called "domestic content." What does that mean? It means the content has to be from this wonderful country called the United States of America. People are objecting to domestic content. Domestic content means products made in America, and American hands-on putting it together.

I happen to like domestic content. I like domestic content more than foreign content, because domestic content means jobs in my State and in other States.

There are those who say, well, this is going to violate the antitrust provisions.

Mr. President, I am not a lawyer, so I do not know a lot about antitrust, but I do know one thing: The antitrust clause comes from a 19th-century economy when we had to regulate a different kind of economy. Twenty-first-century economics says that maybe instead of trying to comply with out-of-date antitrust laws, we ought to change the antitrust laws. The old arrangement of laboratory manufacturing to customer service is exactly the kind of model the Japanese have and on which they are now beating the zingos out of us in telecommunications.

So I am for this bill because it provides jobs. I am for this bill, because it takes the best ideas that the United States of America does and turns them into products. I am very frustrated that we win the Nobel Prizes with our research, and other countries develop them.

I am glad that the local Bell Cos.—if this bill passes—will get back into making products.

So when my name is called, I am going to vote for this legislation. I am going to vote for it enthusiastically, knowing that it is going to produce jobs and produce telephone products that will be reliable, have American quality control, and be compatible.

So that is why when this legislation comes to final passage, I want everybody to remember Western Electric and remember those 4,000 people who right now—I do not know quite where they are, but I know they are not earn-

ing the same kind of living as when Ma Bell provided jobs.

I yield the floor.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Maryland. She has really stated the case with respect to domestic content, as well as the bill itself.

I am an enthusiastic supporter of the domestic content proceeding, because it is going to make America competitive again, particularly in the field of technology and, thereby provide for the consumers advanced technology services and the improvements that are so much in demand, set out in the Office of Technology Assessment report.

With respect to the domestic content provision, it is intentional. The European Economic Community, as set forth in this letter from the President of the United States, has its own requirements.

I quote from that letter dated March 9, 1990, from the President of the Senate majority and Republican leaders. On page 3, I quote:

> The directive mandates nondiscriminatory and transparent tendering to all producers whose products are at least 50 percent EC origin. It also places a 3 percent price preference on community offers.

This has to do with the European Economic Community in a report and findings that substantial progress has been made and the telecommunications trade talk conducted under section 1375 of the act with the European Community and Korea, and it contains the reasons why an extension of the negotiating period with the European Economic Community and Korea is necessary.

So when they are talking about a veto maybe, or disapproval of this measure on account of domestic content, we live in the real world. Would it not been grand if the Europeans and other countries had no tariffs or barriers or governmental action? But the market is full of it all. Antitrust is one provision that, in a sense, has outlived, to some extent, its usefulness. We used to look upon size as a no-no. In order to survive here in the international competition, you are going to have to have substantial size if you are going to survive.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GORTON. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. No, it is not.

Mr. GORTON. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

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

The Senator from Washington is recognized.

Mr. GORTON. I thank the Chair.

(The remarks of Mr. GORTON pertaining to the introduction of S. 1216 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. SIMPSON. Mr. President, I have inquired of the manager of the bill, my good friend from South Carolina, and I ask unanimous consent to proceed as if in morning business.

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

THE CIVIL RIGHTS BILL

Mr. SIMPSON. Mr. President, just two brief items before I get back to the matter at hand. I will be glad to yield at any point, but I shall just be a few minutes.

I wanted to discuss the latest compromise civil rights bill being offered by the proponents of H.R. 1, the Civil Rights Act of 1991, and that debate, of course, is taking place this day.

I feel that the proponents of that bill are simply trying to mislead the American public into thinking that that bill does not cause quotas. I have introduced a bill for the consideration of the Senate. Our good friend from Missouri has done that; others; Senator DOLE. There are many proposals presented.

We all realize, I think without any question, that the only way you get an appropriate civil rights bill is with a bipartisan approach. And I think the effort with H.R. 1 in the House is a deception that will not prevail. The substance of H.R. 1 would leave U.S. employers with no alternative but to hire by quota, pure and simple. However, the proponents of H.R. 1 have, I think, a clever little shell game going on there. They tell us that their bill is not a quota bill and then point to specific language in H.R. 1 which reads thusly:

> Nothing in the amendments made by this act shall be construed . . . to require, encourage, or permit an employer to adopt a hiring or promotion quota on the basis of race, color, religion, sex, or national origin.

Mr. President, that language appears in section 111 of H.R. 1. However, it does absolutely nothing to change or overrule the rest of H.R. 1. The quota-inducing language is in section 102 and nowhere does H.R. 1 specifically overrule section 102.

In effect, then, section 102 of H.R. 1 essentially holds a loaded gun to the head of most employers—the loaded gun of expensive litigation—and it tells them this: "If you are smart and you want to avoid costly lawsuits, you'll use quotas." So what does H.R. 1's "antiquota" language mean? I think it means absolutely nothing. Zip. Nothing.

The new antiquota language reminds us of that old and jaded story of the emperor's new clothes, how the Emperor wandered among his subjects—in what he said were his fine new clothes—but what, in reality, was "no clothes" at all, until a young man pointed that out.

Well, if the emperor's advisers were the proponents of H.R. 1, they would tell him, "Why don't you hang a little sign around your neck, Emperor," and the sign might say:

> Nothing in the emperor's wardrobe shall be construed to require, encourage, or permit one of the emperor's subjects to believe that the emperor is really stark naked.

Mr. President, that is just how absurd this claim is that H.R. 1 is not a quota bill.

So I think it is at least time for all of the good subjects in the great kingdom of "Inside the Beltway" to come out and have the courage of the young boy to speak out on the plain and very obvious truth that "the emperor is still naked and H.R. 1 is still a quota bill"—"is now, and ever shall be, world without end, amen," as we say in my particular faith.

Enough of that.

HOW TO FEED IMMIGRATION WILDINGS

Mr. SIMPSON. Mr. President, just briefly if I may make a comment with regard to a recent Wall Street Journal editorial. I have always had a great deal of difficulty with the editorial staff of the Wall Street Journal. I have accused them of various lapses in brainpower and skill and journalistic expertise. But, it does not drip down into their reportorial crew. I think they have a fine reporting staff. I have known many of them: Al Hunt and Jim Perry and many others, for whom I have the highest respect and regard. But I noted recently the Wall Street Journal had written another rather puerile and bone-headed editorial on immigration, which they do with great gusto every now and then, blaming the recent disturbance in the Mount Pleasant neighborhood of Washington—a very vexatious thing to all of us—on the original immigration legislation which was originally sponsored by my dear friend, Congressman ROMANO MAZZOLI, and myself.

In calling the recent violence a "Simpson-Mazzoli riot," the Journal once again, I think, reveals what its base wishes really are, and they are, No. 1, open borders. That is their feeling: Open borders in order that more and more illegal immigrants may enter the United States and work; Under what conditions it is not important, just so they do their good-old work. No. 2, large-scale employment of illegal aliens, so millions of these aliens may be kept in a form of slave labor by U.S. employers, in order to meet the Journal's own peculiar and long-held version of "free market capitalism.".

I, too, consider myself to be a "free market capitalist," but I surely do not favor giving employers such a crude and cruel leverage over illegal aliens that these people will be afraid to ask for decent wages or working conditions or else they risk sure and certain and swift deportation. And I believe most Americans might agree with me that the open border situation which the Journal advocates is certainly not in "the national interest."

So I would, if I may, Mr. President, have printed in the RECORD a column by Richard Estrada, a highly respected columnist for the Dallas Morning News, who has written a most interesting column concerning the Journal's comments about the Mount Pleasant riots and the Simpson-Rodino-Mazzoli legislation. Mr. Estrada argues that the Journal itself should be the entity to "take credit" for the adverse social conditions in Mount Pleasant that led to the violence on May 5, 1991. And Mr. Estrada says:

> The Nation should pause and give credit where credit is due. First, there's the Wall Street Journal, which has consistently opposed any meaningful measure to control illegal immigration, successfully backed huge increases in legal immigration, and now seeks repeal of employer sanctions.

I commend Mr. Estrada's column to my colleagues and to Americans concerned with our immigration problems, and I ask unanimous consent his May 17, 1991 editorial, "How To Feed Immigration Wildings" be printed in the RECORD.

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

(See exhibit 1.)

Mr. SIMPSON. Mr. President, the Wall Street Journal makes it a rather religious habit of not printing my letters to the editors, even though they are written all by myself. I find that to be rather unfair, but I assure you that bias is not unusual at all for them. I believe this inherent editorial bias and unfairness imbues and colors their entire perspective on all immigration issues.

Their credo is, "Let's do whatever we think is good for good old American business, no matter how unfair or repugnant it is to illegal aliens and to other Americans."

Fortunately, most Americans are smart enough to know better than to swallow that old line of pure guff.

I now yield the floor.

EXHIBIT 1

[From the Dallas Morning News, May 17, 1991]

HOW TO FEED IMMIGRATION WILDINGS

(By Richard Estrada)

Several months ago, two young Mexicans stopped me in a Dallas parking lot and asked me for money. They had crossed the border illegally, and now found themselves down on their luck. Nobody would hire them. In the sing-song Spanish of Mexico City, one of them explained: "It's that Simpson-Rodino law."

The 1986 law to control illegal immigration made the newspapers again recently after Hispanic aliens in the Mount Pleasant neighborhood of Washington, D.C., set off two days of riots. By most accounts, street violence began on May 5 after a female police officer shot a drunken, knife-wielding Salvadoran immigrant who had lunged at her.

Enter the Wall Street Journal. A Journal editorial of May 10 said the riot "was sparked by an alleged abuse of force by a police officer against an immigrant" and let it go at that. The piece went on to term the disorders the "Simpson-Mazzoli" riots—which was to say that because the employer sanctions law that fines employers for hiring illegal aliens is allegedly causing discrimination against Hispanics legally authorized to work, they rioted not that rioting is right, mind you.

However, in addition to getting the name of the law wrong (that's Simpson-Rodino) the *Journal* provided no specific link between discrimination and the rioting. As it turns out, the rioters were complaining not so much about the lack of work, but about not being given more attractive jobs. They also wanted the right to drink beer on the street and in the parks; free restaurant service; and the right to park their cars anywhere they wanted. The *Journal* also failed to note that by no means all of the rioters were aliens; perhaps half were U.S. citizens of African descent, and a few whites joined in.

The inner cities of the nation are seriously over crowded. Ironically, nothing is worsening the competition for jobs, social services and affordable housing more than immigration. Economist George Borjas notes that a 10 percent increase in national immigration results in the doubling of the immigrant population in that handful of U.S. cities in which they settle.

While it's true that the General Accounting Office has alleged discriminary impact stemming from employer sanctions, the Journal failed to mention that the GAO's conclusions have come under fire because the agency had no baseline study to show the degree of anti-Hispanic discrimination before employer sanctions. The GAO may have caved in to political pressure on this one.

Item: Nearly every poll ever taken of Hispanic public opinion has found that Hispanics desire greater immigration controls, up to and including fines against employers who hire illegal aliens. Illegal labor market competition appears to be what's bothering most Hispanics.

Immigrant workers are real, live people, with dreams, frustrations and families. But that is a fact to be appreciated before making the decision to import them, not afterward.

The nation should pause and give credit where credit is due. First, there's the *Wall Street Journal*, which has consistently opposed any meaningful measure to control illegal immigration, successfully backed huge increases in legal immigration and now seeks repeal of employer sanctions. Then, there's Sen. Dennis DeConcini, D-Ariz., and Rep. Joseph Moakley, D-Mass., who last year wrangled yet another immigration amnesty, this one for Salvadoran illegal aliens.

And let's not forget the Mexican American Legal Defense and Educational Fund (MALDEF), the National Council of La Raza ("The Race"), the League of United Latin American Citizens (LULAC, one of whose officials was recently charged with bilking illegal aliens out of thousands of dollars) and the archbishop of Los Angeles, Roger Mahony, who a little more than three months ago officiated at the funeral of 34-year-old Tina Kerbrat.

Tina Who? Tina Kerbrat—she's the Los Angeles police officer who died on Feb. 11, after having been shot in the face by another drunken Salvadoran illegal alien across the continent from Mount Pleasant, in the mother of all illegal immigration sanctuaries, Los Angeles.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

Mr. BRADLEY. Mr. President, I rise today in opposition to the bill introduced by my distinguished colleague from South Carolina, Senator HOLLINGS. My opposition is somewhat reluctant. First, because I share the goal of strengthening America's telecommunications industry, and second because the bill pits the Regional Bell Operating Cos. against AT&T. Both of them—both in this case New Jersey Bell and AT&T—are great contributors to economic growth in the Nation and especially in the State of New Jersey.

I cannot support the bill as it exists, however, because of my great concerns that the mechanisms that this legislation uses to stimulate American competitiveness will be at best ineffective and at worst counterproductive. Furthermore, I am concerned that we have not learned the lesson that markets are more efficient regulators than regulators themselves. It is difficult for markets to be competitive when manufacturers sell to themselves.

The antitrust action which broke up AT&T was based on the premise that because AT&T controlled the bottleneck monopoly at the consumer level it was in a position to engage in anticompetitive behavior in its relations with its suppliers. That is the basic case. AT&T, the Government case argued, and the courts agreed, had taken advantage of its bottleneck monopoly by providing Western Electric, its manufacturing subsidiary, with more timely, accurate, and complete information about technical needs than the information provided to any competitors.

Furthermore, since AT&T's profits were determined by a regulatory formula which was based on AT&T's costs, there was an incentive to shift costs into the rate base. AT&T did this by shifting the cost of research, design, development, and manufacturing into the basic telephone network. In other words, onto the bills of consumers.

As a result, competition was stifled by the control that AT&T exercised and the ability of Western Electric to sell its products at below the cost of even making them. Consumers absorbed the direct cost of this subsidy in their telephone bills, as I have just stated, and, in essence, AT&T was self-dealing and the consumers were hurt, which is exactly what would happen if S. 173 were to become law, self-dealing and the consumers hurt.

Where were the regulators in all of this? Well, the FCC tried to conduct investigations. The States tried to exercise their authority to examine local telephone subsidiaries of AT&T. But none had jurisdiction over the manufacturing affiliates and no one could document the subsidies that were pervasive in this monopolized system. A significant step in what ultimately broke up the telephone monopoly was the court's rejection, in 1976, of AT&T's claim that the FCC had extensive and effective oversight over their activities and that it was impossible for them to engage in the alleged competitive abuse.

AT&T urged the courts to continue to rely on the regulators. In other words, regulators could solve the problem. But when the monopoly was broken up, the continued existence of the bottleneck monopolies was recognized as a continuing problem. In other words, the regulators could not solve the problem and the court decided, and the parties to the agreement, that AT&T would be broken up.

Central to ensuring that the problem of anticompetitive behavior and rate base abuse did not recur was the imposition of restrictions on the companies that would not control the bottleneck monopolies, the seven Regional Bell Operating Cos. or the RBOC's, as they are called. They were prohibited from providing long distance service, information services, or engaging in manufacturing.

The restriction, however, does not preclude the RBOC's from engaging in a number of activities related to design and manufacturing such as market research, providing generic specifications, selecting an exclusive manufacturer, funding product development, or selling consumer premises equipment. None of those are excluded by the court agreement.

Some of these allowed areas of activity have, indeed, thrived. Bellcore Labs of New Jersey, for example, is a testament to this policy. I was struck by the statement of the vice president of technology systems for Bellcore, cited in the minority views of Mr. INOUYE contained in the report on S. 173.

He describes the post-divestiture environment as marked by—his words, vice president of Bellcore—a major progress towards the opening of the telecommunications marketplace through the free flow of information on architectures, requirements, and interfaces. The response has been an outpouring of products that Bellcore's clients—that is the RBOC's—are using to grow and to evolve their networks, to provide existing services more economically than heretofore and to provide new services.

He goes on to cite that the supplier database, the telecommunications supplier database, has grown from 2,000 companies in 1984 to 9,000 companies in 1989.

How could Bellcore be affected by S. 173? Proponents have argued that since the RBOC's would be manufacturers, they would invest more in Bellcore.

However, if each RBOC had a competing manufacturing affiliate, what incentive would these competitors have to contribute to a common R&D pool? On the contrary, individual RBOC's would focus their R&D resources on their own projects, not on research that would be shared with their competitors.

Furthermore, this argument forgets that Bellcore is a special institution, exempted from antitrust laws specifically because its clients, the RBOC's, are precluded from engaging in manufacturing. If the regional companies had manufacturing affiliates, then antitrust laws would prohibit the sharing of R&D costs by competing manufacturers. S. 173 might put Bellcore out of business, not bring more in R&D.

The expanding telecommunications market and network of suppliers from 2,000 to 8,000 in about 5 years is the direct result of the free and open competition to supply the needs of the regional operating companies. Since they do not have an in-house supplier to whom they have every incentive to rely on, the RBOC's have used their size, resources, and technical expertise to essentially be investive money machines for one of America's fastest growing and most important industries.

S. 173 threatens that success. Instead of a thriving industry, we could very well end up with a self-dealing, cross-subsidy, and anticompetitive behavior.

Proponents of this bill present a dark vision of America's role in the international telecommunications market. In fact, the international market for high-end telecommunications is rapidly expanding and American firms are the No. 1 benefactors of its growth.

Our trade surplus—underlined surplus—in switches, network needs, and other sophisticated technology has grown from $115 million in 1988 to $710 million in 1990, a 500-percent increase. The deficit in telecommunications is in consumer products equipment. But even if we include consumer premises equipment—the telephones and fax machines—the U.S. trade deficit has declined from $2.6 billion in 1988 to $800 million in 1990.

How will S. 173 change the situation? Proponents hope that the RBOC's intimate knowledge of the telecommunications network and their tremendous capital and human resources will make them strong players in the international telecommunications market.

Frankly, I am concerned that S. 173 may have the opposite effect. The two qualities that RBOC undeniably possess—their intimate knowledge and tremendous resources—are exactly the reasons that AT&T was able to engage in anticompetitive behavior and abuse of the rate base.

The regional operating companies will get a share of the telecommunications market but that may come at the expense of other manufacturers and not increase the overall total. Even if each regional operating company only captures 10 percent of the market, that is 70 percent of the total that will be foreclosed to competitors by the unfair advantage that the regional operating companies have by virtue of their regulated bottleneck monopolies.

So it could very well have the opposite effect as the proponents of this bill contend.

S. 173 will clearly change distribution within the pie, but it will not make the pie any bigger.

Another way that S. 173 hopes to improve the structure of the telecommunications market is through a domestic content provision. That provision has many loopholes that are provided by the bill and those loopholes probably make a bad situation worse. The regional operating companies may use parts manufactured abroad but must certify to the FCC that it has made a good-faith effort to obtain equivalent parts in the United States and that the cost of these parts is less than 40 percent of the sales revenue derived from that equipment.

Each year, the FCC and the Secretary of Commerce shall determine what percentage of the revenues come from each RBOC. The FCC can impose penalties if it deems a firm is in violation, and any supplier claiming that the supplier did not make "a good faith effort" to buy the components in the United States can file a complaint with the FCC or can sue the affiliate for damages caused by the manufacturing affiliate's actions.

If I understand this correctly, if I am an American firm that makes a part that a telecommunications manufacturer can use, and that telecommunications manufacturer decides a better and cheaper part is made by a competitor of mine that happens to be owned

or based overseas, then I can sue the manufacturer for choosing a better and cheaper part than mine.

The only American industry that I see being made more competitive by this provision is the legal industry, not telecommunications.

Just as this bill would be a boon to lawyers, it would be a bust to all consumers of telephone services. It has been argued here that S. 173 contains more than adequate safeguards against abuse of the rate base through cross-subsidization. That has been the argument made countless times. It has been said that we should rely on the regulators to prevent the regional operating companies from taking advantage of their bottleneck monopoly.

It has a strange ring of familiarity to it. It sounds just like the arguments that AT&T made when the Government began to press its case. Let the regulators take care of it.

If there is any lesson that we should have learned in the past decade, it is that the markets are much better regulators than the regulators themselves. Even if the FCC can track direct subsidies, which is a major question, how will the regulators monitor the indirect subsidies provided through cost allocation and the shifting risks from competitive to monopoly ventures? For example, how will the FCC allocate the cost of training and the salary of regional operating employees who are working, laying out the generic specifications for the product and regional operating affiliate develops?

How will the FCC determine what percent of the increase in a regional operating company's cost of capital is due to the perception that it is affiliated, is engaged in financially risky activities?

All of these are enormously complicated questions. They are now answered by this bill. And the answer is they will not be regulated.

To be quite frank, the honest answer is—I should say the most honest answer is that no matter how sophisticated their tracking and reporting techniques, the regulators will never establish solid answers to these questions.

Ironically, proponents of eliminating the manufacturing restrictions point to the FCC's success in auditing the manufacturing arm of NYNEX.

The rate base abuse and cross subsidization that was taking place at material enterprises, however, was not revealed by sophisiticated financial analysis technique. It was not revealed by an audit team sleuthing for the regulator and discovering the abuse. No. It came to light only because an employee leaked the story to the Boston Globe. And even then the FCC was not able to act until 5 years after the violations occurred. And we are going to depend on regulators in this matter? It just will not be successful.

If we have learned the lesson that markets are more efficient regulators than regulators, if we ask whether this would increase the size of the telecommunications market or just shift business to the regional operating company, if we are concerned about the impact of cross-subsidization on the telephone consumer, then the right decision would be to retain the manufacturing restrictions on the regional operating companies.

Unfortunately, that is not what this bill does, and that is why I will oppose the legislation.

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

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

MORNING BUSINESS

Mr. HOLLINGS. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

CRISIS IN YUGOSLAVIA

Mr. MOYNIHAN. Mr. President, recently the esteemed Flora Lewis wrote of the ongoing crisis in Yugoslavia. She noted that this extreme example of ethnic conflict may well be a harbinger of things to come, that success or failure in this case may establish a pattern for other similar disputes which are bound to arise. She closed her article with this warning: "It is a test of whether the new Europe can keep its own order, with implications far beyond Yugoslavia."

I commend this cogent article to my colleagues and 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 New York Times, May 31, 1991]

HOW TO STOP A CIVIL WAR

(By Flora Lewis)

ZAGREB, YUGOSLAVIA.—The shouting match among Yugoslavia's ethnic rivals is becoming a shooting match.

Some Croatian leaders say the warning that civil war looms is only "Serbian propaganda" and that the country can and should peaceably break up into independent states. In vowing yesterday to secede from Yugoslavia by June 30 unless the turmoil dividing the country is solved, Croatia confidently asserted to the world that it can prosper on its own.

Tensions and tempers are high. There are minorities in too many places and interests are too intertwined to solve the dispute by redrawing maps. The U.S. and the European Community have made clear they will not support the breakup of Yugoslavia, as the President of the European Community Commission, Jacques Delors, repeated yesterday.

But the nationalists aren't listening. They shout past one other with such intensity that nobody knows what the arguments come down to any more. They are choking themselves with history, and as always when history becomes the tool of polemics it exacerbates conflict. Like statistics, history can be made to prove any point. It is true that the creation of Yugoslavia after World War I was an artifice to deal with the dissolution of the Austro-Hungarian empire, a rich stew of peoples that never became a melting pot.

Now, the Serbs want either to maintain firm central powers or to achieve the old dream of a Greater Serbia at the expense of their ethnic rivals. Croatia and Slovenia want independence, in an alliance of soverign states, or on their own. Others take sides, according to their hopes for benefit.

This month the U.S. dabbled with cutting off aid to Yugoslavia in an attempt to shock people to their senses, specifically citing Serbian human rights abuses against Albanians in the province of Kosovo. But Prime Minister Ante Markovic, whose economic reform program has been blocked by feuding republics, pointed out that sanctions would only accelerate a collapse. Slovenia and Croatia took it as all the more reason to break with Serbia, since it had provoked the punishment. Washington called off its aid suspension last week.

Yet, there is little chance of the Yugoslavs coming to terms among themeslves. The tide has to be turned from outside, a delicate matter.

This is an urgent case for the new peacekeeping machinery set up last November by the Conference on Security and Cooperation in Europe. The C.S.C.E. has no power, and ostensibly its concern is international disputes, not conflict within states.

But Europe has to be concerned with a crisis that is likely to spill over to neighboring countries. The C.S.C.E. should set up a commission to listen to all sides, identifying issues and reporting the points of contention. It could be a safety valve and provide a cooling-off period.

Rather than government representatives, it should be a group of eminent people experienced in state-craft. It's an idea that provokes interest here. Some names that have come up include Lord Carrington, Eduard Shevardnadze, Helmut Schmidt and Valery Giscard d'Estaing.

It is possible that with encouragement, the Yugoslav Government or one or more of the republics will invite such an initiative from the Conference on Security and Cooperation in Europe. If not, the organization should propose it.

A basic C.S.C.E. principle is that borders cannot be changed by force. If this could be made to apply to the republics' borders, it would go far toward satisfying Croatia and Slovenia. Serbia would object at first, but it might be persuaded in return for assuring the integrity of the Yugoslav state.

It is a test of whether the new Europe can keep its own order, with implications far beyond Yugoslavia.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,271st day that Terry An-

derson has been held captive in Lebanon.

As we debate the merits of granting most-favored-nation status to the People's Republic of China on this anniversary of the massacre at Tiananmen Square, our thoughts turn to the rights of man and the the rule of law. The question is not whether there are human rights abuses in China, rather the question is whether to condition China's trade status on compliance with international standards. A most important debate, indeed.

I raise my voice at this point, however, to remind my colleagues of other abuses of rights and law. Of the innocent people held against their will in Lebanon and around the world. Hostage taking is not only immoral, it is categorically forbidden under international law. And I call on all parties holding hostages to release them.

VIOLENCE IN LITHUANIA

Mr. DIXON. Mr. President, a most curious report came out of the Soviet Union today. The Soviet Prosecutor General, Nikolai Trubin, reported that the investigation into the violence and mayhem in Vilnius, Lithuania, last January that became known as Bloody Sunday was not caused by Soviet military troops. I underline not.

He claims that it was not caused by Soviet military troops. In fact, Mr. President, according to the report in this morning's New York Times "The victims had not been crushed by tanks or shot by (Soviet) troops * * * but they were shot and killed by 'Lithuanian militants.'"

The report, Mr. President, is remarkable in its insistence on a bald-faced lie. Mr. President, I have here a videotape. I hope every Senator that may be watching television in his or her office will look at this. I have here a videotape, Mr. President, taken of the murder and the violence inflicted against unarmed Lithuanians by armed Soviet military black beret troops. This videotape, Mr. President, reveals it all.

There is no question as to who were the aggressors, and who the unarmed individuals are. I have seen this video, Mr. President. It is brutal, a brutal video.

My staff showed it some time ago to anyone who wished to view it. I want to say to every Senator, and every Senator who wants a staffer to look at this, here is the videotape you ought to see.

The images of the Soviet troops using rifle butts and nightsticks, of tanks rolling over women and men, who did not even have sticks with which to defend themselves, of the injured and overburdened Vilnius hospitals, recalled the brutality I spoke about in Tiananmen Square that we commemorated earlier today.

Should any of my colleagues or their staffs wish to view this video Mr. President, I will be happy to share it with them. The camera does not lie. The Soviet Prosecutor General lies. It must be noted that this report is timed to blunt any criticism that may greet Soviet President Gorbachev in Oslo as he delivers his delayed Nobel Peace Prize lecture. What a laugh—this despite the increase in Soviet interior ministry troop violence against Baltic border posts and the deployment of troops around Vilnius last night.

Mr. President, I am struck by the issuance of a report so far from the truth it reaffirms the concerns and fears of Americans around the country who believe that our inching toward an embrace of the Soviet Union is terribly premature. If the Soviets can so blithely dimiss the bloody reality of January 13, 1991, can we then take any assurance from Moscow about democratization, about reform, about immigration policy? I think not.

I urge the administration to condemn this outrageous report. I remind the Soviets that any improvement of relations with the Soviet Union is predicated on our insistence that they abide by international standards of human rights and stop the military intimidation and oppression of the Baltics.

Mr. President, I just want to say this to my colleagues in conclusion. A couple of weeks ago I had the honor and privilege of going to the University of Illinois, Chicago campus. Many thousands of Lithuanian-Americans were there playing music, singing songs, marching with their children in that auditorium, thousands of them pledging allegiance to our country and its flag, and remembering their own country.

And it does violence, Mr. President, to our way of life for us to permit and to condone this kind of conduct against innocent people. That annexation of those three Baltic States over half a century ago has never been recognized by our country. It never will be recognized. And the time has come to give recognition to those States.

Those countries, and those millions of people who want to be free, who love the democratic institutions we love, are being brutalized. And we stand here silent. It is an outrage, Mr. President.

I thank the distinguished manager for letting me make that record. I say to every staff person of every Senator representing the interests of our great Nation, who loves this great Nation of ours, every one of them ought to look at this, look at the brutality involved in it, against innocent people in Lithuania by the Soviets. This outrageous lie ought to be condemned by the U.S. Senate.

I yield the floor.

TECHNICAL AMENDMENTS TO VARIOUS INDIAN LAWS ACT

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 98, S. 1193, regarding technical amendments to various Indian laws.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1193) to make technical amendments to various Indian laws.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 282

(Purpose: To delete provision amending Hoopa Yurok Settlement Act)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk in behalf of Mr. INOUYE, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for Mr. INOUYE, proposes an amendment numbered 282.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 3, strike lines 8 through 21.

On page 3, line 22, delete "4" and insert "3".

On page 4, line 15, delete "5" and insert "4".

On page 4, line 6, delete the word "shall" and insert in lieu thereof the word "may".

On page 2, strike lines 18 through 24 and insert in lieu thereof the following:

"(F) If, during the one-year period described in subparagraph (B) there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision."

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

The amendment (No. 282) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1193

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 "Technical Amendments to Various Indian Laws Act of 1991".

SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT.

(a) EXTENSION OF TIME FOR OPERATION OF CERTAIN GAMING ACTIVITIES.—Section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703) is amended by adding at the end of paragraph (7) the following new subparagraphs:

"(E) Notwithstanding any other provision of this paragraph, the term 'class II gaming' includes, during the 1-year period beginning on the date of enactment of this subparagraph, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin or Montana on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 11(d)(3) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(3)).

"(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.".

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMING COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of section 18, there is authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.".

SEC. 3. AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT.

Section 204 of the Indian Land Consolidation Act (25 U.S.C. 2203) is amended—

(1) by deleting "(1) the sale price" and inserting in lieu thereof "(1) except as provided by subsection (c), the sale price"; and

(2) by adding immediately after subsection (b) the following new subsection:

"(c) The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on the date of the enactment of this subsection, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.".

SEC. 4. AMENDMENT TO THE ACT ENTITLED "AN ACT TO PROVIDE FOR THE ALLOTMENT OF LANDS OF THE CROW TRIBE, FOR THE DISTIBUTION OF TRIBAL FUNDS, AND FOR OTHER PURPOSES".

Section 1 of the Act entitled "An Act to provide for the allotment of lands of the Crow Tribe, for the distribution of tribal funds, and for other purposes", approved June 4, 1920 (41 Stat. 751) is amended by inserting immediately after "*Provided*, That any Crow Indian classified as competent shall have the full responsibility of obtaining compliance with the terms of any lease made", a comma and the following: "except for those terms that pertain to conservation and land use measures on the land, and the Superintendant shall ensure that the leases contain proper conservation and land use provisions and shall also enforce such provisions".

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the bill was passed, and I move that the motion be laid on the table.

The motion to lay on the table was agreed to.

SENATE RESOLUTION 135 AND SENATE RESOLUTION 136

Mr. HOLLINGS. Mr. President, I send two resolutions to the desk, and I ask unanimous consent that they be considered and agreed to en bloc, that the motions to reconsider be tabled en bloc, and that their consideration be shown separately in the Record.

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

The resolution considered and agreed to en bloc are as follows:

S. RES. 135

Resolved, That paragraph 2 of Rule XXV of the Standing Rules of the Senate is amended as follows:

Strike "16" after "Environment and Public Works" and insert in lieu thereof "17".

Strike "18" after "Foreign Relations" and insert in lieu thereof "19".

Strike "14" after "Governmental Affairs" and insert in lieu thereof "13".

That paragraph 3(a) of rule XXV of the Standing Rules of the Senate is amended for the One Hundred Second Congress as follows:

Strike "18" after "Small Business" and insert in lieu thereof "19".

S. RES. 136

Resolved, That the Senator from Pennsylvania (Mr. WOFFORD) is hereby appointed to serve as a member on the Committee on Environment and Public Works, the Committee on Foreign Relations, and the Committee on Small Business.

TO MAKE A MINORITY PARTY APPOINTMENT TO THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HOLLINGS. Mr. President, on behalf of the distinguished minority leader, the distinguished Senator from Kansas [Mr. DOLE] I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 137) to make a minority party appointment to the Committee on Banking, Housing and Urban Affairs.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 137) was agreed to.

The resolution is as follows:

S. RES. 137

Resolved, That the following Senator (Mr. CHAFEE) shall be added to the minority party's membership on the Senate Committee on Banking, Housing and Urban Affairs for the One Hundred Second Congress until November 6, 1991.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPORT ON THE NATION'S ACHIEVEMENTS IN AERONAUTICS AND SPACE—MESSAGE FROM THE PRESIDENT—PM 54

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

It is with great pleasure that I transmit this report on the Nation's achievements in aeronautics and space during 1989 and 1990, as required under section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476). Not only do aeronautics and space activities involve 14 contributing departments and agencies of the Federal Government, as represented in this report, but the results of this ongoing research and development affect the Nation as a whole.

In 1989 and 1990 we successfully conducted eight space shuttle flights, deploying the Magellan Venus probe, the Galileo Jupiter probe, the Syncom IV Navy communications satellite, and the Hubble Space Telescope and retrieving the Long Duration Exposure Facility. The successful launch of 28 expendable launch vehicles put into orbit a wide variety of spacecraft including the Cosmic Background Explorer and the Roentgen satellite. In addition, many ongoing activities contributed to the period's achievements. The Voyager 2 encounter with Neptune capped off the highly successful 12-year Voyager program; the Tracking and Data Relay Satellite System became fully operational; the Defense Advanced Research Projects Agency sponsored a commercially developed first launch of the Pegasus Air-Launched Space Booster; the Department of Commerce continued studies on ozone, cloud occurrence, and snow cover—factors critical to our study of climate change; the Federal Aviation Administration strengthened aviation security by deploying the advanced Thermal Neutron Analysis system for detecting explosives in baggage; the Smithsonian Institution contributed greatly to the public's understanding of space research and conducted programs to improve pre-college science instruction; and we helped Soviet Armenians in need of medical assistance by establishing the Telemedicine Space Bridge between U.S. doctors and hospitals in

earthquake-struck Armenia. These are just a few of the many accomplishments produced by our 1989 and 1990 budgets for space ($28.4 billion and $31.8 billion, respectively) and aeronautics ($10.6 billion and $11.4 billion, respectively).

The years 1989 and 1990 were successful ones for the U.S. aeronautics and space programs. Not only did these lead to significant accomplishments in scientific knowledge, but also to improvements in the quality of life on Earth through benefits to the economy, to the environment, and in the defense of freedom. Our mission must be to provide stability in aeronautics and space leadership in an ever-changing international environment.

GEORGE BUSH.

THE WHITE HOUSE, *June 4, 1991.*

MESSAGES FROM THE HOUSE

At 3:23 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 292. An act to expand the boundaries of the Saguaro National Monument; and

S. 483. An act entitled the "Taconic Mountains Protection Act of 1991".

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 971) to designate the facility of the U.S. Postal Service located at 630 East 105th Street, Cleveland, OH, as the "Luke Easter Post Office".

The message further announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 2042. An act to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes;

H.R. 2100. An act to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes;

H.R. 2426. An act making appropriations for military contruction for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes;

H.R. 2427. An act making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 72. Joint resolution to designate December 7, 1991, as "National Pearl Harbor Remembrance Day"; and

H.J. Res. 138. Joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week."

The message also announced that pursuant to the provisions of section 4(a) of Public Law 98-399, the Speaker appoints as members of the Martin Luther King, Jr., Federal Holiday Commission the following Members on the part of the House: Mr. WHEAT, Mr. SAWYER, Mr. REGULA, and Mr. FRANKS of Connecticut.

The message further announced that pursuant to the provisions of 20 U.S.C. 42 and 43, the Speaker appoints Mr. MCDADE to the Board of Regents of the Smithsonian Institution on the part of the House, to fill the existing vacancy thereon.

The message also announced that pursuant to the provisions of section 203 of Public Law 99-660, as amended by title IV of Public Law 100-436, the minority leader appoints Mr. GOODLING to serve as a member on the part of the House of the National Commission to Prevent Infant Mortality.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2042. An act to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 2100. An act to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; to the Committee on Armed Services.

H.R. 2426. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

H.R. 2427. An act making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

H.J. Res. 72. Joint resolution to designate December 7, 1991, as "National Pearl Harbor Remembrance Day"; to the Committee on the Judiciary.

H.J. Res. 138. Joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week"; to the Committee on the Judiciary.

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-1310. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend section 5584 of title 5, section 2774 of title 10, and section 716 of title 32, United States Code, to increase from $500 to $2,500 the maximum aggregage amount of a claim that may be waived by the head of an agency under those sections; to the Committee on Armed Services.

EC-1311. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report on the operations of the Bank for fiscal year 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC-1312. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a survey of section 202 and section 8 projects under the National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

EC-1313. A communication from the Administrator of the Federal Railroad Administration, transmitting, pursuant to law, a report regarding the advisability and feasibility of requiring automatic train control systems on each rail corridor on which passengers or hazardous materials are carried; to the Committee on Commerce, Science, and Transportation.

EC-1314. A communication from the Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, notice of leasing systems for the Beaufort Sea, Sale 124, scheduled to be held in June 1991; to the Committee on Energy and Natural Resources.

EC-1315. A communication from the Independent Counsel, Office of the Independent Counsel, transmitting, pursuant to law, a report on status of appropriated funds for fiscal year 1991; to the Committee on Governmental Affairs.

EC-1316. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the annual report on civil monetary penalty assessments and collections for fiscal year 1990; to the Committee on Governmental Affairs.

EC-1317. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the semiannual report of the Office of Inspector General of the Board for the period October 1, 1990 through March 31, 1991; to the Committee on Governmental Affairs.

EC-1318. A communication from the Assistant Attorney General (Legislative Affairs), transmitting a draft of proposed legislation entitled the "Money Laundering Improvements Act"; to the Committee on the Judiciary.

EC-1319. A communication from the Secretary of Labor, transmitting a draft of proposed legislation to amend the Job Training Partnership Act to improve the delivery of services to hard-to-serve youth and adults, to establish the Youth Opportunities Unlimited Program, and for other purposes; to the Committee on Labor and Human Resources.

EC-1320. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the National Center on Educational Statistics entitled "The Condition of Education, 1991"; to the Committee on Labor and Human Resources.

EC-1321. A communication from the Secretary of Education, transmitting a draft of proposed legislation to reauthorize the program for infants and toddlers with disabilities under part H of the Individuals with Disabilities Education Act, and for other purposes; to the Committee on Labor and Human Resources.

EC-1322. A communication from the Secretary of Education, transmitting a draft of proposed legislation to amend the School Dropout Demonstration Assistance Act of 1988, and for other purposes; to the Committee on Labor and Human Resources.

EC-1323. A communication from the Secretary of Education, transmitting, pursuant to law, the annual report of the Helen Keller

National Center for the Deaf-Blind Youths and Adults for the 1990 program year; to the Committee on Labor and Human Resources.

EC-1324. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to authorize the Secretary of Veterans Affairs to accept gifts for the benefit of all Departmental programs; to the Committee on veterans' 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-91. A resolution adopted by the House of Representatives of the State of Illinois; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 554

"Whereas the Defense Department has begun a program with a code name of Operation Quick Silver to reduce the size of its force structure; and

"Whereas the Illinois Army National Guard as presently constituted stands ready to assist the people of this State in many ways, such as providing medical emergency response capabilities during a major disaster; and

"Whereas plans currently call for the elimination of some 6,800 part-time positions and some 400 full-time jobs in Illinois alone, representing $55 million in lost salaries; and

"Whereas Defense Department cuts made in Operation Quick Silver could place in jeopardy up to 28 Guard armories in this State; and

"Whereas the State of Illinois could lose $2.3 million in State tax revenue if Operation Quick Silver proceeds as planned; and

"Whereas the 2,330 State scholarships received by Illinois Guardsmen in fiscal year 1991 would be lost if troop cuts take place; and

"Whereas the Illinois National Guard maintains a long and proud tradition of service to the people of this State; therefore be it

"*Resolved, by the House of Representatives of the Eighty-Seventh General Assembly of the State of Illinois*, That we urge it made known to the Department of Defense our objection to the full implementation of Operation Quick Silver, particularly as it affects units of the Illinois Guard; and be it further

"*Resolved*, That suitable copies of this preamble and resolution be presented to each member of the Illinois Congressional Delegation.

"Adopted by the House of Representatives on May 21, 1991."

POM-92. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Armed Services:

SENATE CONCURRENT RESOLUTION NO. 58

"Whereas England Air Force Base and the 23rd Tactical Fighter Wing played a vital role in the recent Operation Desert Storm to liberate Kuwait; and

"Whereas the Flying Tigers destroyed a full Iraqi armored division of tanks, hundreds of trucks, armored personnel carriers, and heavy artillery pieces; and

"Whereas England Air Force Base employs three thousand active military personnel, one thousand civilians, with four thousand dependents and eight thousand military retirees use the base facilities; and

"Whereas England Air Force Base houses seventy-two military aircraft of the 23d Tactical Fighter Wing; and

"Whereas Louisiana had a large percentage of National Guard personnel, who proudly served in the Persian Gulf, more than any other state in the Union; and

"Whereas the closing of England Air Force Base would have an extremely negative economic impact on central Louisiana's economy to the extent of one hundred forty nine million dollars annually; and

"Whereas the closing of England Air Force Base would be an undeserved reward for the tremendous military effort put forth by the people of Louisiana in Operation Desert Storm; and

"Whereas the people of Louisiana and our military personnel deserve the highest consideration from the Congress of the United States for their service and patriotism: Therefore, be it

"*Resolved*, That the Legislative of Louisiana memorializes the Congress of the United States to show its gratitude to the patriotic men and women of the military and the people of Louisiana who support their effort by keeping England Air Force Base open and vital to the economy of Louisiana; Be it further

"*Resolved*, That a copy of this Resolution shall be transmitted to the Secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-93. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Commerce, Science, and Transportation:

SENATE JOINT MEMORIAL 91-4

"Whereas in the waning moments of the 1990 legislative session, the Congress of the United States created a new tax in the form of a fee or charge upon recreational vessels; and

"Whereas this new federal tax on recreational vessels is in addition to increased taxes on gasoline and boat registration fees currently paid by boaters in all states; and

"Whereas additional taxes have a negative impact on state economics; and

"Whereas the estimated seven hundred eighteen million dollars to be collected over a five-year period from boaters as a result of the new federal tax on recreational vessels are not pledged for uses which benefit boaters or the United States' Coast Guard but may be used for any purpose; and

"Whereas the United States House of Representatives voted 287-110 against boat 'use fees' in 1987: Now, therefore, be it

"*Resolved by the Senate of the fifty-eighth general assembly of the State of Colorado, the House of Representatives concurring herein*, That the members of the Congress of the United States are hereby memorialized to adopt House Resolution 534 designed to repeal the new federal tax on recreational vessels before it is implemented: "Be it further

"*Resolved*, That copies of this Memorial be sent to the President of the Senate and the Speaker of the House of Representatives of Congress and the members of the congressional delegation representing the state of Colorado in Congress."

POM-94. A resolution adopted by the Senate of the State of Michigan; to the Committee on Commerce, Science, and Transportation:

SENATE RESOLUTION NO. 92

"Whereas the automotive industry continues to make steady, continuous improvements in the fuel economy of the fleet it offers for sale to the public; and

"Whereas efforts have been made recently in Congress to impose drastic, government-mandated increases in the Corporation Average Fuel Economy (CAFE) standards on the automotive industry for cars and light trucks, calling for a forty percent increase to be achieved by 2001; and

"Whereas a major increase in the CAFE standards would sharply limit consumer's choices of vehicles, limiting them to choose from minicompact, subcompact, and compact cars; and

"Whereas unrealistic standards would seriously reduce the availability of full-size and mid-size vans and pickup trucks—the workhorses of many small businesses and farms; and

"Whereas it has been estimated that significantly higher CAFE standards could cost as many as 300,000 jobs in the United States in the next decade; and

"Whereas higher CAFE standards would do little to enhance our nation's security, as it would reduce oil imports by only one to two percent by the year 2005; and

"Whereas many national safety experts have expressed the opinion that a drastic increase in the standards would increase the risk of fatalities and injuries because of smaller and lighter automobiles, creating a vast difference in vehicle sizes operating on the roads and highways: Now, therefore, be it

"*Resolved by the Senate*, That the members of this legislative body hereby memorialize the Congress of the United States to reject any effort to impose unrealistic government-mandated standards on the automotive industry, thus preserving the freedom of the public to exercise its choice of vehicle to meet its needs; and be it further

"*Resolved*, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation."

POM-95. A resolution adopted by the Assembly of the State of New Jersey; to the Committee on Environment and Public Works:

"ASSEMBLY RESOLUTION NO. 224

"Whereas the beaches and shores of the Northeastern States, and especially the 127 miles of Atlantic coastline within the jurisdiction of New Jersey, not only constitute a recreational, economic, and social asset of the individual states, but also a precious and irreplaceable natural resource of the nation; and

"Whereas in recent years, the beaches and shores of New Jersey have suffered from increased pollution and erosion, and the response of State, local and federal authorities has been reactive and piecemeal rather than comprehensive, indicating a need to develop long-term, cost-effective solutions to these problems, as well as a need for education and information-sharing among engineers and planners, both governmental and private; and

"Whereas the effectiveness of regulatory and enforcement efforts of the State of New Jersey, diligent as they may be, is necessarily limited by the fact that the State's jurisdiction extends only three miles from its boundary, and that, accordingly, the United States Environmental Protection Agency retains enforcement authority with respect to the overwhelming percentage of violations giving rise to the pollution problem; and

"Whereas environmental pollution is now generally acknowledged to be a national and

interstate phenomenon and, that, therefore, it is vital that Congress take a role in providing funding for the research being conducted to prevent coastal pollution and alleviate beach erosion; and

"Whereas the Alliance for Coastal Engineering has been formed by the Davidson Laboratory, an internationally recognized engineering facility at Stevens Institute of Technology in Hoboken, New Jersey, to conduct research to improve the control of beach erosion and coastal pollution, and to provide educational offerings to engineers and planners employed by private firms and local and State government: Now, therefore, be it

"Resolved by the Assembly of the State of New Jersey:

"1. The Congress of the United States is memorialized to provide funding for the Alliance for Coastal Engineering which has been formed by the Davidson Laboratory at Stevens Institute of Technology in Hoboken, New Jersey, to conduct research to improve the control of beach erosion and coastal pollution, and to provide educational offerings to engineers and planners employed by private firms and local and State government.

"2. Copies of this resolution, signed by the Speaker and attested by the Clerk, shall be forwarded to the Vice-President of the United States, to the Speaker of the House of Representatives, to each member of Congress elected from this State, to the Administrators of the United States Environmental Protection Agency and to the Region II component thereof, and to the Commissioner of the New Jersey Department of Environmental Protection.

"STATEMENT

"The purpose of this resolution is to memorialize the Congress of the United States to provide funding to the Alliance for Coastal Engineering at Stevens Institute of Technology in Hoboken, New Jersey to improve the control of beach erosion and coastal pollution.

"HIGHER EDUCATION

"Memorializes Congress to provide funding to the Alliance for Coastal Engineering at Stevens Institute of Technology for research on controlling coastal pollution and beach erosion."

POM-96. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"SENATE CONCURRENT RESOLUTION NO. 103

"Whereas the authority of the president of the United States to negotiate trade agreements under "fast track" authority expires on June 19, 1991; and

"Whereas this "fast track" authority is simply a mechanism which allows the president to speed the approval of trade agreements as the Congress is restricted to an up-or-down vote, without amendments, on any agreement negotiated under this authority; and

"Whereas the Congress initially included the current version of the "fast track" authority for approval of trade agreements in the 1974 Trade Act and reenacted this authority in the 1988 trade legislation; and

"Whereas absent a resolution passed by the Congress to disapprove the "fast track" authority, the authority will be automatically extended for another two years until May 31 1993; and

"Whereas "fast track" authority is essential for the good faith negotiation of a trade agreement with Mexico, and for a possible negotiation of a North American Free Trade Agreement between Mexico, Canada, and the United States; Therefore, be it

"Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to vote against any resolution which has been proposed to disapprove of the "fast track" authority: Be it further

"Resolved, That the Legislature of Louisiana supports the negotiation of a free trade agreement with Mexico, which would be sensitive to environmental issues, labor markets and conditions, competing industries, and regulatory issues: Be it further

"Resolved, That the Legislature of Louisiana believes that a North American Free Trade Agreement between Mexico, Canada, and the United States would be in the best interest of all parties and therefore strongly urges that a dialogue be established to examine the potential for a trilatral negotiation to take place: Be it further

"Resolved, That a duly attested copy of this Resolution be immediately transmitted to the President of the United States, to the secretary of the United States Senate, to the clerk of the United States House of Representatives, to each member of the Louisiana delegation to the Congress of the United States, and to the presiding officer of each house of each state legislature in the United States."

POM-97. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Finance:

"SENATE CONCURRENT RESOLUTION 41

"Whereas liquefied petroleum gas (LPG) for automotive use is a non-toxic, non-corrosive, lead-free, hydrocarbon fuel that is capable of delivering consistent vehicle performance with clean, smooth combustion under all driving conditions; and

"Whereas the technology exists to affordably convert engines from gasoline to "dual fuel" or "LPG-only" systems, with data from Australia indicating that LPG conversion is a sound proposition for motorists who drive more than 19,000 miles a year or who retain their vehicles for four or five years; and

"Whereas data from Australia also indicate that the initial cost of standard installation for an LPG system can be recouped in less than fifteen months with approximately 19,000 miles of driving a year, and that LPG-powered vehicles are equally safe, if not safer overall, than vehicles with gasoline systems; and

"Whereas although LPG operation involves some loss of power as compared to gasoline operation, the difference between the two is minimal and barely noticeable except under extreme engine load, and because LPG vaporizes completely before it enters the engine, its use results in a smoother application of power across the range of engine operating conditions; and

"Whereas although LPG produces less energy output than gasoline on a gallon for gallon basis and requires up to twenty per cent more fuel by volume to travel a given distance, data from Australia indicate that for every six dollars worth of LPG used, a person must use ten dollars worth of gasoline to travel the same distance; and

"Whereas with growing concerns about the long-term environmental and health effects of air pollution, the ongoing war in the Persian Gulf and the destruction of that region's oil producing capacity, and the ever present danger of catastrophic oil spills, the conversion of automobiles from gasoline to "dual-fuel" or "LPG only" systems should be encouraged; now, therefore, be it

Resolved by the Senate of the sixteenth legislature of the State of Hawaii, regular session of 1991, the House of Representatives concurring, That the Congress of the United States is respectfully requested to provide tax credits to motorists to encourage the conversion of automobiles from gasoline to liquefied petroleum gas; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States Senate and the Speaker of the United States House of Representatives, and the members of Hawaii's delegation to the Congress of the United States."

POM-98. A resolution adopted by the Pinellas County Florida Metropolitan Planning Organization expressing concern over the use of Federal gas tax revenue for non-transportation purposes; to the Committee on Finance.

POM-99. A concurrent resolution adopted by the Legislature of the State of Oklahoma; to the Committee on Governmental Affairs.

"HOUSE CONCURRENT RESOLUTION NO. 1013

"Whereas there are more than 88,000 American service personnel missing in action from World War II, Korea, and Vietnam; and

"Whereas recent information has been released regarding American service personnel held against their will after World War II, the Korean War, and the Vietnam Conflict; and

"Whereas the United States Senate Foreign Relations Committee released an interim report in October 1990 that concluded that American service personnel were held in Southeast Asia after the end of the Vietnam Conflict and that information available to the United States government does not rule out the probability that American service personnel are still being held in Southeast Asia; and

"Whereas on April 12, 1973, the United States Department of Defense publicly stated that there was "no evidence" of live American POWs in Southeast Asia; and

"Whereas the public statement was given nine days after Pathet Lao leaders declared on April 3, 1973, that Laotian communist forces did, in fact, have live American prisoners of war in their control; and

"Whereas no POWs held by the Laotian government and military forces were ever released; and

"Whereas there have been more than 11,700 live sighting reports received by the Department of Defense since 1973 and, after detailed analysis, the Department of Defense admits there are a number of "unresolved" and "discrepancy" cases; and

"Whereas in October 1990, the United States Senate Foreign Relations Committee released an "Interim Report on the Southeast Asian POW/MIA Issue" that concluded that United States military and civilian personnel were held against their will in Southeast Asia, despite earlier public statements by the Department of Defense that there was "no evidence" of live POWs, and that information available to the United States government does not rule out the probability that United States citizens are still held in Southeast Asia; and

"Whereas the Senate Interim Report states that congressional inquiries into the POW/MIA issue have been hampered by information that was concealed from committee members, or were "misinterpreted or manipulated" in government files; and

"Whereas the POW/MIA truth bill would direct the heads of the federal government agencies and departments to disclose infor-

mation concerning the United States service personnel classified as prisoners of war or missing in action from World War II, the Korean War, and the Vietnam Conflict; and

"Whereas this bill would censor the sources and methods used to collect the live sighting reports, thus protecting national security; and

"Whereas the families of these missing service personnel need and deserve the opportunity to have access to the information concerning the status of their loved ones after these many years, now, Therefore, be it,

"*Resolved by the House of Representatives of the 1st Session of the 43rd Oklahoma Legislature, the Senate concurring therein;* That the Congress of the United States is urged to appoint a select committee to assist the United States Senate Foreign Relations Committee in obtaining information in government files.

"That the Congress of the United States is urged to begin immediate committee hearings to consider enacting the POW/MIA truth bill.

"That the Congress of the United States is requested to continue funding of this investigation that is vital to resolving the POW/MIA issue in Southeast Asia.

"That a copy of this resolution be distributed to the Secretary of State, the President and Secretary of the United States Senate, the Speaker and Chief Clerk of the United States House of Representatives, and each member of the Oklahoma Congressional Delegation."

POM-100. A resolution adopted by the City Council of Seattle, Washington favoring the passage of H.R. 7, the "Brady Bill"; to the Committee on the Judiciary.

POM-101. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Rules and Administration.

"SENATE JOINT MEMORIAL 91-3.

"Whereas legislation has been introduced in Congress which would strengthen the "Federal Election Campaign Act of 1971"; and

"Whereas such strengthening of federal campaign laws would enhance citizens' confidence in our representative government; and

"Whereas specific reforms are necessary to curb excessive special interest influence on elections, to reduce campaign costs, and to halt contributions and expenditures by multicandidate political committees controlled by foreign-owned corporations; and

"Whereas franking privileges of incumbents should be restricted to increase competition in Congressional elections; and

"Whereas reapportionment should produce the fairest and most competitive voting districts that are possible; and

"Whereas contributions which are solicited or received from prohibited sources or which are not subject to record-keeping, reporting, or disclosure requirements should be deemed unlawful; and

"Whereas contributions made through intermediaries or conduits should be prohibited or restricted, and such contributions should be properly disclosed and reported; and

"Whereas the Federal Election Commission should have the authority to pursue violations of election laws aggressively, thereby promoting better compliance with such laws; and

"Whereas the Federal Election Commission should act as a clearinghouse of political activities; and

"Whereas all available methods should be utilized to establish a political climate which is viewed by the electorate as fair, competitive, and responsive; Now, therefore, be it

"*Resolved by the Senate of the fifty-eight general assembly of the State of Colorado, the House of Representatives concurring herein:* That the Colorado general assembly hereby urges the Congress of the United States to adopt legislation strengthening the "Federal Election Campaign Act of 1971"; be it further

"*Resolved,* That copies of this memorial be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Colorado Congressional delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

S. 1204. An original bill to amend title 23, United States Code, and for other purposes (Rept. No. 102-71).

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. LEVIN:

S. 1198. A bill to provide that the compensation paid to certain corporate officers shall be treated as a proper subject for action by security holders, to require certain disclosures regarding such compensation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WIRTH:

S. 1199. A bill to amend the Department of Energy Organization Act to require the Secretary of Energy to establish an Area Office in Grand Junction, Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself, Mr. GORE, and Mr. DOLE):

S. 1200. A bill to advance the national interest by promoting and encouraging the more rapid development and deployment of a nationwide, advanced, interactive, interoperable, broadband communications infrastructure on or before 2015 and by ensuring the greater availability of, access to, investment in, and use of emerging communications technologies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DECONCINI:

S. 1201. A bill to require the Secretary of Veterans Affairs to increase by 60 the number of nursing home beds operated and maintained at the Department of Veterans Affairs Medical Center Nursing Home Care Unit, Prescott, Arizona; to the Committee on Veterans Affairs.

By Mr. HELMS:

S. 1202. A bill to amend the Internal Revenue Code of 1986 to allow the one-time exclusion on gain from sale of principal residence to be taken before age 55 if the taxpayer or a family member suffers a catastrophic illness; to the Committee on Finance.

S. 1203. A bill to amend the Internal Revenue Code of 1986 to provide that the one-time exclusion from sale of a principal residence shall not be precluded because the taxpayer's spouse, before becoming married to the taxpayer, elected the exclusion; to the Committee on Finance.

By Mr. BURDICK from the Committee on Environment and Public Works:

S. 1204. An original bill to amend title 23, United States Code, and for other purposes; placed on the calendar.

By Mr. WELLSTONE:

S. 1205. A bill for the relief of Alicia Lasin Brummitt, and Bobby Lasin Brummitt; to the Committee on the Judiciary.

By Mr. PELL (by request):

S. 1206. A bill to amend the International Security and Development Cooperation Act of 1985 to authorize appropriations for fiscal years 1992 and 1993 for the United States Commission for the Preservation of America's Heritage Abroad for carrying out that Act; to the Committee on Foreign Relations.

By Mr. DANFORTH (for himself, Mr. JEFFORDS, Mr. SPECTER, Mr. RUDMAN, Mr. CHAFEE, Mr. COHEN, Mr. DURENBERGER, Mr. HATFIELD, and Mr. DOMENICI):

S. 1207. A bill to strengthen and improve Federal civil rights laws, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DANFORTH (for himself, Mr. JEFFORDS, Mr. SPECTER, Mr. RUDMAN, Mr. CHAFEE, Mr. COHEN, Mr. DURENBERGER, Mr. HATFIELD, and Mr. DOMENICI):

S. 1208. A bill to amend the Civil Rights Act of 1964 to clarify provisions regarding disparate impact actions, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DANFORTH (for himself, Mr. JEFFORDS, Mr. SPECTER, Mr. RUDMAN, Mr. CHAFEE, Mr. COEHEN, Mr. DURENBERGER, Mr. HATFIELD, and Mr. DOMENICI):

S. 1209. A bill to provide for damages in cases of intentional employment discrimination, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PELL.

S. 1210. A bill to amend the Immigration and Nationality Act to provide for the deportation of aliens who are convicted of felony drunk driving; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 1211. A bill to amend title XIX of the Social Security Act to permit States the option of providing medical assistance to individuals with a family income not exceeding 300 percent of the income official poverty line with appropriate costsharing, and for other purposes; to the Committee on Finance.

S. 1212. A bill to amend title XVIII of the Social Security Act to provide coverage for certain preventive care items and services under part B and to provide a discount in premiums under such part for certain individuals certified as maintaining a healthy lifestyle; to the Committee on Finance.

S. 1213. A bill to amend title IX of the Public Health Service Act to require the Director of the Centers for Disease Control to acquire and evaluate data concerning preventative health and health promotion, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SPECTER:

S. 1214. A bill to direct the Secretary of Health and Human Services to treat physicians services furnished in Lancaster County, Pennsylvania, as services furnished in number II locality for purposes of determin-

ing the amount of payment for such services under part B of the Medicare program; to the Committee on Finance.

By Mr. GORTON (for himself, Mr. NUNN, Mr. MCCAIN, Mr. INOUYE, Mr. COHCRAN, Mr. DECONCINI and Mr. CRAIG):

S. 1215. A bill to amend the Public Health Service Act to establish a program to fund maternity home expenses and improve programs for the collection and disclosure of adoption information, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GORTON (for himself, Mr. KENNEDY, Mr. KOHL, Mr. DIXON, Mr. COHEN, Mr. GORE and Mr. D'AMATO):

S. 1216. A bill to provide for the deferral of enforced departure and the granting of lawful temporary resident status in the United States to certain classes of nonimmigrant aliens of the People's Republic of China; to the Committee on the Judiciary.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1217. A bill to establish a field office of the Federal Emergency Management Agency in the State of Hawaii; to the Committee on Governmental Affairs.

By Mr. BAUCUS (for himself and Mr. CHAFEE):

S. 1218. A bill to enhance the conservation of exotic wild birds; to the Committee on Environment and Public Works.

By Mr. BAUCUS (for himself and Mr. CHAFEE):

S. 1219. A bill to enhance the conservation of exotic wild birds; to the Committee on Environment and Public Works.

By Mr. DECONCINI (for himself, Mr. GRASSLEY, Mr. PELL, Mr. STEVENS, Mr. WALLOP, Mr. LUGAR, Mr. PRESSLER, Mr. BRADLEY, Mr. CRAIG, Mr. D'AMATO, Mr. GLENN, Mr. SASSER, Mr. KERRY, Mr. SIMON, Mr. DIXON, Mr. KENNEDY, Mr. MITCHELL, Mr. COHEN, Mr. ROBB, Mr. MOYNIHAN, Mr. JEFFORDS, Mr. RIEGLE, Mr. LAUTENBERG, Mr. KOHL, Mr. BROWN, Mr. CHAFEE, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. CONRAD, Mr. COCHRAN, Mr. SARBANES, Mr. BRYAN, Mr. BIDEN, Mr. DODD, Ms. MIKULSKI, Mr. JOHNSTON, Mr. WARNER, Mr. THURMOND, Mr. NUNN, Mr. PACKWOOD, Mr. DOLE, Mr. HATCH, Mr. BREAUX, Mr. LIEBERMAN, Mr. ADAMS, Mr. MURKOWSKI, Mr. SPECTER, Mr. REID, Mr. HOLLINGS, Mr. SHELBY, Mr. DOMENICI, Mr. HATFIELD, Mr. GORE, and Mr. CRANSTON):

S.J. Res. 154. Joint resolution to designate August 1, 1991, as "Helsinki Human rights Day"; to the Committee on the Judiciary.

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S.J. Res. 155. Joint resolution commemorating the 250th Anniversary of the arrival of Vitrus Bering in America; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HOLLINGS (for Mr. MITCHELL):

S. Res. 135. A resolution to amend paragraphs 2 and 3 of Rule XXV; considered and agreed to.

S. Res. 136. A resolution to make appointments to the Committee on Environment and Public Works, the Committee on Foreign Relations and the Committee on Small Business; considered and agreed to.

By Mr. HOLLINGS (for Mr. DOLE):

S. Res. 137. A resolution to make a minority party appointment to the Committee on Banking, Housing, and Urban Affairs; considered and agreed to.

By Mr. DECONCINI:

S. Con. Res. 45. A concurrent resolution to express the sense of the Congress that the President should consider certain factors in 1992 before recommending extension of the waiver authority under section 402(c) of the Trade Act of 1974 with respect to the Union of Soviet Socialist Republics; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN:

S. 1198. A bill to provide that the compensation paid to certain corporate officers shall be treated as a proper subject for action by security holders, to require certain disclosures regarding such compensation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

CORPORATE PAY RESPONSIBILITY ACT

Mr. LEVIN. Mr. President, today I am introducing a bill to give stockholders a voice in the way executive pay is set by their corporations. It's hard to believe that in a country where the economic system is based on capitalism, that a law to achieve this is necessary. But it is.

Recent stories have carried alarming examples of executive pay out of control. Business Week says the pay numbers are "mind-numbing." Time magazine's headline for its article on executive pay reads: "CEO's: No Pain, Just Gain." The cover of Forbes magazine states in red letters that the current pay system "doesn't make sense."

I think most of us would agree with Forbes. Something is out of whack when the average pay for a CEO in our largest corporations is over 100 times the average pay of the average worker. To put that figure in perspective, J.P. Morgan, in his heydey, said no executive should make more than 20 times the pay of the average worker. While as recently as 10 years ago our pay ratios were close to that target, that is no longer the case. Other countries of the world are much closer to the mark. In Japan, for example, CEO's make about 17 times what average workers do; in Germany the figure is about 23 times. But here in America, our pay gap is now 100 times.

Mr. President, it is one thing to have spectacular pay for spectacular performance. It is another to have spectacular pay for dismal or even mediocre performance. Yet, we are witnessing huge pay for poor performance all over corporate America.

Let me give you just one example. A few weeks ago, the newspapers reported that although Eagle-Picher Industries filed for bankruptcy in January of this year, last year it gave its five top executives pay increases of more than 30 percent; 1990 was a tough year for business. But as corporate management was asking average American workers to tighten their belts, in too many corporate boardrooms, they were buying themselves whole new wardrobes—without the stockholders having any say in the matter.

Mr. President, the facts are that CEO pay in America vastly exceeds CEO pay in other countries; that increases in CEO pay in America vastly exceed the increases in the pay of our other workers; and that CEO pay in America has continued to rise in the face of falling company profits. These three charts lay out the story.

In the first chart, we see that pay for American's chief executive officers far exceeds that of CEO's in any other country. Looking at companies with $250 million or more in assets, our CEO pay exceeds that of Australia and Sweden by almost three times, and it is more than double that of Japan.

In the second chart, we can see that in the 1980's, the pay increases for our CEO's shot way above the pay increases for other workers. In the 1960's and 1970's, the pay of our schoolteachers, engineers, factory workers, and corporate CEO's was increasing at about the same rate. Then the 1980's came along, and CEO pay abruptly, rapidly, and disproportionately shot upward.

As far as I know, in the history of our country, there has never been such a wide pay gap between our CEO's and average workers.

The third chart shows that the dramatic pay increases and widening pay gap of the 1980's were not linked to increased profitability at American companies. Just the opposite: Executive pay rose at the same time corporate profits stagnated or dropped. The chart shows that the 1980's saw CEO pay shoot up past the inflation rate, while the hourly wages of other employees did not even keep up with inflation, and company profits dropped well below inflation. And the trend appears to be continuing: in 1990, we are told that CEO pay rose another 7 percent while corporate profits fell by the same amount.

In short, CEO pay increases are outpacing inflation, the pay of other American workers, the pay of CEO's in other countries, and company profits in America. More than one compensation expert has characterized CEO pay as spiraling out of control.

A similar story applies to the people in the boardrooms who are charged with setting the CEO's pay. Those people, the directors of the corporation, have also seen their pay skyrocket, to an average of $45,000 for the equivalent of about 2½ weeks of work. Some receive as much as $94,000. And that cash payment is on top of such benefits as

insurance, travel expenses, and pensions. The fact is that, in boardrooms of the largest corporations across America, the directors and the CEO's are getting rich together, even when their companies are losing money.

The cozy relationship that exists today between U.S. CEO's and directors was described by one of the witnesses at a hearing held a few weeks ago by the Governmental Affairs Oversight Subcommittee, which I chair. That witness said:

[T]he board members are dependent upon and thus beholden to just one person, the CEO, for their positions, pay and perks. So it doesn't surprise me a bit that there is not a lot of argument when it comes to the day where the board approves the CEO's pay. It is a you-scratch-my-back, I'll-scratch-yours system of corporate governance. Under the system, the executives are doing exactly what we would expect. They are increasing their pay year after year regardless of performance.

Now here comes a really interesting part—the Federal Government is actually hindering stockholder efforts to put the brakes on runaway executive pay.

The key Federal barrier is a ruling by the Securities and Exchange Commission which allows corporations to ignore stockholder proposals on pay and prevent those proposals from being put to a shareholder vote.

The relevant SEC regulation is called the Shareholder Proposal Rule. In essence, this rule states that any shareholder who has held $1,000 worth of stock for at least a year is eligible to submit a shareholder proposal to a corporation. The corporation then has to circulate the proposal in its proxy statement and put it to a shareholder vote, unless the proposal falls into one of the SEC's exceptions. The problem is that the SEC considers proposals on pay to be an exception. So corporations, with the knowledge and consent of the SEC, can simply ignore stockholder proposals on executive and director compensation.

The end result is this: If a stockholder who otherwise meets SEC requirements for circulating a proposal, wants to address executive pay, the SEC will back up any corporation's refusal to put that proposal to a shareholder vote.

That's what happened to all 15 shareholder proposals on pay which were presented to the SEC in 1990 for consideration. In all 15 cases in which publicly held corporations asked the SEC whether they had to circulate a shareholder proposal on compensation for a vote at the annual meeting, the SEC said "No."

This SEC practice is the largest stumbling block in the way of shareholders who want to do something about runaway executive pay.

Another key SEC regulation controls the disclosure of compensation information. Despite SEC efforts to require clear disclosure, all too often, even knowledgeable investors are at a loss to figure out complex pay packages spread over multiple pages in annual proxy statements. Nowhere is there just one table that adds it all up and gives the bottom line in pay for each executive and director. Nor is there any easy way to compare current pay to past years or to project the future costs of the very intricate pay packages that are common today.

Finally, there are no Federal provisions allowing shareholders to nominate directors and include them in the corporation's proxy statement and ballot. As a witness at the subcommittee hearing testified:

We know the theory of the corporation. The shareholder elects the board to represent their interests, and then the board's job is to choose the management and set the compensation package. But, in reality, this theory is turned completely upside down, because the way the process works, the management appoints the board. * * * And whether the shareholders vote for the management's slate, against the slate, or whether they vote at all, they get the management slate. There is no competition for board seats. Worse yet, there is no mechanism for the shareholder to nominate an alternative board member.

As long as shareholders are barred from the nomination process, too many directors will have only a weak sense of loyalty and accountability to stockholders. And directors simply will not have the incentive to confront the CEO or each other about their runaway pay.

The subcommittee hearing I've referred to took place on May 15 and focused on the SEC and the issue of runaway executive pay. The shareholder groups who testified let us know loud and clear that they are angry about excessive pay and angry about SEC practices which block shareholder attempts to do something about it. One witness testified that skyrocketing CEO pay, unrelated to corporate performance, is the "smoking gun that proves the lack of meaningful accountability of managements of large American corporations today."

The witnesses also testified that these practices threaten American competitiveness. They explained that executives who receive huge pay increases when the company is doing poorly not only lose their incentive to improve corporate performance, but also damage the morale of workers far down the pay scale and damage investor interest in buying American stock.

That is why I am introducing today the Corporate Pay Responsibility Act. Congressman JOHN BRYANT is introducing the same bill in the House of Representatives. The purpose of our legislation is to get the Federal Government out of the way of stockholders who want to hold their corporations accountable for runaway pay.

The bill would reduce the Federal barriers to effective stockholder action on excessive executive pay. First, it would allow stockholders to vote on proposals addressing how a corporation should set executive and director pay.

Second, it would require corporations to provide clearer and simpler disclosure of executive and director pay packages.

Third, the bill would allow stockholders with not less than $1 million or 3 percent of a corporation's stock to nominate directors and include their nominees in the proxy statement and ballot.

Finally, the bill would provide for confidential voting of proxies and require the SEC to support stockholder access to a corporation's stockholders when this access is otherwise authorized by law.

Mr. President, the owners of the corporations—the stockholders—ought to have the right to question executive pay which is excessive when they go to their annual stockholder meetings. They ought to have the right to propose changes in their corporation's compensation policies, criteria and methods for setting CEO and director pay. After all, it is their money.

By increasing stockholder participation in compensation policies and practices, the Corporate Pay Responsibility Act could provide some "CPR" to revive American competitiveness. I hope that my colleagues will join me in removing the Federal Government's stumbling blocks to stockholders who want to increase corporate performance and stop runaway executive pay.

I ask unanimous consent that a summary of the bill's provisions and the text of the bill itself be printed in the RECORD immediately after my remarks.

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

S. 1198

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 "Corporate Pay Responsibility Act".

SEC. 2. CORPORATE OFFICER COMPENSATION.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(h) CORPORATE OFFICER COMPENSATION.—

"(1) SECURITY HOLDER PROPOSALS.—For purposes of this Act and the rules and regulations issued by the Commission under this Act, recommendations, proposals, or statements on the policies, criteria, or methods to be used in determining or providing the compensation to be paid to the directors or the chief executive officer of an issuer shall be considered proper subjects for action by its security holders. If such recommendations, proposals, or statements otherwise meet the requirements of this section and the rules and regulations of the Commission, an issuer may not omit such recommendations or proposals or any statement in support thereof otherwise required by this section from its proxy statement.

"(2) DISCLOSURE INFORMATION.—Pursuant to the rules and regulations of the Commission, an issuer shall include in its proxy statement, clear and comprehensive information concerning the compensation paid to each director and senior executive, including—

"(A) a single dollar figure representing the total compensation paid to such person, including deferred, future, or contingent compensation, by the issuer during the year to which such proxy statement pertains;

"(B) the estimated present value, represented by a dollar figure, of any forms of deferred, future, or contingent compensation provided during such year; and

"(C) a graphic representation of—

"(i) the compensation referred to in subparagraph (A);

"(ii) comparable figures for the total compensation paid to such person by the issuer during each of the 2 years prior to the year to which such proxy statement pertains; and

"(iii) comparable figures for the estimated total compensation to be paid to such person by the issuer in each of the succeeding 5 years.

"(3) PRESENT VALUE CALCULATIONS.—For purposes of paragraph (2) of this subsection, the Commission shall—

"(A) specify the method for estimating the present value of stock options and other forms of deferred, future, or contingent compensation paid to the directors or senior executives of an issuer; and

"(B) require the issuer to reduce its earnings, as reflected in its earnings statements to its security holders, by the estimated present value of such compensation.".

SEC. 3. SHAREHOLDER NOMINATIONS.

(a) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsections:

"(i) CORPORATE OFFICER NOMINATIONS BY SECURITY HOLDERS.—

"(1) SECURITY HOLDER NOMINEES.—Subject to the rules and regulations of the Commission, a person or group that is the beneficial owner of voting equity securities representing—

"(A) not less than 3 percent of the voting power of such issuer's securities, or

"(B) not less than $1,000,000 in market value,

may nominate persons for election to the board of directors of the issuer.

"(2) INCLUSION IN PROXY STATEMENT.—Subject to the rules and regulations of the Commission, such nominations shall be included in the issuer's proxy statement and form of proxy, and the person or group making such nominations may provide descriptions or other statements with respect to such nominations to the same extent as the board of directors or management of such issuer, and to the same extent as provided with respect to other nominations.

"(j) AVAILABILITY OF SECURITY HOLDER LIST.—Upon receipt of a written request, an issuer shall promptly deliver its list of security holders of record and any list of beneficial owners used by or available to it to any person entitled to obtain such list under applicable laws. An issuer that fails to promptly provide the list required by this subsection shall be subject to a monetary penalty imposed by the Commission, pursuant to rules or regulations established by the Commission.

"(k) CONFIDENTIALITY.—The Commission shall, by rule or regulation—

"(1) require that the granting and voting of proxies, consents, and authorizations, be confidential; and

"(2) require the tabulation of votes to be performed by an independent third party, certified in accordance with such rules and regulations; and

"(3) provide for the announcement of the results of a vote following such tabulation.

Nothing in this subsection shall be construed to authorize any person to withhold information from the Commission or from any other duly authorized agency of the Federal Government or a State government that is otherwise required by law.".

(a) IN GENERAL.—The amendments made by this Act shall become effective 1 year after the date of enactment of this Act.

(b) COMMISSION ACTION.—The Commission shall promulgate final rules and regulations necessary to carry out this Act not later than 1 year after the effective date of this Act.

SUMMARY OF CORPORATE PAY RESPONSIBILITY ACT

The Corporate Pay Responsibility Act would remove federal barriers to stockholder efforts to limit executive and director pay in publicly-held corporations, by amending the Securities Exchange Act of 1934 to:

(1) allow stockholders, for the first time, to obtain a stockholder vote on proposals recommending changes in corporate policies, criteria and methods used to determine and provide compensation to the CEO and directors;

(2) require clearer and simpler disclosure of executive and director compensation packages, including a bottom-line dollar figure on the total compensation paid to each individual, and a table comparing this compensation to the 2 previous years and projecting its costs for the 5 succeeding years;

(3) require the Securities and Exchange Commission (SEC), for the first time, to specify a method for calculating the present value of stock options and other deferred or contingent compensation and require this compensation cost to be reflected in corporations' earnings statements;

(4) allow stockholders with not less than 3% or $1 million of the corporation's voting equity shares to nominate directors and include their nominees in the corporation's proxy statement and ballot;

(5) require the SEC to support shareholder access to a corporation's stockholder list, when this access is otherwise authorized by law; and

(6) provide for confidential voting of proxies and tabulation of vote results by an independent third party.

By Mr. WIRTH:

S. 1199. A bill to amend the Department of Energy Organization Act to require the Secretary of Energy to establish an Area Office in Grand Junction, CO, and for other purposes; to the Committee on Energy and Natural Resources.

DEPARTMENT OF ENERGY GRAND JUNCTION AREA OFFICE ESTABLISHMENT ACT

Mr. WIRTH. Mr. President, today I am introducing legislation that will strengthen the Department of Energy's [DOE] environmental cleanup program by making the DOE's highly successful Grand Junction Project Office an independent area office under the direct supervision of the DOE's Office of Environmental Restoration and Waste Management.

The DOE considers the Grand Junction Project Office [GJPO] to be a very important part of the department's environmental restoration infrastructure. In the last decade, the Grand Junction Project Office has emerged as one of the DOE's most efficient and resourceful operations.

Chem-Nuclear Geotech, the contractor at the Grand Junction Project Office has successfully managed more than a dozen environmental restoration, geoscience and energy-related projects for the DOE—including the complex remediation and removal of uranium mill tailings wastes from more than 3,900 properties in Mesa County, CO.

The Grand Junction Project Office currently manages programs in 21 States and Korea. Over the years, this office has developed expertise and technical skills that make it one of the DOE's crown jewels. The Environmental Protection Agency [EPA] has indicated that the Grand Junction Project Office was a key component in the cleanup of the Denver Radium Superfund Site—a site which captured the National Superfund Team of the Year Award in 1990.

In short, the Grand Junction Project Office has been entrusted with some of the Federal Government's most difficult and complex environmental problems—and has, by all accounts, performed excellent work for the DOE and the Nation's taxpayers.

The current administrative framework of the DOE has, however, hindered efforts to fully utilize the skills and engineering resources of the Grand Junction Project Office. An out-dated and cumbersome bureaucracy has kept the GJPO reporting to the DOE's Idaho Operations Office, instead of reporting directly to the Office of Environmental Restoration and Waste Management. This arrangement has resulted in the waste of time and resources in an otherwise effective and efficient operation.

The long and short of it, Mr. President, is that the Grand Junction Project Office has outgrown its administrative beginnings. New times and new environmental challenges have encouraged the DOE and other Federal agencies like the EPA and the Department of Defense to use the expertise and engineering resources of the Grand Junction Project Office in managing or supporting complicated environmental cleanups around the country.

Facilities at the project office represent a $50 million Federal investment, including state-of-the-art laboratories and engineering equipment. However, the most important resource is the human one. In the last 20 years this office has nurtured and developed a highly trained and skilled pool of people possessing important talents that should be fully utilized in tackling

the myriad of environmental pollution and contamination problems facing the DOE and the Federal Government. It would be a shame to waste these resources in a bureaucratic dispute about administrative hierarchy.

Unfortunately, after more than 2 years of discussions, reams of interdepartmental memoranda, and scores of debates about the future of this facility, it is still underutilized and the department has yet to come forward with a long-range plan for new missions.

I am convinced that the most efficient and least costly way of fully utilizing these important Federal resources is to cut through the jungle of conflicting administrative authority and make this office a DOE area office directly answerable to the DOE's Office of Environmental Restoration and Waste Management. In this way, the Department of Energy will be authorized to use the Grand Junction Project Office as it sees fit—and with a streamlined command structure which will save taxpayer dollars.

Legislation I am proposing today is a step toward cutting out bureaucracy, fully utilizing resources that American taxpayers have already paid for, and getting on with the important—and indeed monumental task—of cleaning up polluted and contaminated sites owned by the Federal Government.

Mr. President, I send the bill to the desk and ask for its appropriate referral.

By Mr. DECONCINI:

S. 1201. A bill to require the Secretary of Veterans Affairs to increase by 60 the number of nursing home beds operated and maintained at the Department of Veterans Affairs Medical Center Nursing Home Care Unit, Prescott, AZ; to the Committee on Veterans' Affairs.

PRESCOTT NURSING HOME CARE UNIT

Mr. DECONCINI. Mr. President, I rise today to introduce a bill to direct the Secretary of the Department of Veterans Affairs to expand the nursing home care unit [NHCU] in Prescott, AZ to 120 beds. This legislation is required to provide adequate and important services to our veterans residing in Yavapai County, AZ. I hope to assure its passage in the 102d Congress.

We have recently been reminded of the great and important service our Armed Forces render to our country. During the Persian Gulf war, our service men and women demonstrated once again their commitment and dedication in serving our country. Now, it is our duty to show that same commitment and dedication to ensure that quality medical care is available to all veterans of the Armed Forces.

Veterans in the northern Arizona counties of Yavapai, Mohave, and Coconino, are not receiving the full support of the VA medical care system which they have earned and deserve. At present, there are only 60 beds available at the Prescott VA NHCU. This 60-bed facility opened in January 1990. Within a week, every bed was filled. Today, almost as many veterans requiring nursing care are on a waiting list for the new facility as those presently receiving care. Countless more northern Arizona veterans in need of nursing care don't even bother to put their names on the waiting list.

While the waiting list grows, the number of older veterans in the primary service area who will require nursing care continues to increase dramatically. Projections show that by 1995, 45,266 veterans will be treated by the Prescott VA Medical Center, 19,176 of whom will be 65 years old or older. Several hundred of these older veterans will require VA nursing care. The existing 60 nursing home beds cannot possibly accommodate the future nursing care needs of northern Arizona's elderly veteran population.

Planning for the VA nursing home facility in Prescott first began in 1975. After several concept changes, the decision was made to go forward with a 120-bed project based upon a lack of community nursing home beds. Projections at that time showed a continued shortage of beds both locally and elsewhere within the Medical Center's Primary Service Area [PSA]. In 1984, the VA included the 120-bed Prescott NHCU in the 1984 VA 5-year facility plan, fiscal years 1986–90. However, a 1984 GAO study reviewing the 5-year plan suggested a 120-bed facility was not necessary given the projected availability of community nursing home beds. A later construction project contract audit by the VA inspector in 1986 supported the GAO's conclusion. But they were wrong as I predicted.

Contrary to the assumptions made by both audit reports, the community nursing care beds cannot reasonably accommodate the current veteran population. The mere fact that the new 60-bed facility was filled in the first week is the best evidence that the assumptions made by GAO and the VA Inspector General were erroneous.

This legislation will not only improve nursing care services for veterans living in the Prescott primary serving area, but will also help veterans statewide. It will free up beds in the Phoenix and Tucson VA Medical Centers Nursing Home Care Units now occupied by northern Arizona veterans. The expansion would also reduce the number of veterans forced to relocate to Tucson and Phoenix in order to receive care. The Prescott expansion is needed today more than ever since the nearest nursing care facility, located over 2 hours away at the Phoenix VA Medical Center, is facing an extreme funding shortfall. Given a $2.5 million-plus medical care center shortfall, the Phoenix director had no other option but to shut down half of his nursing home care unit, leaving open only 60 of its 120 beds.

Mr. President, our veterans must be able to trust the VA to provide nursing care when it is required. Expansion of the NHCU at the Prescott VA Medical Center is vital to maintaining that trust. The need is there. We must respond now and fulfill the Nation's promise to its veterans.

I urge my colleagues to approve this bill, so that elderly veterans in northern Arizona will no longer have to wait for the nursing care they need and deserve from this country.

Mr. President, I ask unanimous consent that a copy 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. 1201

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN NUMBER OF OPERATIONAL BEDS AT THE DEPARTMENT OF VETERANS AFFAIRS NURSING HOME CARE FACILITY, PRESCOTT, ARIZONA.

(1) MINIMUM NUMBER OF BEDS.—The Secretary of Veterans Affairs shall operate and maintain not less than 120 nursing home beds at the Prescott Department of Veterans Affairs Medical Center Nursing Home Care Unit, located in Prescott, Arizona.

(b) RELATIONSHIP TO MAXIMUM NUMBER OF BEDS.—The requirement in subsection (a) does not authorize an increase in the maximum number of beds authorized to be operated and maintained under section 8110(a)(1) of title 38, United States Code.

By Mr. HELMS:

S. 1202. A bill to amend the Internal Revenue Code of 1986 to allow the one-time exclusion of gain from sale of a principal residence to be taken before age 55 when the taxpayer or a family member suffers a catastrophic illness; to the Committee on Finance.

S. 1203. A bill to amend the Internal Revenue Code of 1986 to provide that the one-time exclusion of gain from sale of a principal residence shall not be precluded because the taxpayer's spouse, before becoming married to the taxpayer, elected the exclusion; to the Committee on Finance.

MODIFICATION OF CAPITAL GAINS TAX EXCLUSION PROVISIONS

• Mr. HELMS. Mr. President, today I am introducing two bills to modify the one-time capital gains tax exclusion that is currently allowed for taxpayers over the age of 55 when they sell a home.

The first bill (S. 1202) would allow a taxpayer to claim the one-time capital gains exclusion before the age of 55 in the event that the taxpayer or a member of the taxpayer's family suffers a catastrophic illness.

The second bill (S. 1203) would allow a taxpayer to claim the exclusion on a sale even though his spouse may have

already claimed such a deduction before they were married.

Mr. President, section 121 of the Internal Revenue Code allows an individual over the age of 55 to exclude from taxable income up to $125,000 of capital gains from the sale of a residence. This exclusion may be claimed only once by the taxpayer or his spouse.

S. 1202 is identical to legislation offered in the 101st Congress by our former colleague, Bill Armstrong. It would allow an individual who faces a catastrophic illness in his or her family to take advantage of the one-time capital gains exclusion prior to the age of 55. Under this bill, a taxpayer of any age would be able to exclude from taxable income up to $125,000 capital gains if a parent, spouse, or child of the taxpayer is physically or mentally incapable of self-care and that condition has lasted, or is expected to last, for at least 6 months. Once a taxpayer elects to exercise this exclusion, it would not be available again to that taxpayer.

Mr. President, more and more families face the exorbitant and unexpected cost associated with the onset of a catastrophic illness. Because of the high cost of long-term care, many taxpayers facing these costs are forced to sell their homes to pay medical bills. Unfortunately, the Federal Government imposes a capital gains tax on the profits the taxpayer may realize.

This legislation provides one small way Congress can help families deal with the costs of long-term care without creating another massive and costly new Federal program and without forcing private businesses to carry the burden.

Mr. President, my second bill (S. 1203) would remedy an unintended marriage penalty that exists in section 121. This problem was brought to my attention by Mr. Alan McKease, a 70-year-old constituent from Hendersonville, NC. Mr. McKease's wife suffered from cancer. When she died in 1989, neither she nor Mr. McKease had used the one-time capital gains exclusion that was available to them. They had planned to use the exclusion later to help pay for the cost of a good retirement home.

A couple of years after his wife's death, Mr. McKease married a 70-year-old widow. When he sold his home, he was shocked to learn that he couldn't exercise his one-time capital gains exclusion because his new wife and her late husband had already used the exclusion when they sold a previous residence.

Mr. President, there were ways that Mr. McKease could have avoided this problem. He could have sold his home before he remarried and found a new home, whether or not he was ready to do so. Or, if he and his wife wished to keep his home for the time being, they could have lived together without getting married. In that way, Mr. McKease could have retained his exclusion until he and his second wife decided to sell the home. That is why I referred to this section as containing a marriage penalty.

Mr. President, it should not be necessary for taxpayers to play such games to qualify within the provisions of our income tax laws. That is why I am proposing that we amend section 121 so that taxpayers who find themselves in a situation like that of Mr. McKease will be able to exercise the one-time capital gains exclusion even if their spouse has exercised the exclusion before they were married.●

By Mr. BURDICK, from the Committee on Environment and Public Works:

S. 1204. An original bill to amend title 23, United States Code, and for other purposes; placed on the calendar.

SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. BURDICK. Mr. President, upon the occasion of filing the Surface Transportation Efficiency Act of 1991, and the report accompanying the bill, I make note of the fact that the following Senators have indicated their strong support for the bill:

Senators MOYNIHAN, CHAFEE, SYMMS, LAUTENBERG, LIEBERMAN, BAUCUS, REID, JEFFORDS, CRANSTON, and D'AMATO.

I ask unanimous consent that the Surface Transportation Efficiency Act of 1991, an original bill reported by the Environment and Public Works Committee, be printed in the CONGRESSIONAL RECORD.

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

S. 1204

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 "Surface Transportation Efficiency Act of 1991".

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SEC. 3. SECRETARY DEFINED.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

TITLE I

PART A—GENERAL PROVISIONS

SEC. 102. DECLARATION OF POLICY.

(a) Subsection 101(b) of title 23, United States Code, is amended to read as follows:

"(b) DECLARATION OF POLICY.—The National Systems of Interstate and Defense Highways is completed. The principal purpose of Federal highway assistance shall henceforth be to improve the efficiency of the existing surface transportation system.

"It is the policy of the United States to facilitate innovation and competition, energy efficiency, productivity and accountability in transportation modes through Federal and State initiative.

"It is the policy of the United State to increase productivity in the transportation sector of the economy through systematic attention to costs and benefits, pursuing the most efficient allocation of costs and the widest distribution of benefits.".

(b) Subsections 101(d) and 101(e) of title 23, United States Code, are hereby repealed.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(a) REPEAL OF FISCAL YEAR 1993 AUTHORIZATION FOR INTERSTATE CONSTRUCTION.—Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by—

(1) inserting "and" after "1991";

(2) striking the coma after 1992" and inserting in lieu thereof a period; and

(3) striking "and the additional sum of $1,400,000,000 for the fiscal year ending September 30, 1993".

(b) AUTHORIZATIONS.—The following sums are authorized to be appropriated out of the Highway Account of the Highway Trust Fund:

(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program $7,330,000,000 for fiscal year 1992, $7,700,000,000 for fiscal year 1993, $8,260,000,000 for fiscal year 1994, $9,250,000,000 for fiscal year 1995, and $12,260,000,000 for fiscal year 1996.

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For Congestion Mitigation and Air Quality Improvement $1,000,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995 and 1996.

(3) BRIDGE PROGRAM.—For the Bridge Program $2,370,000,000 for fiscal year 1992, $2,460,000,000 for fiscal year 1993, $2,600,000,000 for fiscal year 1994, $2,840,000,000 for fiscal year 1995, and $3,050,000,000 for fiscal year 1996.

(4) INTERSTATE MAINTENANCE PROGRAM.—For resurfacing, restoring and rehabilitating the National System of Interstate and Defense Highways, $2,530,000,000 for fiscal year 1992, $2,620,000,000 for fiscal year 1993, $2,770,000,000 for fiscal year 1994, $3,020,000,000 for fiscal year 1995, and $3,250,000,000 for fiscal year 1996.

(5) INTERSTATE CONSTRUCTION PROGRAM.—For construction to complete the Interstate System, $1,800,000,000 for fiscal year 1993, 1994, 1995, and 1996: *Provided*, that section 102(c) of the Federal-Aid Highway Act of 1987, regarding minimum apportionment, is hereby repealed, and: *Provided further*, that such sums shall be obligated as if authorized by section 108(b) of the Federal-aid Highway Act of 1956.

(6) INTERSTATE SUBSTITUTION PROGRAM.—For the Interstate Substitution Program for projects under highway or transit assistance programs $240,000,000 for each of fiscal years 1992, 1993, 1994 and 1995: *Provided*, that such sum shall be obligated as if authorized by 23 U.S.C. 103(e)(4)(G) for highway assistance programs.

(7) FEDERAL LANDS HIGHWAY PROGRAM.—

(A) For Indian reservation roads $150,000,000 for each of fiscal years 1992, 1993, 1994, 1995 and 1996.

(B) For public lands highways $200,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996.

(C) For parkways and park highways $100,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996.

(8) TERRITORIAL HIGHWAY PROGRAM.—For the Territorial Highway Program $15,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(9) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—For the National Magnetic Levitation Design Program $50,000,000 for fiscal year 1992, $75,000,000 for fiscal year 1993, $125,000,000 for fiscal year 1994, $250,000,000 for fiscal year 1995, and $250,000,000 for fiscal year 1996.

(10) FEDERAL HIGHWAY ADMINISTRATION RESEARCH PROGRAMS.—For the purpose of carrying out research as authorized by Section 307, the amount of $120,000,000 for each of fiscal years 1992, 1993, 1994, 1995 and 1996: *Provided*, that such amount shall be made available from within the amount of the deduction authorized pursuant to section 104(a) of title 23, United States Code.

(11) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—For carrying out the University Transportation Centers Program pursuant to the Urban Mass Transportation Act of 1964, as amended, $5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(12) HIGHWAY USE TAX EVASION PROJECTS.—For highway use tax evasion projects $2,000,000 for each of fiscal years 1992, 1993, 1994, 1995 and 1996: *Provided*, that these sums shall be available until expended and may be allocated to the Internal Revenue Service or the States at the discretion of the Secretary, and: *Provided further*, that these funds shall be used to expand efforts to enhance motor fuel tax enforcement, fund additional Internal Revenue Service staff, supplement motor fuel tax examination and criminal investigation, develop automated data processing tools, evaluate and implement registration and reporting requirements, reimburse state expenses that supplement existing fuel tax compliance efforts and analyze and implement programs to reduce the tax evasion associated with other highway use taxes.

(13) SAFETY BELT AND MOTORCYCLE HELMET USE.—For the purpose of carrying out programs under section 153 of title 23, United States Code, $45,000,000 for fiscal year 1992, $30,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994.

SEC. 104. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highway programs shall not exceed—

(1) $15,480,000,000 for fiscal year 1992;
(2) $15,940,000,000 for fiscal year 1993;
(3) $16,840,000,000 for fiscal year 1994;
(4) $18,410,000,000 for fiscal year 1995; and
(5) $20,190,000,000 for fiscal year 1996;

Provided, that limitations under this section shall not apply to obligations for emergency relief pursuant to section 135 and obligations for minimum allocation pursuant to section 157.

(b) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 1992, 1993, 1994, 1995 and 1996, the Secretary shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to all the States for such fiscal year.

(c) LIMITATION ON OBLIGATION AUTHORITY.—During the period October 1 through December 31 of each fiscal year 1992, 1993, 1994, 1995, and 1996 no State shall obligate more than 35 per centum of the amount distributed to that State under subsection (b) for that fiscal year, and the total of all State obligations during the period shall not exceed 25 per centum of the total amount distributed to all States under subsection (b) for that fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent unintended lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a state:

(2) after August 1 of each of fiscal years 1992, 1993, 1994, 1995 and 1996, revise a distribution of funds made available under subsection (b) for that fiscal year if a State will not obligate the amount distributed to it during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during the fiscal year, first in accordance with paragraph (4) of this subsection and, to the extent further obligation authority is available after distribution of the maximum permitted under paragraph (4), then by distributing the remainder giving priority to those States having large unobligated balances of funds apportioned under section 104 and section 144 of title 23, United States Code; and

(3) not distribute amounts authorized for administrative expenses, the Federal lands highways program, and the National Magnetic Levitation Design Program.

(4)(A) Subject to subparagraph (B), a State which after August 1 and on or before September 30 of fiscal years 1992, 1993, 1994, 1995 or 1996, obligates the amount distributed to such State in such fiscal year under subsection (b) may obligate for Federal-aid highways and highway safety construction on or before September 30 of such fiscal year an additional amount not to exceed 5 per centum of the aggregate amount of funds apportioned or allocated to such State—

(i) under sections 104 and 144; and

(ii) for highway assistance projects under section 103(e)(4), which are not obligated on the date such State completes obligation of the amount so distributed.

(B) LIMITATION.—During the period August 2 through September 30 of each of fiscal years 1992 through 1996, the aggregate amount which may be obligated by all States pursuant to subparagraph (A) shall not exceed 2.5 per centum of the aggregate amount of funds apportioned or allocated to all States—

(i) under sections 104 and 144, and

(ii) for highway assistance projects under section 103(e)(4), which would not be obligated in such fiscal year if the total amount of obligational authority provided by subsection (a) for such fiscal year were utilized.

(C) LIMITATION ON APPLICABILITY.—

(i) Subparagraph (A) shall not apply in a fiscal year to any State which on or after August 1 of that fiscal year has the amount distributed to such State under subsection (b) for such fiscal year reduced under paragraph (d)(2).

(ii) This paragraph does not create obligation authority in addition to that provided by subsection (a), but concerns only redistribution of obligation authority.

SEC. 105. UNOBLIGATED BALANCES.

Unobligated balances of funds apportioned for the primary, secondary and urban systems and the railway-highway crossing and hazard elimination programs may be obligated for the Surface Transportation Program as if they had been apportioned for that Program.

SEC. 106. SURFACE TRANSPORTATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title 23, United States Code, is amended by adding the following new section:

"SEC. 133. SURFACE TRANSPORTATION PROGRAM.—The Secretary shall establish a Surface Transportation Program in accordance with this section.

"(a) ELIGIBILITY.—Projects eligible under the Surface Transportation program shall include—

"(1) construction, reconstruction, rehabilitation, resurfacing, restoration, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and in-

cluding the seismic retrofit and painting of bridges and other elevated structures;

"(2) capital costs for mass transit, passenger rail (including high speed rail), publicly owned intra—or inter city bus terminals and facilities, and magnetic levitation systems, including expenditures on rights of way and associated facilities, and expenses for contracted passenger rail or magnetic levitation service provided by public or private carriers;

"(3) carpool projects and fringe and corridor parking facilities and programs, and bicycle facilities and programs;

"(4) surface transportation safety improvements and programs, including highway safety improvement projects, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings;

"(5) surface transportation research and development programs;

"(6) capital and operating costs for traffic monitoring, management and control facilities and programs;

"(7) surface transportation planning programs;

"(8) transportation enhancement activities as defined in section 101;

"(9) transportation control measures listed in section 108(f) of the Clean Air Act, as amended; and

"(10) any other purpose approved by the Secretary.

Provided, that projects other than those described in paragraphs (3) and (4) may not be undertaken on roads functionally classified as local or rural minor collector, unless such roads are on a Federal-aid highway system as of January 1, 1991, except as approved by the Secretary. Surface Transportation Program funds may be used either as part of a highway construction project or as a separate effort to mitigate wetland loss related to highway construction, or to contribute to statewide efforts which comply with the requirements of the Secretary of the Army and the Administrator of the Environmental Protection Agency that restore, conserve, or enhance wetland habitat affected by highway construction. These efforts may include the development of statewide wetland mitigation plans, State or regional conservation and enhancement of wetlands, and other related efforts. Contributions toward these efforts may occur in advance of specific project activity.

"(b) GENERAL REQUIREMENTS.—

"(1)(A) At least 75 per centum of apportionments and obligation authority made available to a State for the Surface Transportation Program in any year shall be divided between—

(i) the metropolitan areas of the State with a metropolitan statistical area population of over 250,000 and areas of the State that are in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act as amended and have an urbanized area population above 50,000; and

(ii) the other areas of the State;

in proportion to their relative share of the State's population. The remaining 25 per centum of funds may be programmed in any area of the State.

"(B) Notwithstanding the requirements of subparagraph (A), in any State where—

(i) greater than 80 per centum of the population of such State is located in one or more metropolitan statistical areas and greater than 80 per centum of the land area of such State is owned by the United States; or

(ii) such State is non-contiguous with the continental United States;

only 35 per centum of Surface Transportation Program funds shall be divided based on the formula provided in subparagraph (A). The remaining 65 per centum of funds may be programmed in any area of the State.

"(2) Programming and expenditure of funds for projects in metropolitan areas shall be consistent with the requirements of section 134, regarding metropolitan planning.

"(3) Programming and expenditure of funds for projects in non-metropolitan areas shall be consistent with the provisions of section 135, regarding statewide planning.

"(4) Of the apportionments made available to a State under this section, each State must assure that no less than 8 per centum of such funds are programmed for transportation enhancement activities, as defined in section 101.

"(5) In the case where a State constructs a facility under this program with a Federal share of 80 per centum and later converts the facility to operation such that the project would originally have been undertaken with a Federal share of 75 per centum, the State shall repay to the United States, with interest, the amount of the difference in the cost to the United States.

"(6) Each State shall assure that funds attributed to metropolitan and nonattainment areas pursuant to paragraph (1) shall be divided among such areas in a fair and equitable manner based on the relative population of such areas, except that the State may divide funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

"(7) Each State shall assure that funds attributed to attainment and non-metropolitan areas pursuant to paragraph (1) shall be distributed fairly and equitably among those areas.

"(c) ADMINISTRATION.—

(1) If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State, that, if it fails to take corrective action within 60 days from the receipt of the notification, the Secretary will withhold future payments under this section until the Secretary is satisfied that appropriate corrective action has been taken.

"(2) The Governor of each State shall certify prior to the beginning of each fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for Surface Transportation Program projects during the fiscal year: *Provided*, that the State may request adjustment to the obligation amounts later in the fiscal year. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the Surface Transportation Program funds expected to be obligated by the State in that fiscal year for projects not subject to review by the Secretary.

"(3) Projects must be designed, constructed, operated and maintained in accordance with State laws, regulations, directives, safety standards, design standards and construction standards.

"(4) Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multi-lane limited access control highways, except as provided in section 102(b), regarding resurfacing projects. After receiving any such notification the Secretary shall undertake project review as requested by the State.

"(5) The Secretary shall make payments to a State of costs incurred by it for the Surface Transportation Program. Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.".

(b) APPORTIONMENT.—Section 104(b) of title 23, United States Code, is amended by—

(1) amending paragraph (1) to read as follows:

"(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program, in a manner such that—

(A) a State's per centum share of all funds allocated or apportioned pursuant to this title for fiscal year 1992 and any fiscal year thereafter, excluding funds apportioned or allocated for the Interstate Construction, Interstate Substitute, Federal Lands Highways, Congestion Mitigation and Air Quality Improvement, Minimum Allocation, National Magnetic Levitation Design, and Emergency Relief programs;

shall be equal to—

(B) such State's per centum share of all apportionments and allocations received under this title for fiscal years 1987, 1988, 1989, 1990 and 1991, excluding apportionments and allocations received for the Interstate Construction, Interstate Substitute, Federal Lands Highways and Emergency Relief Programs, all apportionments and allocations received for demonstration projects, and the portion of allocations received pursuant to section 157, regarding minimum allocation, that is attributable to apportionments made under the Interstate Construction and Interstate Substitute programs in such years: *Provided that*, in calculating a State's per centum share under this subparagraph for the purpose of making apportionments for fiscal years 1992, 1993, 1994, 1995, and 1996, each State shall be deemed to have received one-half of one per centum of all funds apportioned for the Interstate Construction Program in fiscal years 1987, 1988, 1989, 1990, and 1991; and, *Provided further*, that in any fiscal year no State shall receive a percentage of total apportionments and allocations that is less than 70 per centum of its percentage of total apportionments and allocations for fiscal years 1987, 1988, 1989, 1990, and 1991, except for those States that receive an apportionment for interstate construction of more than $50,000,000 for fiscal year 1992.

"(C) ENERGY CONSERVATION, CONGESTION MITIGATION, AND CLEAN AIR BONUS.—This paragraph shall apply beginning in fiscal year 1993 and shall apply only to those States with one or more metropolitan statistical areas with a population of 250,000 or more. The amount of each such State's Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) shall be reduced by multiplying such amount by a factor of 0.9 if the State's vehicle miles of travel per capita is more than 110 per centum of its vehicle miles of travel in the base year. Reductions in apportionments made pursuant to the preceeding sentence shall be placed in a Surface Transportation Bonus Fund and shall be used, to the extent such funds are available, to increase the amount of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) by a factor of 1.1 for each State affected by this paragraph, if such State's vehicle miles of travel per capita is less than 90 per centum of its vehicle miles of travel per capita in the base year. Funds remaining thereafter in the Surface Transportation Bonus Fund, if any, shall be apportioned to the States af-

fected by this paragraph in proportion to each State's share of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) among all such States prior to any adjustments made pursuant to this paragraph. Funds so apportioned shall be treated as funds pursuant to section 133(b)(1)(A)(i) ara treated. For the purposes of this paragraph, the term 'base year' shall mean the year 1990 for fiscal years 1993, 1994, and 1995, and shall mean the year 1995 for fiscal years 1996 and all subsequent fiscal years.";

(2) striking "upon the Federal-aid systems" and inserting in lieu thereof "upon the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, and the Interstate System";

(3) striking "paragraphs (4) and (5)" and inserting in lieu thereof "subparagraph (5)(A)"; and

(4) striking "and sections 118(c) and 307(d)" and inserting in lieu thereof "and section 307".

(c) FEDERAL SHARE.—Section 120(a) of title 23, United States Code, is amended by striking "Subject to the provisions of subsection (d) of this section, the" and inserting in lieu thereof "The"; by striking ", primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system" and inserting instead "Surface Transportation Program funds"; and by inserting "for capital projects that add capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times, and 80 per centum of the cost of construction for other projects", in two places after the words "cost of construction".

(d) GUIDANCE.—The Secretary shall develop and make available to the States guidance on how to determine what portion of any project under section 133 of title 23, United States Code, is eligible for an 80 per centum Federal share.

(e) CONFORMING AMENDMENTS.—The analysis of title 23, United States Code, is amended by striking "133. [Repealed P.L. 90-495]." and inserting in lieu thereof "133. Surface Transportation Program.".

SEC. 107. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Section 149 of title 23, United States Code, is amended to read as follows:

"SEC. 149. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—The Secretary shall establish a congestion mitigation and air quality improvement program pursuant to the requirements of this section.

"(a) ELIGIBLE PROJECTS.—A project may be funded under the congestion mitigation and air quality improvement program—

"(1) only if guidance issued by the Environmental Protection Agency pursuant to section 108(f) of the Clean Air Act, as amended, shows to the satisfaction of the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the project is likely to contribute to the attainment of any national ambient air quality standard, except in the case where such guidance is not available, only if the project is described in section 108(f) of the Clean Air Act, as amended;

"(2) the project is listed in a State implementation plan that has been approved pursuant to the Clean Air Act, as amended and the project will have air quality benefits; or

"(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project is likely to contribute to the attainment of any national ambient air quality standard, whether through reductions in vehicle miles travelled, fuel consumption, or through other factors; and

only if the project does not result in the construction of new capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times.

"(b) DISTRIBUTION OF FUNDS.—Apportionments made under this section shall be made available in nonattainment areas as defined pursuant to the Clean Air Act, as amended, with urbanized area populations over 50,000 in proportion to the relative share of weighted nonattainment area population as calculated in section 104(b)(2) within the State; *Provided*, that each State that contains a nonattainment area shall receive a minimum apportionment of one-quarter of one per centum of the apportionment made under this section. Selection of projects for such funds shall be carried out by the metropolitan planning organization for each such area in accordance with the provisions of section 134 of title 23, United States Code.

"(c) FEDERAL SHARE.—The Federal Share payable for a project under this section shall not exceed 80 per centum of the cost of the project."

(b) APPORTIONMENT.—Section 104(b)(2) is amended to read as follows:

"(2) FOR THE CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—In the ratio which the weighted nonattainment area population of each State bears to the total weighted nonattainment area population of all States, where weighted nonattainment area population shall be calculated by multiplying the population of any nonattainment areas within any State that is in nonattainment for ozone by a factor of—

"(A) 1.0 if the area is classified as a marginal nonattainment area;

"(B) 1.1 if the area is classified as a moderate nonattainment area;

"(C) 1.2 if the area is classified as a serious nonattainment area;

"(D) 1.3 if the area is classified as a severe nonattainment area; and

"(E) 1.4 if the area is classified as an extreme nonattainment area;

where the classification of nonattainment areas is that used in the Clean Air Act, as amended, and by further multiplying the population of any non-attainment area by a factor of 1.2 if such area is in nonattainment for carbon monoxide.". Notwithstanding any other provision of this section, any State which is subject to air pollution control measures pursuant to Section 184 (related to Interstate Ozone Air Pollution) or Section 176A (related to Interstate Transport Commissions) of the Clean Air Act Amendments of 1990 shall receive a minimum of one-tenth of one per centum of the total funds apportioned under this section.

(c) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking "Sec. 149. Truck lanes." and inserting instead "Sec. 149. Congestion Mitigation and Air Quality Improvement Program."

SEC. 108. BRIDGE PROGRAM.

(a) FEDERAL SHARE.—Section 144(f) of title 23, United States Code, is amended to read as follows:

"(f) The Federal share payable for any project undertaken under this subsection shall be 80 per centum, except for any costs attributable to the expansion of the capacity of any bridge or the construction of any new bridge where such new capacity or new bridge is primarily available to single occupant vehicles, in which case the Federal share payable shall be 75 per centum. In the case where a State constructs a bridge or portion thereof not primarily available to single occupant vehicles pursuant to this section, and later converts the bridge or portion thereof to be primarily available to single occupant vehicles, the State shall repay to the United States, with interest, the amount of the additional cost born by the United States that would have been born by the State had the bridge or portion thereof been originally available primarily to single occupant vehicles.".

(b) NEW CAPACITY GUIDANCE.—The Secretary shall develop and make available to the States criteria for determining what share of any project undertaken pursuant to section 144 of title 23, United States Code, is attributable to the expansion of the capacity of a bridge where the new capacity is available to single occupant vehicles.

(c) BRIDGE PAINTING, SEISMIC RETROFIT, AND MAINTENANCE.—Section 144(e) of title 23, United States Code, is amended by adding at the end "Funds apportioned pursuant to this subsection shall be available for the painting and seismic retrofit of, or application of calcium magnesium acetate on, any bridge eligible for assistance under this section.".

(d) REPEAL OF DISCRETIONARY BRIDGE PROGRAM.—Section 144(g) of title 23, United States Code, is repealed.

(e) LEVEL OF SERVICE CRITERIA.—The Secretary shall, by January 1, 1992, in consultation with the States, establish level of service criteria for the Bridge Program, *Provided* that, notwithstanding the requirements of such criteria or of section 144 of title 23, United States Code, up to 35 per centum of bridge program funds made available to a State in any fiscal year shall be available for expenditure on any public bridge, provided that such expenditure conforms with the bridge management system adopted by the State.

(f) CONFORMING AMENDMENTS.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking "Sec. 144. Highway bridge replacement and rehabilitation program." and inserting in lieu thereof "Sec. 144. Bridge Program."

(2) Section 144 of title 23, United States Code, is amended as follows:

(A) The title is amended to read "Sec. 144. Bridge Program.".

(B) Subsection (b) is repealed; and subsection (c) is amended by striking ", other than those on any Federal-aid system," and by striking "on and off the Federal-aid system;".

(C) Subsection (e) is amended by striking "(1) Federal-aid system bridges eligible for replacement,

(2) Federal-aid system bridges eligible for rehabilitation, (3) off-system bridges eligible for replacement, and (4) off-system bridges eligible for rehabilitation." and inserting instead "(1) Bridges categorized for rehabilitation and (2) bridges categorized for replacement."; and (2) by striking "on the Federal-aid primary system" and inserting instead "under the Surface Transportation Program".

Sec. 109 INTERSTATE MAINTENANCE PROGRAM.

(a) LIMITATION ON NEW CAPACITY.—Section 119(a) of title 23, United States Code, is amended by inserting after the end of the first sentence: "Notwithstanding any other provision of this title, the portion of the cost

of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.";

(b) ADEQUATE MAINTENANCE OF THE INTERSTATE SYSTEM.—Section 119(f)(1) of title 23, United States Code, is amended by inserting at the end of the paragraph "The Secretary must find that the State is adequately maintaining the Interstate System to accept such a certification.";

(c) NON-FEDERAL MATCH REQUIREMENT.—

(1) Section 119(a) of title 23, United States Code, is amended by striking "section 120(c)" and inserting in lieu thereof "section 120(d)".

(2) Section 120(d) of title 23, United States Code, is amended to read as follows:

"(d) INTERSTATE MAINTENANCE.—The Federal share payable on account of any project undertaken for the maintenance of Interstate highways under the provisions of section 119 shall either—

"(1) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

"(2) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage of the area of all such lands in such State is of its total area, except that the Federal share payable on any project shall not exceed 95 per centum of the total cost of the project.

In any case where a State elects to have the Federal share as provided in paragraph (2), the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring the State to use solely for purposes eligible under this title (other than paying its share of projects undertaken pursuant to this title) during the period covered by the agreement the difference between the States share as provided in paragraph (2) and what its State's share would be if it elected to pay the share provided in paragraph (1) for all projects subject to the agreement.".

(d) GUIDANCE TO THE STATES.—The Secretary shall develop and make available to the States criteria for determining—

(1) what share of any project funded under section 119 of title 23, United States Code, is attributable to the expansion of the capacity of an Interstate Highway or bridge; and

(2) what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code.

(e) NON-CHARGEABLE SEGMENTS.—Section 104(b)(5)(B) of title 23, United States Code, is amended by adding "and routes on the Interstate system designated under section 139(a) of this title before January 1, 1984" after the phrase "under sections 103 and 139(c) of this title" each of the two times it appears in the first sentence.

(f) CONFORMING AMENDMENTS.—

(1) NEW TITLE.—The title of section 119 of title 23, United States Code, is amended to read "Sec. 119. Interstate Maintenance Program.";

(2) ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking "Sec. 119. Interstate System Resurfacing." and inserting in lieu thereof "Sec. 119. Interstate Maintenance Program.".

(3) Section 119 of title 23, United States Code, is amended—

(A) by striking out subsection (c), with regard to reconstruction, and inserting in lieu thereof the following new subsection:

"(c) Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.";

(B) by striking out subsection (e), with regard to toll facilities;

(C) by striking out, in subsection (a), ", rehabilitating, and reconstructing" and inserting in lieu thereof "and rehabilitating"; and

(D) in subsection (f)—

(i) by striking "PRIMARY SYSTEM" from the title and inserting in lieu thereof "SURFACE TRANSPORTATION PROGRAM"; and

(ii) by striking "rehabilitating, or reconstructing" and inserting in lieu thereof "or rehabilitating".

(4) APPORTIONMENT.— Section 104(b)(5)(B) of title 23, United States Code, is amended by striking "rehabilitating, and reconstructing" and inserting instead "and rehabilitating".

SEC. 110. INTERSTATE CONSTRUCTION PROGRAM.

(a) MASSACHUSETTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is amended by striking "upon the approval by Congress, the Secretary shall use the Federal share of such approval estimates in making apportionments for the fiscal year 1993" and inserting in lieu thereof—

"The Secretary shall use the Federal share of the 1991 Interstate Cost Estimate, adjusted to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds, to make apportionments for fiscal years 1993, 1994, 1995 and 1996 in the ratio in which the Federal share of the estimated cost of completing the Interstate System in a State bears to the Federal share of the sum of the estimated cost of completing the Interstate System in all of the States, except Massachusetts: *Provided*, That Massachusetts shall be apportioned $100,000,000 for the fiscal years 1993, $800,000,000 for the fiscal year 1994, $800,000,000 for the fiscal year 1995, and $850,000,000 for the fiscal year 1996.".

(b) CONFORMING AMENDMENTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is further amended by striking "1960 through 1990" the two places it appears and inserting instead "1960 through 1996"; and by striking "1967 through 1990" and inserting instead "1967 through 1996".

SEC. 111. FEDERAL LANDS HIGHWAYS PROGRAMS.

(a) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended as follows:

(1) Subsection (c) is amended by inserting at the end "The secretary shall allocate 66 per centum of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987."; and by inserting after "allocate" the words "34 per centum of".

(2) Subsection (a) is repealed and the following subsections are relettered accordingly.

(b) PROJECTS.—Section 204 of title 23, United States Code, is amended as follows:

(1) Subsection (b) is amended by inserting at the end "Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways."; and by striking "forest highways and".

(2) Subsection (a) is amended by striking "forest highways,"; and by inserting at the end "Notwithstanding any other provision of this title, no public lands highway project may be undertaken in any State pursuant to this section unless the State concurs in the selection and planning of the project.".

(3) Subsection (c) is amended by striking "on a Federal aid system and inserting in lieu thereof "eligible for funds apportioned under section 104 or section 144 of this title".

(c) CONFORMING AMENDMENTS.—Section 203 of title 23, United States Code, is amended by striking "forest highways" in two places.

SEC. 112. TOLL FACILITIES.

(a) REPEAL OF NATIONAL POLICY.—Section 301 of title 23, United States Code, is hereby repealed. The analysis of chapter 3 of such title is amended by striking out the item relating to section 301.

(b) NEW REQUIREMENTS.—Section 129 of title 23, United States Code, is amended to read as follows: "Sec. 129. Toll Facilities.

"(a) PROHIBITION.—Tolls may not be imposed on any existing free Interstate Highway.

"(b) FEDERAL SHARE PAYABLE.—Except as provided in subsection (e), the Federal share payable for any project under this section shall not exceed 35 per centum of the cost of the project for construction of new toll facilities, and shall not exceed 80 per centum of the cost of the project for rehabilitation of existing toll facilities or conversion of existing free facilities to toll facilities.

"(c) CONSTRUCTION OR CONVERSION OF FACILITIES.—Except as otherwise provided in this section, Federal funds to carry out this title may not be obligated on toll facilities or to convert free facilities to toll facilities. The Secretary may permit Federal participation, on the same basis and in the same manner as participation in projects on free highways under this title, in the construction of any toll highway, bridge, tunnel, or approach thereto, or the conversion of any free highway, bridge, tunnel or approach thereto to a toll facility, upon compliance with the provisions of this subsection, except that no Federal funds may be used to impose tolls on any existing free Interstate Highway. The highway, bridge, tunnel, or approach thereto must be publicly owned. The appropriate State transportation or highway department or departments must be party to an agreement with the Secretary that provides that—

"(1) all tolls received from the operation of the facility, less the actual cost of operation and maintenance, shall be applied to repayment, including debt service and reasonable return on investment, of the party financing the facility, except for amounts contributed by the United States; and

"(2) after the date of final repayment, revenues from tolls in excess of revenues needed to recover actual costs of operation and maintenance shall be used for any transportation project eligible under this title.

"(d) CONSTRUCTION OF FERRYBOATS AND FERRY APPROACHES.—The Secretary may permit Federal participation under this title in the construction of ferryboats and ferry approaches, whether toll or free, subject to the following conditions:

"(1) It is not feasible to build a bridge, tunnel, or other normal highway structure in lieu of the ferry.

"(2) The operation of the ferry shall not be on a route that is classified as local, as a rural minor collector, or as a route on the Interstate System.

"(3) The ferry shall be publicly owned and operated.

"(4) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues shall be applied to actual and necessary costs of operation, maintenance, and repair, including replacement of ferryboats.

"(5) The ferry shall be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the islands of Maine, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operations shall be in any foreign or international waters.

"(6) No ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Surface Transportation Program funds last apportioned to the State. Any amounts credited shall be in addition to other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title.

"(e) CONGESTION PRICING PILOT PROGRAM.—(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more congestion pricing pilot and public projects. The Secretary may enter into cooperative agreements with as many as five such State or local governments or public authorities to establish, maintain, and monitor congestion pricing projects.

"(2) Notwithstanding subsection (c), the Federal share payable for such programs shall be 100 per centum. The Secretary shall fund all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least one year, and thereafter until such time that sufficient revenues are being generated by the program to fund its operating costs without Federal participation, except that the Secretary may not fund any project for more than 3 years.

"(3) Revenues generated by any pilot project under this section must be applied to projects eligible under this title.

"(4) The Secretary shall monitor the effect of such projects for a period of at least 10 years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives every 2 years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.

"(5) Of the sums made available the Secretary pursuant to section 104(a), not to exceed $5,000,000 shall be made available each fiscal year to carry out the requirements of this subsection.".

(c) EXISTING TOLL FACILITY AGREEMENTS.—At the request of the non-Federal parties to any toll facility agreement reached before October 1, 1991 under (1) section 105 of the Federal-Aid Highway Act of 1978; or (2) section 129 of title 23, United States Code, as in effect immediately prior to the date of enactment of this Act; the Secretary shall allow for the continuance of tolls without repayment of Federal funds.

SEC. 113. METROPOLITAN PLANNING.

(a) NEW REQUIREMENTS.—Section 134 of title 23, United States Code, is amended to read as follows:

"SEC. 134. METROPOLITAN PLANNING.

"(a) METROPOLITAN PLANNING ORGANIZATIONS.—A metropolitan planning organization shall be designated for each urbanized area of over 50,000 in population within any State by agreement among the Governor and the units of general purpose local government. Each metropolitan planning organization shall designate boundaries for a metropolitan area pursuant to subsection (b) and shall carry out the transportation planning process required by this section. Metropolitan planning organizations in existence on or before October 1, 1991 shall be considered as being designated for the purposes of this section. Metropolitan planning organizations that represent portions of multi-State metropolitan areas shall, where feasible, provide for coordinated transportation planning for the entire metropolitan area by adopting a single transportation improvement program for such area. The Governor of any State may enter into such agreements as may be necessary with the Governor of any other State to provide for comprehensive multi-State transportation planning for metropolitan areas that encompass portions of more than one State.

"(b) METROPOLITAN AREA BOUNDARIES.—For the purposes of this title, the boundaries of any metropolitan area shall be determined by the metropolitan planning organization and the Governor. Each metropolitan area shall cover at least the existing urbanized area and the area expected to become urbanized within the forecast period, and may encompass the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area as defined by the Bureau of the Census. For areas designated as nonattainment for ozone or carbon monoxide under the Clean Air Act, as amended, the boundaries of the metropolitan area shall be the boundaries of the nonattainment area, except as otherwise provided by the metropolitan planning organization.

"(c) GENERAL REQUIREMENT FOR PLANNING.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum—

"(1) consider preservation of existing transportation facilities and, where practical, meet transportation needs by using existing transportation facilities more efficiently;

"(2) provide that transportation planning is consistent with applicable Federal, State and local energy conservation programs, goals and objectives;

"(3) consider the need to relieve congestion and prevent congestion from occurring where it does not yet occur;

"(4) conform with the applicable requirements of the Clean Air Act as amended;

"(5) consider the effect of transportation policy decisions on land use and development, and assure that transportation plans and programs are consistent with the provisions of all applicable short- and long-term land use and development plans;

"(6) recommend, where appropriate, the use of innovative financing mechanisms, including value capture, tolls, and congestion pricing to finance projects and programs;

"(7) provide for the programming of expenditure on transportation enhancement activities as required in section 133;

"(8) consider the effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded;

"(9) consider the overall social, economic, and environmental effects of transportation decisions;

"(10) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(11) consider the need for connectivity of roads within the metropolitan area with roads outside the metropolitan area; and

"(12) develop a long range transportation plan.

"(d) TRANSPORTATION IMPROVEMENT PROGRAM.—

"(1) DEVELOPMENT OF PROGRAM.—The metropolitan planning organization, in cooperation with the State and relevant transit operators, shall develop a transportation improvement program that includes all projects within the metropolitan area proposed for funding pursuant to this title and the Urban Mass Transportation Act, that is consistent with the long range transportation plan developed by the metropolitan planning organization, and that conforms with the applicable State implementation plan developed pursuant to the Clean Air Act, as amended. The program may include a project only if full funding can be reasonably anticipated to be available for such project within the period of time contemplated for its completion. The program shall be updated at least every two years, and shall be approved by the metropolitan planning organization and the Governor.

"(2) PRIORITY OF PROJECTS.—The transportation improvement program shall include a priority list of projects and project segments to be carried out within each three-year period after the initial adoption of the transportation improvement program.

"(3) SELECTION OF PROJECTS.—Except as otherwise provided in subsection (e), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization, and shall be in conformance with the transportation improvement program for the area.

"(e) ADDITIONAL REQUIREMENTS FOR AREAS OF OVER 250,000 POPULATION AND NONATTAINMENT AREAS OVER 50,000 POPULATION.—

"(1) For metropolitan statistical areas of more than 250,000 population within any State and areas with an urbanized area population of over 50,000 that are in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, within any

State, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by a metropolitan planning organization in cooperation with the State and transit operators.

"(2) The planning process shall include a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies. In nonattainment areas for ozone or carbon monoxide, the development of the congestion management system shall be coordinated with the development of the transportation element of the State Implementation Plan required by the Clean Air Act as amended.

"(3) The Secretary shall assure that each metropolitan planning organization is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once per annum. The Secretary may certify a metropolitan planning organization only if it is complying with the requirements of section 134 and other applicable requirements of Federal law. If at any time after October 1, 1992 a metropolitan planning organization is not certified by the Secretary, the obligation authority attributed to the relevant metropolitan area pursuant to section 133(b)(1) shall lapse and be redistributed to other States in accordance with the requirements of section 104(d)(2), regarding redistribution of obligation authority.

"(4) SELECTION OF PROJECTS.—All projects carried out with Federal participation pursuant to this title (excluding projects undertaken pursuant to the Bridge and Interstate Maintenance Programs) or the Urban Mass Transportation Act within the boundaries of a metropolitan area covered under this subsection shall be selected by the metropolitan planning organization and the Governor in conformance with the transportation improvement program for such area and the priorities established therein. Projects undertaken pursuant to the Bridge and Interstate Maintenance Programs shall be selected by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement plan for the area.

"(5) The metropolitan planning organization for areas covered under this subsection shall provide for a fair and equitable distribution of funds within the metropolitan area.

"(6) Metropolitan planning organizations for areas covered under this subsection shall provide opportunity for public review of draft transportation plans and programs prior to final approval of such plans and programs.

"(f) ADDITIONAL REQUIREMENTS FOR NONATTAINMENT AREAS.—

"(1) Notwithstanding any other provision of law, for areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system.

"(2) If, at the end of any three-year planning period established pursuant to subsection (d), a project to be carried out within such period has not been carried out, any changes in emissions of pollutants that contribute to nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, that have been attributed to such project shall be discounted for the purposes of conformity review pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)) until such time as binding commitments have been made to complete the project by a date certain.

"(3) For the purpose of determining conformity pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)), the metropolitan planning organization shall take into account emissions expected to result from all projects to be carried out within the metropolitan area, whether such projects are publicly or privately funded.

"(g) REPROGRAMMING OF SET ASIDE FUNDS.—Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this subsection may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135.".

(b) ONE PERCENT SET ASIDE.—Section 104(f) of title 23, United States Code, is amended by striking in paragraph (1) "one-half per centum" and inserting in lieu thereof "one per centum"; by striking in paragraph (1) "the Federal-aid systems" and inserting in lieu thereof "programs authorized under this title"; by striking in paragraph (1) all after the fifth comma and inserting in lieu thereof "except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the Interstate Construction and Interstate Substitute programs."; and by striking in paragraph (3) "section 120" and inserting in lieu there of "section 120(j)".

(c) APPORTIONMENT WITHIN A STATE.—Section 104(f)(4) of title 23, United States Code, is amended by striking "and metropolitan area transportation needs" and inserting in lieu thereof "attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable Federal law.".

(d) CONFORMING AMENDMENTS.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking "Sec. 134 Transportation planning in certain urban areas." and inserting in lieu thereof "Sec. 134. Metropolitan Planning.".

(2) Section 104(f)(3) of title 23, United States Code, is amended by striking "designated by the State as being".

SEC. 114. STATEWIDE PLANNING.

(a) NEW REQUIREMENTS.—Section 135 of title 23, United States Code, is amended to read as follows:

"SEC. 135. STATEWIDE PLANNING.

"(a) MANAGEMENT SYSTEMS.—Each State shall have a Bridge Management System, a Pavement Management System, a Safety Management System, and a Congestion Management System developed in accordance with regulations prescribed by the Secretary, except that any State that certifies to the satisfaction of the Secretary that no significant congestion exists or is projected to exist within such State shall not be required to have a congestion management system. Systems shall include inventories and use current condition data to identify needs. The Secretary may withhold project approvals under section 106 and may decline to accept a notice and certification under section 133(c)(2) if a State fails to have approved systems. The regulations shall provide for periodic Federal review of the Management Systems.

"(b) TRAFFIC MONITORING SYSTEM.—Each State shall have a Traffic Monitoring System to provide statistically based data necessary for pavement management, bridge evaluation, safety management, congestion management, national studies, and other activities under this title. The Secretary shall establish guidelines and requirements for the Traffic Monitoring System.

"(c) STATE PLANNING PROCESS.—Each State shall undertake a continuous transportation planning process which shall—

"(1) take into account the results of the management systems required pursuant to subsection (a);

"(2) take into account any Federal, State or local energy use goals, objectives, programs or requirements;

"(3) take into account any valid State or local development or land use plans, programs, or requirements;

"(4) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(5) provide for comprehensive surface transportation planning for non-metropolitan areas;

"(6) be consistent with any metropolitan area plan developed pursuant to section 134;

"(7) provide for connectivity between metropolitan areas within the State and with metropolitan areas in other States;

"(8) take into account recreational travel and tourism;

"(9) take into account any State plan developed pursuant to the Federal Water Pollution Control Act; and

"(10) be coordinated with the development of any State implementation plan required under the Clean Air Act, as amended, and provide for compliance with any relevant requirements of such plan and such Act.

"(d) ADDITIONAL REQUIREMENTS FOR STATES CONTAINING NON ATTAINMENT AREAS.—Any State containing an area in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, shall develop and update at least every two years a long range transportation plan. In addition to the requirements in subsection (c), such plan shall—

"(1) incorporate without amendment the provisions of any metropolitan area plan developed pursuant to section 134; and

"(2) provide for coordination in the development of the State transportation plan required pursuant to this section and the State implementation plan required pursuant to the Clean Air Act, as amended.

"(e) FUNDING.—Funds set aside pursuant to section 307(c)(1) of title 23, United States Code, shall be available to carry out the requirements of this section.".

(b) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking "Sec. 135. Traffic operations improvement programs." and inserting in lieu thereof "Sec. 135. Statewide Planning.".

SEC. 115. RESEARCH AND DATA COLLECTION.

(a) RESEARCH PROGRAM.—Section 307 of title 23, United States Code, is amended as follows:

(1) NEW REQUIREMENTS.—Subsection (b) is redesignated (b)(1), and the following new paragraphs are added thereafter:

"(2) The highway research program shall include a coordinated long term program of research on Intelligent Vehicle Highway Systems.

"(3) The highway research program shall include a coordinated long term program of research for the development, use and dissemination of performance indicators to measure the performance of the surface transportation system, including indicators for productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect the overall performance of the surface transportation system.

"(4) The highway research program shall continue those portions of the work of the Strategic Highway Research Program that the Secretary deems to be important.

"(5) The Secretary shall create and administer a transportation research fellowship program to attract qualified students to the field of transportation engineering and research, which shall be known as The Dwight David Eisenhower Transportation Fellowship Program. No less than $2 million per fiscal year of the funds set aside pursuant to section 307 shall be made available to carry out this paragraph.".

(2) Subsection (c) is amended by striking "highway programs and local public transportation systems" and inserting in lieu thereof "transportation programs"; by striking "highway usage" and inserting in lieu thereof "transportation"; and by striking "highways and highway systems" and inserting in lieu thereof "transportation systems".

(b) FEDERAL SHARE FOR STATE RESEARCH ACTIVITIES.—Section 120(j) is amended by striking "85 per centum" and inserting in lieu thereof "80 per centum"; and by striking "exclusive of" and inserting in lieu thereof ", and".

(c) STATE AUTHORITY TO PROGRAM FUNDS.—Section 307(c) of title 23, United States Code, is amended by striking "upon the request of the State highway department, with the approval of the Secretary, with or without State funds," in paragraph (1); by striking "Not to exceed 1½ per centum" and inserting in lieu thereof "Two per centum"; by striking "section 104" and inserting in lieu thereof "sections 104 and 144"; and by repealing paragraphs (2) and (3).

(d) DATA COLLECTION AND ANALYSIS.—

(1) BUREAU OF TRANSPORTATION STATISTICS.—There is hereby established within the Department of Transportation a Bureau of Transportation Statistics. The Bureau shall be headed by a Director (hereafter referred to as the 'Director'), who shall be appointed by the President with the advice and consent of the Senate, and who shall be removable only for cause.

(2) NEW REQUIREMENTS.—Section 303 of title 23, United States Code, is amended to read as follows:

"SEC. 303. DATA COLLECTION AND ANALYSIS.

"(a) PROGRAM.—The Director of the Bureau of Transportation Statistics, in cooperation with the States, shall pursue a comprehensive, long-term program for the collection and analysis of data relating to the performance of the national transportation system. This effort shall—

"(1) be coordinated with the efforts undertaken pursuant to section 307(b)(3) to develop performance indicators for the national transportation system;

"(2) assure that data and other information is collected in a manner to maximize the ability to compare data from different regions and time periods; and

"(3) assure that data is quality controlled for accuracy and is disseminated to the States and other interested parties.

"(b) ESTIMATES.—The Director shall, on an annual basis, produce estimates of productivity in the various portions of the transportation sector, traffic flows, travel times, vehicle weights, variables influencing traveller behavior including choice of mode, travel costs of intracity commuting and intercity trips, frequency of vehicle and transportation facility repairs and other interruptions of service, accidents, collateral damage to the human and natural environment, and the condition of the transportation system, which estimates shall be suitable for conducting cost-benefit studies and other analysis necessary for prioritizing transportation system problems and analyzing proposed solutions.

"(c) REPORTS.—Beginning on October 1, 1992, and every 12 months thereafter, the Director shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report containing the estimates described in subsection (b) and otherwise describing the status of the transportation system in the United States.

"(d) COLLECTION OF DATA.—The Secretary may use any authority granted under this or any other title, or any Act to collect data the Secretary deems to be important in carrying out the provisions of this section.".

(3) FUNDING.—Section 104(a) of title 23, United States Code, is amended by inserting ", data collection, and other programs" after "research"; and by inserting ", and section 303" after "section 307".

(4) ANALYSIS.—The analysis for chapter 3 of title 23, United States Code, is amended by striking "Sec. 303. [Repealed. P.L. 97-449]." and inserting in lieu thereof "Sec. 303. Data Collection and Analysis.".

(e) FUNDAMENTAL PROPERTY STUDIES.—(1) The Administrator of the Federal Highway Administration (hereafter in this subsection referred to as the 'Administrator') is directed to conduct fundamental chemical property and physical property studies of petroleum asphalts and modified asphalts used in highway construction in the United States with the primary emphasis of prediction of pavement performance from the fundamental and rapidly measurable properties of asphalts and modified asphalts.

(2) In carrying out the studies in paragraph (1), the Administrator shall enter into contracts with a non-profit organization with demonstrated expertise in research associated in the above areas in order to undertake the necessary technical and analytical research in coordination with existing programs, including the Strategic Highway Research Program, that evaluate actual performance of asphalts and modified asphalts in roadways.

(3) ACTIVITIES OF STUDIES.—The Administrator in conducting the studies in this subsection shall include the following activities:

(A) fundamental composition studies;

(B) fundamental physical and rheological property studies;

(C) asphalt-aggregate interaction studies;

(D) coordination of composition studies, physical and rheological property studies and asphalt-aggregate interaction studies for the purposes of prediction of pavement performance including refinements of strategic Highway Research Program specifications.

(4) The Administrator, in coordination with a non-profit research organization, shall implement a test strip, the purpose of which shall be to demonstrate and evaluate unique energy and environmental advantages of the use of shale oil modified asphalts under extreme climate conditions. The Administrator shall report to Congress on his findings as required under paragraph (6). Such findings shall include an evaluation of this test strip and legislative recommendations on a national program to support American transportation and energy security requirements. In no event shall this report be submitted after November 30, 1995. For purposes of construction activities related to this test strip the Administrator and the Director of the National Park Service shall make the necessary funds available in equal amounts from the Park and Parklands allocation for the Federal lands highway program.

(5) AUTHORIZATIONS.—The Administrator shall provide at least $3 million for each of fiscal years 1992, 1993, 1994, 1995 and 1996 to carry-out the provisions of paragraph (2).

(6) ANNUAL REPORT TO CONGRESS.—On November 30 of each year, the Administrator shall report to Congress on progress in implementing the provisions of this subsection in the preceding fiscal year. For purposes of fiscal year 1992, the Administrator shall provide a report on proposed activities within one hundred eighty days of enactment of this section.

SEC. 116. MAGNETIC LEVITATION TRANSPORTATION.

(a) DECLARATION OF POLICY.—Section 101(c) of title 23, United States Code, is amended to read as follows:

"(c) It is the policy of the United States to establish in the shortest time practicable a United States designed and constructed magnetic levitation transportation technology capable of operating along Federal-aid highway rights-of-way, as part of a national transportation system of the United States.".

(b) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—

(1) MANAGEMENT OF PROGRAM.—(A) There is hereby established a National Magnetic Levitation Design Program to be managed jointly by the Secretary and the Assistant Secretary of the Army for Civil Works (hereafter referred to as 'the Assistant Secretary'.) In carrying out such program, the Secretary and the Assistant Secretary shall consult with appropriate Federal officials, including the Secretary of Energy and the Administrator of the Environmental Protection Agency. The Secretary and the Assistant Secretary shall establish a National Maglev Joint Project Office (hereafter referred to as the 'Maglev Project Office') to carry out such program, and shall enter into such arrangements as may be necessary for funding, staffing, office space, and other requirements that will allow the Maglev Project Office to carry out its functions.

(B) STRATEGIC PLAN.—The Secretary and the Assistant Secretary, in consultation with appropriate Federal officials including the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop a national strategic plan for the design and construction of a national magnetic levitation surface transportation system. Such plan shall consider other modes of high speed surface transportation, including high speed rail. The plan shall be completed and transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives within 18 months of the date of enactment of this Act.

(2) PHASE ONE GRANTS.—(A) Not later than 3 months after the date of enactment of this Act, any eligible participant may submit to the Maglev Project Office a proposal for research and development of a conceptual de-

sign for a maglev system and an application for a grant to carry out that research and development.

(B) Not later than 6 months after the date of enactment of this Act, the Secretary and the Assistant Secretary shall award grants for one year of research and development to no less than six applicants. If fewer than six complete applications have been received, grants shall be awarded to as many applicants as is practical.

(C) The Secretary and the Assistant Secretary may approve a grant under subparagraph (B) only after consideration of factors relating to the construction and operation of a magnetic levitation system, including the cost-effectiveness, ease of maintenance, safety, limited environmental impact, ability to achieve sustained high speeds, ability to operate along the Interstate highway rights of way, the potential for the guideway design to be a national standard, and the bidder's resources, capabilities, and history of successfully designing and developing systems of similar complexity; *Provided that*, the applicant agrees to submit a report to the Maglev Project Office detailing the results of the research and development, and agrees to provide for matching of the phase one grant at a 90 per centum Federal, 10 per centum non-Federal cost share.

(D) For purposes of this section, the term 'eligible participant' means United States private businesses, United States public and private education and research organizations, Federal laboratories, and consortia of such businesses, organizations and laboratories.

(3) PHASE TWO GRANTS.—Within 3 months of receiving the reports under paragraph (2), the Secretary and the Assistant Secretary shall select not more than 3 participants to receive one-year grants for research and development leading to a final design for a maglev system. The Secretary and the Assistant Secretary may only award grants under this paragraph if they determine that the applicant has demonstrated technical merit for the conceptual design and the potential for further development of such design into a national system, and if the applicant agrees to provide for matching of the phase two grant at a 80 per centum Federal, 20 per centum non-Federal cost share.

(4) PROTOTYPE.—(A) Within 6 months of receiving the final designs developed under paragraph (3), the Secretary and the Assistant Secretary shall select one design for development into a full scale prototype. Not more than 3 months after the selection of such design, the Secretary and the Assistant Secretary shall award one prototype construction grant to a State government, local government, organization of State and local governments, consortium of United States private businesses or any combination of these entities for the purpose of constructing a prototype maglev system in accordance with the selected design.

(B) Selection of the grant recipient under this paragraph shall be based on the following factors:

(i) The project shall utilize Interstate highway rights of way.

(ii) The project shall have sufficient length to allow significant full speed operations between stops.

(iii) No more than 75 per centum of the cost of the-project shall be borne by the United States.

(iv) The project shall be constructed and ready for operational testing within 3 years after the award of the grant.

(v) The project shall provide for the conversion of the prototype to commercial operation after testing and technical evaluation is completed.

(vi) The project shall be located in an area that provides a potential ridership base for future commercial operation.

(vii) The project shall be located in an area that experiences climatic and other environmental conditions that are representative of such conditions in the United States as a whole.

(viii) The project shall be suitable for eventual inclusion in a national magnetic levitation system network.

(c) LICENSING.—

(1) PROPRIETARY RIGHTS.—No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained from a United States business, research, or education entity as a result of activities under this Act shall be disclosed.

(2) COMMERCIAL INFORMATION.—The research, development and use of any technology developed pursuant to an agreement reached pursuant to this section, including the terms under which any technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701-3714). In addition, the Secretary and the Assistant Secretary may require any grant recipient to assure that research and development shall be performed substantially in the United States, and that the products embodying the inventions made under any agreement pursuant to this section or produced through the use of such inventions shall be manufactured substantially in the United States.

(d) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated to carry out this section shall remain available until expended.

(e) REPORTS.—The Secretary and the Assistant Secretary shall provide periodic reports on progress made under this section to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(f) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, the requirements of chapter 1 of title 23, United States Code, shall apply to the provisions of this section.

SEC. 117. ACCESS TO RIGHTS OF WAY.

(a) AVAILABILITY OF RIGHTS OF WAY.—Subsection 142(g) of title 23, United States Code, is amended to read as follows:

"(g) In any case where sufficient land exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, highway and non-highway public mass transit facilities the Secretary shall authorize a State to make such lands and rights-of-way available with or without charge to a publicly or privately owned authority or company for such purposes.".

(b) AVAILABILITY OF AIRSPACE.—Section 156 of title 23, United States Code, is amended by adding before the period at the end of the first sentence the following: ": *Provided*, That the States may permit governmental use, use by public or private entities for passenger, commuter, or high speed rail, magnetic levitation systems, or other transit, utility use and occupancy where such use or occupancy is necessary for a transportation project allowed under this section, or use for transportation projects eligible for assistance under this title, with or without charge.".

(c) CONFORMING AMENDMENTS.—Section 142 of title 23, United State Code, is amended as follows:

(1) Paragraph (a)(1) is amended by striking "of the Federal-aid systems"; and by striking "project on any Federal-aid system" and inserting in lieu thereof "Surface Transportation Program project or as an Interstate construction project".

(2) Paragraph (a)(2) is repealed.

(3) Subsection (c) is repealed.

(4) Paragraph (e)(2) is repealed.

(5) Subsections (i) and (k) are repealed.

SEC. 118. REPORT ON REIMBURSEMENT FOR SEGMENTS CONSTRUCTED WITHOUT FEDERAL ASSISTANCE.

The Secretary shall update the findings of the report required by Section 114 of the Federal-Aid Highway Act of 1956 to determine what amount the United States would pay to the States to reimburse the States for segments incorporated into the Interstate System that were constructed at non-Federal expense. The report required under this section shall be completed by October 1, 1993, and shall be transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

SEC. 119. DISADVANTAGE BUSINESS ENTERPRISES.

(a) CONTINUATION OF CURRENT LAW.—Section 106(c)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking "titles I and III of this Act or obligated under" and inserting instead "the Surface Transportation Efficiency Act of 1991 or obligated under titles I and III of this Act and ".

(b) ADJUSTMENT FOR INFLATION.—Sec. 106(c)(2)(A) of such 1987 Act is amended by striking "14,000,000" and inserting instead "15,370,000".

SEC. 120. AVAILABILITY OF FUNDS.

(a) Section 118 of title 23, United States Code, is amended to read as follows:

"(a) DATE AVAILABLE FOR OBLIGATION.—Except as otherwise specifically provided, authorizations from the Highway Account of the Highway Trust Fund to carry out this title shall be available for obligation when apportioned or allocated, or on October 1 of the fiscal year for which they are authorized, whichever first occurs.

"(b) PERIOD OF AVAILABILITY.—

"(1) INTERSTATE CONSTRUCTION FUNDS.—Funds apportioned or allocated for Interstate Construction in a State shall remain available for obligation in that State until the close of the fiscal year in which they are apportioned or allocated. Sums not obligated by the close of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994 shall remain available in the State until expended and: *Provided further*, that all sums apportioned or allocated to Massachusetts on or before October 1, 1989 shall remain available until expended.

"(2) OTHER FUNDS.—Except as otherwise specifically provided, funds (other than Interstate Construction) apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

"(c) ALASKA AND PUERTO RICO.—Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, and other like purposes.".

SEC. 121. PROGRAM EFFICIENCIES.

(a) Section 102 of title 23, United States Code, is amended to read as follows:

"SEC. 102. PROGRAM EFFICIENCIES.

"(a) STANDARDS.—Except as provided in section 133(c), projects undertaken pursuant to the Surface Transportation Program must be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. The design and construction standards to be adopted for highways classified as principal arterials shall be those approved by the Secretary in cooperation with the State highway departments and the American Association of State Highway and Transportation Officials. Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multi-lane limited access control highways, except as provided in subsection (b), regarding resurfacing projects. After receiving any such request the Secretary shall undertake project review only as requested by the State.

"(b) PAVEMENT REHABILITATION PROJECTS.—Notwithstanding any other provision of this title, a State highway or transportation department may approve the design of a pavement rehabilitation project or highway resurfacing project on any project constructed pursuant to this title, *provided* that States comply with the requirements of all other applicable Federal laws and regulations.

"(c) HIGHWAY MAINTENANCE STANDARDS.—Notwithstanding any other provision of this title, a State highway or transportation department may establish maintenance standards for projects constructed pursuant to this title, which shall be subject to annual approval by the Secretary. The Secretary may not withhold project approval pursuant to section 106 if a State is meeting maintenance standards approved by the Secretary under this section.

"(d) HOV PASSENGER REQUIREMENTS.—A State highway or transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes *Provided*, that no fewer than two occupants may be required. For the purposes of this title and the Surface Transportation Efficiency Act of 1991, motorcycles and bicycles shall not be considered single occupant vehicles. Nothing in this title or the Surface Transportation Efficiency Act of 1991 shall be construed as altering the provisions or effect of section 163 of the Highway Improvement Act of 1982.

"(e) ENGINEERING COST REIMBURSEMENT.—A State shall refund to the Highway Trust Fund all Federal funds for preliminary engineering for any project if the project has not yet advanced to construction or acquisition of right-of-way within 10 years of receipt of such Federal funds.".

(b) HISTORIC AND SCENIC VALUES.—Section 109 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(p) Where a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or where such project is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) and section 133(c) if such project is designed to standards that allow for the preservation of these values: *Provided*, that such project is designed with mitigation measures to allow preservation of these values and ensure safe operation of the project.".

(c) DELEGATION OF RESPONSIBILITIES.—Section 302 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(c) At the request of the Governor of any State, the Secretary is authorized to permit the highway or transportation department of a municipality of over 1 million population within the State to perform all such duties and responsibilities regarding projects undertaken within the municipality as are delegated to it that would otherwise be the responsibility of the State highway or transportation department.".

(d) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking "Sec. 102. Authorizations." and inserting in lieu thereof "Sec. 102. Program efficiencies.".

SEC. 122. USE OF SAFETY BELTS AND MOTORCYCLE HELMETS.

(a) NEW REQUIREMENTS.—Section 153 of title 23, United States Code, is amended to read as follows:

"153. USE OF SAFETY BELTS AND MOTORCYCLE HELMETS.

"(a) STATE LAWS.—

"(1) FISCAL YEAR 1995.—If, at any time in fiscal year 1994 a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 1.5 per centum of the amount apportioned to such State for fiscal year 1995 under section 104(b)(1).

"(2) AFTER FISCAL YEAR 1995.—If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) has a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 3 per centum of the amount apportioned to such State for the succeeding fiscal year under section 104(b)(1). A State which is required to expend funds for highway safety programs under this subsection shall expend such funds for purposes eligible under section 402 and section 130.

"(3) FEDERAL SHARE.—The Federal share of the cost of any project carried out under this subsection shall be 100 per centum.

"(4) AVAILABILITY.—Notwithstanding the requirements of section 118, funds subject to the set aside under this subsection shall be available only in the year for which they were apportioned, and shall thereafter lapse. For the purposes of making expenditures of such funds, a State shall use an amount of the obligation authority distributed for the Surface Transportation Program for the fiscal year in which the set aside apportionments were made equal to the amount required to be expended under this subsection.

"(b) GRANTS TO STATES.

"(1) STATE ELIGIBILITY.—The Secretary may make grants to a State in accordance with this section if such State has in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

"(2) USE OF GRANTS.—a grant made to a State under this section shall be used to adopt and implement a traffic safety program to carry out the following purposes:

"(A) To educate the public about motorcycle and passenger vehicle safety and motorcycle helmet, safety belt, and child restraint system use and to involve public health education agencies and other related agencies in these efforts.

"(B) To train law enforcement officers in the enforcement of State laws described in paragraph (1).

"(C) To monitor the rate of compliance with State laws described in subsection (a).

"(D) To enforce State laws described in paragraph (1).

"(3) MAINTENANCE OF EFFORT—A grant may not be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for any traffic safety program described in subsection (b) at or above the average level of such expenditures in the State's 2 fiscal years preceding the date of the enactment of this section.

"(4) FEDERAL SHARE.—A State may not receive a grant under this section in more than 3 fiscal years. The Federal share payable for a grant under this section shall not exceed—

"(A) in the first fiscal year such State receives a grant, 75 per centum of the cost of implementing in such fiscal year a traffic safety program described in subsection (b);

"(B) in the second fiscal year such State receives a grant, 50 per centum of the cost of implementing in such traffic safety program; and

"(C) in the third fiscal year such State receives a grant, 25 per centum of the cost of implementing in such fiscal year such traffic safety program.

"(5) MAXIMUM AGGREGATE AMOUNT OF GRANTS.—The aggregate amount of grants made to a State under this section shall not exceed 90 per centum of the amount apportioned to such State for fiscal year 1990 under section 402.

"(6) ELIGIBILITY FOR GRANTS.—

"(A) A State is eligible in a fiscal year for a grant under this section only if the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State implements in such fiscal year a traffic safety program described in subsection (b).

"(B) A State is eligible for a grant under this section in a fiscal year succeeding the first fiscal year in which a State receives a

grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 75 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 50 per centum.

"(C) A State is eligible for a grant under this section in a fiscal year succeeding the second fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 85 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 70 per centum.

"(c) MEASUREMENTS OF RATES OF COMPLIANCE.—For the purposes of subsection (b) (2) and (3), a State shall measure compliance with State laws described in subsection (b)(1) using methods which conform to guidelines to be issued by the Secretary ensuring that such measurements are accurate and representative.

"(d) DEFINITIONS.—For the purposes of this section, the following definitions apply:

"(1) The term 'child restraint system' means a device which is designed for use in a passenger vehicle to restrain, seat, or position a child who weighs 50 pounds or less.

"(2) The term 'motorcycle' means a motor vehicle with motive power which is designed to travel on not more than 3 wheels in contact with the surface.

"(3) The term 'passenger vehicle' means a motor vehicle with motive power which is designed for transporting 10 individuals or less, including the driver, except that such term shall not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

"(4) The term 'safety belt' means—

"(A) with respect to open-body vehicles and convertibles, and occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

"(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.".

"(e) AUTHORITY.—All provisions of chapter 1 of this title that are applicable to Surface Transportation Program funds, other than provisions relating to the apportionment formula, shall apply to funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this section shall remain available until expended.".

(b) STUDY.—The Secretary shall conduct a study to collect and analyze data from trauma centers regarding differences in injuries, medical costs, payor mix, and unreimbursed costs of restrained and unrestrained, helmeted and non-helmeted victims of motor vehicle and motorcycle crashes. Of the amounts authorized to be appropriated for fiscal year 1992 to carry out the requirements of this section, not less than $5,000,000 shall be available to carry out this subsection. Public education and information activities in support of State and community motorcycle safety and safety belt programs shall be eligible for funds authorized to be appropriated for this study. Approval by the Secretary of Transportation of the payment of such sums shall establish a contractual obligation of the United States to pay such sums.

(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue regulations to carry out section 153 of title 23, United States Code.

(d) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking "Sec. 153. [Repealed.] and inserting in lieu thereof "Sec. 153. Use of Safety Belts and Motorcycle Helmets.".

SEC. 123. CREDIT FOR NON-FEDERAL SHARE.

(a) ELIGIBILITY.—A State may use as a credit toward the non-Federal matching share requirement for all programs under this Act and title 23, United States Code, those funds that are generated and used by public, quasi-public and private agencies to build, improve, or maintain transportation infrastructure that serves the public purpose of interstate commerce. Such public, quasi-public or private agencies shall have built, improved, or maintained such transportation infrastructure without Federal funds

(b) MAINTENANCE OF EFFORT.—The credit for any non-Federal share shall not reduce nor replace State monies required to match Federal funds for any program pursuant to this Act or title 23, United States Code. In receiving a credit for non-Federal capital expenditures under this section, a State shall enter into such agreements as the Secretary may require to ensure that such State will maintain its non-Federal transportation capital expenditures at or above the average level of such expenditures for the preceding three fiscal years.

(c) TREATMENT.—Use of such credit for a non-Federal share shall not expose such agencies from which the credit is received to additional liability, additional regulation or additional administrative oversight. When credit is applied from chartered multi-State agencies, such credit shall be applied equally to all charter States. The public, quasi-public, and private agencies from which the credit for which the non-Federal share is calculated shall not be subject to any additional Federal design standards, laws or regulations as a result of providing non Federal match other than those to which such agency is already subject.

SEC. 124. ACQUISITION OF RIGHTS-OF-WAY.

(a) RIGHT-OF-WAY REVOLVING FUND.—Section 108(c)(3) of title 23, United States Code, is amended by striking out "ten" and inserting in lieu thereof "twenty".

(b) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Section 108 of title 23, United States Code, is further amended by adding subsection (d) as follows:

"(d) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Federal funds may be used to participate in payment of the costs incurred by a State for the acquisition of rights-of-way, acquired in advance of any Federal approval or authorization, which are subsequently incorporated into a project, and the costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values. The Federal share payable of the costs shall be eligible for reimbursement out of funds apportioned to the State when the rights-of-way acquired are incorporated into a project eligible for surface transportation funds, if the State demonstrates to the Secretary that—

"(1) any land acquired, and relocation assistance provided complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

"(2) title VI, of the Civil Rights Act of 1964 has been complied with;

"(3) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and that the acquisition is certified by the Governor as consistent with the State plans prior to the acquisition;

"(4) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this Act;

"(5) the alternative for which the right-of-way was acquired was selected by the State pursuant to regulations to be issued by the Secretary, which provide for the consideration of the environmental impacts of various alternatives;

"(6) prior to the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the right-of-way was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and other environmental laws as identified by the Secretary in regulations; and

"(7) prior to the time that the cost incurred by a State is approved for Federal participation, both the Secretary and the Administrator of the Environmental Protection Agency have concurred that the property acquired under this section did not influence the environmental assessment of the project, including the decision relative to the need to construct the project or the selection of the specific location.".

(c) CONFORMING AMENDMENTS.—Section 108 of title 23, United States Code, is further amended—

(1) in subsection (a), by striking out "on any of the Federal-aid highway systems, including the Interstate System," each of the two places it appears;

(2) in subsection (c)(2), by striking "on any Federal-aid system"; and

(3) in subsection (c)(3) by striking "on the Federal-aid system of which such project is to be a part".

SEC. 125. TRANSPORTATION IN PARKLANDS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Interior, shall submit to the Congress a study of alternative transportation modes for use in the National Park System. Such study shall consider the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands. Such study shall also consider methods to obtain private capital for the construction of such transportation modes and related infrastructure.

(b) AUTHORIZATION OF APPROPRIATIONS.—From within the sums authorized to be appropriated for subsection 202(d) of title 23, United States Code, $300,000 shall be made available to carry out this section.

SEC. 126. TRAFFIC CONTROL STANDARDS.

The Secretary shall revise the Manual of Uniform Traffic Control Devices to include—

(a) a standard for a minimum level of retroreflectivity that must be maintained

for pavement markings and signs, which shall apply to all roads open to public travel;

(b) a standard to define the roads that must have a center line or edge lines or both, provided that in setting such standard the Secretary shall consider the functional classification of roads, traffic volumes, and the number and width of lanes.

SEC. 127. USE OF RUBBER-MODIFIED ASPHALT.

(a) Beginning on the date four years after the date of enactment of this Act, the Secretary shall make no grant to any State under title 23, United States Code, other than for projects or grants for safety where the Secretary determines that the principal purpose of the project is an improvement in safety that will result in a significant reduction in or avoidance of accidents, for any year unless the State shall have submitted to the Secretary a certification that not less than 10 per centum of the asphalt pavement laid in the State in such year and financed in whole or part by such grants shall be rubber-modified asphalt pavement. The Secretary may establish a phase-in period for the requirements established by this section, if the Secretary determines that such phase-in period is necessary to establish production and application facilities for rubber-modified asphalt pavement. Such phase-in period shall not extend beyond the date eight years after the date of enactment of this section. The Secretary may increase the percentage of rubber-modified asphalt pavement to be used in Federally-assisted highway projects to the extent it is technologically and economically feasible and if an increase is appropriate to assure markets for the reuse and recycling of waste tires.

(b) The Secretary may set aside the provisions of this section for any three-year period on a determination, made in concurrence with the Administrator of the Environmental Protection Agency with respect to paragraphs (1) and (2), that there is reliable evidence indicating—

(1) that techniques for mixing and applying rubber modified asphalt pavement substantially increase risks to human health or the environment as compared to the risks associated with mixing and applying conventional pavement;

(2) that rubber-modified asphalt pavement cannot be recycled to the same degree as conventional pavement; or

(3) that rubber-modified asphalt pavement does not perform satisfactorily as a material for the construction or surfacing of highways and roads.

(c) Any determination made to set aside the requirements of this section may be renewed for an additional three-year period by the Secretary, with the concurrence of the Administrator with respect to determinations made under subsections (b)(1) and (b)(2). Any determination made with respect to subsection (b)(3) may be made for specific States or regions considering climate, geography and other factors that may be unique to the State or region.

(d) The Secretary shall establish a rubber-modified asphalt pavement utilization percentage of less than 10 per centum in a particular State, upon the request of such State and with the concurrence of the Administrator of the Environmental Protection Agency, if the Secretary determines that there is not a sufficient quantity of waste tires available prior to disposal in the State to meet the 10 per centum requirement established by subsection (a) and each of the other recycling and processing uses, including retreading, for which waste tires are required.

(e) The Secretary may grant a State credit toward the requirement that 10 per centum of the asphalt pavement used in Federally-assisted highway projects in the State be rubber modified asphalt pavement for volumes of rubber-modified pavement used in other road and construction projects and for asphalt pavement containing rubber at rates less than 60 pounds per ton, provided that the total amount of rubber used in asphalt pavement containing rubber in the State in any year is at least equivalent to the amount that would be used if 10 per centum of the pavement used in Federally-assisted highway projects was rubber-modified asphalt pavement.

(f) For purposes of this section—

(1) the term 'process' means the utilization of tires to reclaim material or energy value;

(2) the term 'recycle' means to process waste tires to produce usable materials other than fuels;

(3) the term 'rubber-modified asphalt pavement' means asphalt pavement averaging not less than 60 pounds of crumb rubber or other tire-derived material for each ton of finished product and may be formulated from hot mix or cold mix processes for use in base or surface applications.

SEC. 128. RIGHT-OF-WAY REVOLVING FUND.

Section 108 of title 23, United States Code, is amended—

(a) in subsection (a) by striking out "on any of the Federal-aid highway systems, including the Interstate System" in each of the two places it appears; by striking out "State highway department" in each of the two places it appears and inserting in lieu thereof "State transportation department"; and by inserting "or passenger rail facility" after "road"; and

(b) in subsection (c) by inserting "and passenger rail facilities" after "highways" in paragraph (2); by striking "on any Federal-aid system" in paragraph (2); by striking "State highway department" and inserting in lieu thereof "State transportation department" in paragraph (2); by inserting "or passenger rail facility" after "highway" in each of the two places it appears in paragraph (3); and by striking "on the Federal-aid system of which such project is to be a part" in paragraph (3).

SEC. 129. SCENIC AND HISTORIC HIGHWAYS.

There is hereby created a National Scenic and Historic Byways Program, and an Office of Scenic and Historic Byways within the Federal Highway Administration, which Office shall administer the program. The Office shall provide technical assistance to the States and shall provide grants for the planning, design and development of State scenic byway programs. The Secretary, in consultation with the Secretaries of Agriculture, Interior, and Commerce, and other interested parties, shall establish criteria for roads to be designated as part of an All American Roads program. The Secretary shall designate the roads to be included in the All American Roads program. Roads considered for such designation shall be nominated by the States and Federal agencies. For all State owned roads nominated by Federal agencies, the State shall concur in the nomination. The sum of $5 million per year is authorized to be appropriated for the purposes of carrying out this section. The Secretary shall establish criteria for allocating such funds to the States.

SEC. 130. NATIONAL HIGHWAY SYSTEM.

Within two years of the date of enactment of this Act, the Secretary shall submit to the Congress a proposal for a National Highway System to provide an intercontinental system of principal arterial routes which will serve major population centers, ports, airports, international border crossings, and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel. The National Highway System shall consist of highways on the Interstate system and other specified urban and rural principal arterials, including toll facilities.

SEC. 131. DEFINITIONS.

(a) NEW DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended adding definitions for "carpool project", "hazard elimination", "magnetic levitation system", "metropolitan area", "open to public travel", "operational improvement", "public authority", "public lands highway", "railway-highway crossing", "reconstruction", and "transportation enhancement activities" as follows:

"The term 'carpool project' means any project to encourage the use of carpools and vanpools, including but not limited to provision of carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

"The term 'hazard elimination' means the correction or elimination of hazardous locations, sections or elements, including roadside obstacles and unmarked or poorly marked roads which may constitute a danger to motorists, bicyclists or pedestrians.

"The term 'magnetic levitation system' means any facility (including vehicles) using magnetic levitation for transportation of passengers or freight that is capable of operating at high speeds, and capable of operating along Interstate highway rights of way.".

"The term metropolitan area means an area so designated pursuant to section 134.".

"The term 'open to public travel' means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulations other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates."

"The term 'operational improvement' means a capital improvement other than (1) a reconstruction project; (2) additional lanes except high occupancy vehicle lanes; (3) interchange and grade separations; or (4) the construction of a new facility on a new location. The term includes the installation of traffic surveillance and control equipment; computerized signal systems; motorist information systems, integrated traffic control systems; incident management programs; transportation demand management facilities, strategies, and programs; high occupancy vehicle preferential treatments including the construction of high occupancy vehicle lanes; and spot geometric and traffic control modifications to alleviate specific bottlenecks and hazards."

"The term 'public authority' means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate or maintain toll or toll-free facilities.

"The term 'public lands highway' means a forest road under the jurisdiction of and

maintained by a public authority and open to public travel, or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by, a public authority and open to public travel.

"The term 'railway-highway crossing project' means any project for the elimination of hazards of railway-highway crossings, including the protection or separation of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

"The term 'reconstruction' means the addition of travel lanes and the construction and reconstruction of interchanges and over crossings, including acquisition of right-of-way where necessary.

"The term 'transportation enhancement activities' means, with respect to any project or the area to be served by the project, highway safety improvement projects other than repaving projects, railway-highway crossing projects, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities including historic railroad facilities and canals, preservation of abandoned railway corridors including the conversion and use thereof for pedestrian or bicycle trails, control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff.

(b) CONFORMING AMENDMENTS.—

(1) The definition for "highway" is amended by inserting "scenic easements" after "and also includes".

(2) The definitions for "Federal-aid highways", "Federal-aid system", "Federal-aid primary system", "Federal-aid secondary system", "Federal-aid urban system", "forest highway", "project", and "urban area" are repealed.

(3) The definition for "Indian reservation roads" is amended by striking ", including roads on the Federal-aid systems,".

(4) The definition for "park road" is amended by inserting ", including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles," before "that is located in".

Sec. 132. FUNCTIONAL RECLASSIFICATION.

A functional reclassification, which shall be updated periodically, should be undertaken by each State (as that term is defined in section 101 of title 23, United States Code), the United States Virgin Islands, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands, by September 30, 1992, and shall be completed by September 30, 1993 in accordance with guidelines that will be issued by the Secretary. The functional reclassification shall classify all public roads (as that term is defined in section 101 of title 23, United States Code).

Sec. 133. REPEAL OF CERTAIN SECTIONS OF Title 23, UNITED STATES CODE.

(a) The following portions of title 23, United States Code, are hereby repealed, including the chapter analyses relating thereto:

(1) Section 105, relating to programs;

(2) Section 117, relating to certification acceptance;

(3) Section 122, relating to bond retirement;

(4) Section 126, relating to diversion of funds;

(5) Section 137, relating to parking facilities;

(6) Section 146, relating to carpools;

(7) Section 147, relating to priority primary projects;

(8) Section 148, relating to a national recreational highway;

(9) Section 150, relating to urban system funds;

(10) Section 152, relating to hazard elimination;

(11) Section 155, relating to lake access highways;

(12) Section 201, relating to authorizations;

(13) Section 210, relating to defense access roads;

(14) Section 212, relating to the Inter-American Highway;

(15) Section 216, relating to the Darien Gap Highway;

(16) Section 218, relating to the Alaska Highway;

(17) Section 309, relating to foreign countries;

(18) Section 310, relating to civil defense;

(19) Section 311, relating to strategic highway improvements;

(20) Section 312, relating to military officers;

(21) Section 318, relating to highway relocation; and

(22) Section 320, relating to bridges on Federal dams.

SEC. 134. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 23, UNITED STATES CODE.—Title 23, United States Code, is amended as follows:

(1) Section 103 is amended as follows:

(A) Subsections (a), (b), (c), (d), and (g) are repealed.

(B) Paragraph (e)(1) is amended by striking "All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section.".

(C) Paragraph (e)(4)(B) is amended by striking the last two sentences and inserting instead "Each highway project constructed under this paragraph shall be subject to the provisions of this title applicable to highway projects constructed under the Surface Transportation Program."

(D) Paragraph (e)(4)(E)(i) is amended by striking "for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year" and by inserting in lieu thereof "until expended".

(E) Paragraphs (e)(4)(H)(i) and (e)(4)(H)(iii) are amended by striking "and 1991" the three places it appears and inserting instead "1991, 1992, 1993, 1994 and 1995".

(F) Subsection (f) is amended to read as follows: "(f) The Secretary shall have authority to approve in whole or in part the Interstate System, or to require modifications or revisions thereof."

(2) Section 104 is amended as follows:

(A) Subsection (b)(6) is repealed.

(B) Subsections (c) and (d) are repealed.

(3) Section 106 is amended as follows:

(A) Subsection (a) is amended by striking "117" and inserting instead "133".

(B) Subsection (b) is repealed.

(C) Subsection (d) is amended by striking "on any Federal-aid System".

(4) Section 109 is amended as follows:

(A) Subsection (a) is amended by striking "on any Federal-aid system".

(B) Subsection (c) is repealed.

(C) Subsection (i) is amended by striking "on a Federal-aid system" and "on any Federal-aid system"; and by striking "the Federal-aid system on which such project will be located".

(D) Paragraph (l)(1) is amended by striking "on any Federal-aid system".

(5) Section 112 is amended by striking subsection (f).

(6) Section 113 is amended—

(A) by striking "on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System,";

(B) by striking "upon the Federal-aid systems,"; and

(C) by striking "on any of the Federal-aid systems".

(7) Section 114 is amended as follows:

(A) Subsection (a) is amended by (1) striking "located on a Federal-aid system" and inserting instead "constructed under this chapter" and (2) striking "117" and inserting "133".

(B) Paragraph (b)(3) is amended by striking "located on a Federal-aid system" and inserting instead "under this chapter".

(8) Section 115 is amended as follows:

(A) The title of subsection (a) is amended by striking "Urban, Secondary," and inserting instead "Surface Transportation Program,".

(B) Subparagraph (a)(1)(A)(i) is amended by striking "section 104(b)(2), section 104(b)(6)" and inserting instead "section 104(b)(1)".

(C) The title of subsection (b) is amended by striking "And Primary".

(D) Paragraph (b)(1) is amended (i) by striking "the Federal-aid primary system or"; (ii) by striking "104(b)(1) or"; and (iii) by striking ", as the case may be,".

(9) Section 116 is amended as follows:

(A) Subsection (a) is amended by striking "The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system."

(B) Subsection (b) is amended by striking "on the Federal-aid secondary system, or within a municipality," and inserting instead "within a county or municipality".

(10) Section 120 is amended as follows:

(A) Subsection (c) is amended by striking the last sentence.

(B) Subsection (f) is amended by striking "project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (c) of this section" and inserting instead "project on the Interstate System shall not exceed the Federal share payable on a project on that system as provided in subsection (c) of this section and any project off the Interstate System shall not exceed the Federal share payable as provided in subsection (a) of this section".

(C) Subsection (k) is amended by striking "for any Federal-aid system" and inserting instead "under section 104"; by striking ", and 155 of this title and for those priority primary routes under section 147"; and by striking "and for funds allocated under the provisions of section 155".

(D) Subsection (m) is repealed.

(11) Section 121(c) is amended by inserting "For projects obligated under section 106" in two places before the word "No"; and by striking "located on a Federal-aid system".

(12) Section 123 is amended by striking "on any Federal-aid system".

(13) Section 124 is amended by striking "of the Federal-aid systems" and inserting in lieu thereof "public roads or bridges except roads functionally classified as local or rural minor collector".

(14) Section 125 is amended as follows:

(A) Subsection (b) is amended (i) by striking "highways on the Federal-aid highway systems, including the Interstate System" and inserting instead "public roads except roads functionally classified as local or rural minor collector" and (ii) by striking "authorized on the Federal-aid highway systems, including the Interstate System" and inserting instead "authorized on public roads except roads functionally classified as local or as rural minor collector".

(B) Subsection (c) is amended by striking ", whether or not such highways, roads, or trails are on any of the Federal-aid highway systems".

(15) Section 130 is amended by striking subsections (a), (e), (f) and (h), and by renumbering the remaining sections accordingly.

(16) Section 139 is amended as follows:

(A) Subsection (a) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating".

(B) Subsection (b) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating"; and (iv) by striking "section" in the last sentence and inserting instead "subsection".

(C) Subsection (c) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "restoration, and reconstruction" and inserting instead "and restoration".

(17) Section 140 is amended as follows:

(A) Subsection (a) is amended by striking "on any of the Federal-aid systems,".

(B) Subsection (c) is amended by striking "104(a)" and inserting instead "104(b)".

(18) Section 141(b) is amended by striking "on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system" and inserting instead "on public roads except roads functionally classified as local or rural minor collector".

(19) Section 157 is amended as follows:

(A) Subsection (b) is amended (i) by striking "primary, secondary, Interstate, urban" and inserting instead "Interstate, Surface Transportation Program" and (ii) by striking the period at the end of the last sentence and inserting instead "and section 104(a) of the Surface Transportation Efficiency Act of 1991.". (B) Subsection (d) is amended by striking "154(f) or".

(20) Paragraph (a)(2) of section 158 is amended by striking "104(b)(2), 104(b)(5), and 104(b)(6)" and inserting instead "and 104(b)(5)".

(21) Section 215 is amended as follows:

(A) Clause (2) of subsection (c) is amended by inserting at the beginning "except as provided in section 129".

(B) Subsection (e) is repealed.

(C) Subsection (f) is amended by (1) striking "federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(22) Section 217 is amended as follows:

(A) Subsection (a) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(B) Subsection (b) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(23) Section 302(b) is amended by striking ", for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof".

(24) Section 304 is amended by striking "the Federal-aid highway systems, including the Interstate System" and inserting instead "Federal-aid highways".

(25) Section 315 is amended by striking "sections 204(d), 205(a), 206(b), 207(b), and 208(c)" and inserting instead "section 205(a)".

(26) Section 317(d) is amended by striking "on a Federal-aid system" and inserting instead "with Federal aid".

(27) Subsection (d) of section 402 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to the Federal-aid system".

(28) Subsection (g) of section 408 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to Federal-aid systems".

(b) AMENDMENTS TO THE HIGHWAY SAFETY ACT OF 1978.—Subsection (i) of section 209 of the Highway Safety Act of 1978 is amended by (1) striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(c) AMENDMENTS TO THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—(1) Section 411 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid primary system highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (c) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(C) Subsection (e) is amended by striking "Federal-aid Primary System highways" and "Primary System highways" and inserting instead in two places "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(2) Section 412(a) of the Surface Transportation Assistance Act of 1982 is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(3) Section 416 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid highway" in two places and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991"; and by striking "Federal-aid Primary System highway" and inserting instead "highway which was on the Federal-aid Primary System on the date of enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (d) is amended by striking "Federal-aid highway" and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991".

(d) AMENDMENTS TO TITLE 42, UNITED STATES CODE.—Section 5122(8)(B) of title 42, United States Code, is amended by striking "any non-Federal-aid street, road or highway" and inserting instead "any street, road or highway not eligible for emergency relief under title 23, United States Code.".

(e) OPERATION LIFESAVER.—Whenever apportionments are made under section 104(a) of title 23, United States Code, the Secretary shall deduct such sums as the Secretary deems necessary, not to be less than $250,000 per fiscal year, for carrying out Operation Lifesaver.

(f) TECHNICAL CORRECTION TO PUBLIC LAW 101-516.—Section 333 of Public Law 101-516 is amended by—

(1) inserting the following after "SEC. 333.":

"Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"159. Revocation or suspension of the driver's license of individuals convicted of drug offenses.

"(a)(1)"; and

(2) by striking the second sentence of such section.

SEC. 135. RECODIFICATION.

The Secretary shall, by October 1, 1993, prepare a recodification of title 23, United States Code, related Acts and statutes and submit the recodification to the Congress for consideration.

SEC. 136. TIMBER BRIDGE AND TIMBER RESEARCH PROGRAM.

(a) The Secretary of Transportation is hereby authorized to establish a Timber Bridge Construction Discretionary Grant Program.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(3) of the Surface Transportation Efficiency Act of 1991 (relating to the bridge program), $5,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any bridge construction project carried out under this section shall be 80 per centum of the cost of such construction.

(2) States may submit applications for construction grants in such form as required by the Secretary, who shall select and approve such grants based on the following criteria:

(A) bridge design shall have both initial and long term structural and environmental integrity;

(B) bridge design should utilize timber species native to the State or region;

(C) innovative design should be utilized that has the possibility of increasing knowledge, cost effectiveness, and future use of such design; and

(D) environmental practice for preservative treated timber should be utilized and construction techniques which comply with all environmental regulations.

(b) The Secretary of Transportation is hereby authorized to establish a Program of Research on Wood Use in Transportation Structures.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(10) of the Surface Transportation Efficiency Act of 1991 (relating to Federal Highway Administration Research Programs), $1,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any research grant shall be 100 per centum.

(2) The Secretary of Transportation, through the Federal Highway Administra-

tion, may make grants to, or contract with States, other Federal agencies, universities, private businesses, nonprofit organizations, and any research or engineering entity for research on any one of the following areas:

(A) timber bridge systems which involve development of new, economical bridge systems;

(B) development of engineering design criteria for structural wood products which improve methods for characterizing lumber design properties;

(C) preservative systems which demonstrate new alternatives, and current treatment processes and procedures optimized for environmental quality in the application, use and disposal of treated wood.

(D) alternative transportation system timber structures demonstrating the development of applications for railing, sign, and lighting supports, sound barriers, culverts, retaining walls in highway applications, docks, fresh and salt water marine facilities and railway bridges; and

(E) rehabilitation measures which demonstrate effective, safe, reliable methods for rehabilitating existing structures.

(3) The Secretary, through the Federal Highway Administration, shall assure that the information and technology resulting from research is transferred to State and local transportation departments and other interested parties.

SEC. 137. VISUAL POLLUTION CONTROL.

(a) Section 131 of title 23, United States Code, is amended as follows:

(1) In subsection (a) by striking "the primary system" and inserting in lieu thereof "those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(2) In subsection (b)—

(A) by striking "the primary system" in two places and inserting in lieu thereof in each place "those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(B) by striking "shall be reduced" and inserting in lieu thereof "may be reduced"; and

(C) by striking the words "equal to 10" in the second to last sentence, by inserting in lieu thereof "up to 5", and by striking the last sentence;

(3) In subsection (c)—

(A) by striking "the primary system" and inserting in lieu thereof "those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(B) by striking "(c)" and inserting in lieu thereof "(c)(1)" and redesignating clauses 1 through 5 as clauses A through E; and

(C) by inserting at the end thereof the following new paragraphs—

"(2) As part of effective control, each State shall maintain an annual inventory of all outdoor advertising signs, displays, and devices required to be controlled pursuant to this section. Such inventory shall identify all such signs as either illegal, nonconforming, or conforming under State law.

"(3) As part of effective control, each State shall assure that signs, displays, and devices required to be removed by this section shall be removed within ninety days of (A) the date upon which they become unlawful or if not unlawful the date upon which they must be removed pursuant to State or local law, or (B), if eligible to receive cash compensation pursuant to this section or to be authorized, the date upon which cash compensation is paid, or the State or local amortization period ends.

"(4) As part of effective control, no State may allow or undertake any vegetation removal or other alteration of the highway right-of-way with the purpose of improving the visibility of any outdoor advertising sign, display, or device located outside the right-of-way.

"(5) As part of effective control, no State may permit any person to modify any outdoor advertising sign, display, or device which does not conform to subsection (c) or (d) of this section to improve its visibility or to prolong its useful life.".

(4) In subsection (d)—

(A) by striking "and primary systems" and inserting in lieu thereof "System and those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(B) by striking "(d)" and inserting in lieu thereof "(d)(1)"; and

(C) by adding at the end the following:

"(2) After October 1, 1991, no new signs, displays or devices may be erected under the authority of this subsection. Any sign, display or device lawfully erected under State law after October 1, 1991, and prior to the effective date of this section shall be treated as nonconforming.";

(5) In subsection (e) by amending subsection (e) to read as follows'

"(e) The Secretary shall not require a State to remove any lawfully erected sign, display, or device, or device which does not conform to this section and is lawfully in existence on the date which this section becomes effective. Nothing in this subsection shall prevent a State from removing any sign, display, or device.";

(6) In subsection (f) by striking "the primary system" and inserting in lieu thereof "those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(7) In subsection (g) by amending subsection (g) to read as follows:

"(g)(1) The Secretary may participate in the costs incurred by the State for the following:

"(A) physically removing signs, displays, or devices that are located in areas required to be effectively controlled by this section and are illegal under State law or that are required by this section to be removed and that were lawfully erected and have been lawfully maintained under State law.

"(B) acquiring signs, displays, or devices that are required by this section to be removed and that were lawfully erected and have been lawfully maintained under State law; and

"(2) Payments made to a State by the Secretary may be made for the removal or acquisition of signs, displays, or devices located in areas adjacent to connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary and the Interstate System from funds apportioned to such State under sections 104(b)(1) and 104(b)(5) of this title. For the removal or acquisition of signs, displays, or devices, the Federal share of any costs participated in under this subsection shall not exceed that set forth in section 120(a) for those adjacent to connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary and that set forth in section 120(c) for those adjacent to the Interstate System.

"(3) After September 30, 1991, a State may use to carry out this section in any fiscal year not to exceed 3 per centum of funds apportioned in such fiscal year to such State for the Federal-aid Interstate and the Surface Transportation Program.

"(4) A sign, display, or device acquired with funds made available pursuant to this section may be disposed of by sale or other means to a private party only if the State receives satisfactory written assurances that the material will not be used to construct or reconstruct any outdoor advertising sign, display, or device.";

(8) In subsection (h)—

(A) by striking "the primary system" and inserting in lieu thereof "those connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas as designated by the Secretary";

(B) by striking "(h)" and inserting in lieu thereof "(h)(1)"; and

(C) by adding at the end the following new paragraph:

"(2) No outdoor advertising sign, display, or device shall be permitted by any Federal agency on all public lands or reservations, excluding Indian lands and reservations, owned or controlled by the United States, unless such sign, display, or device conforms to regulations issued by the Federal agency with jurisdiction over, or responsibility for, such land. Such regulations shall be at least as stringent as the requirements of this section and the requirements of the State in which the land is located. The regulations required by this paragraph shall be developed in consultation with the Secretary of Transportation and shall be promulgated within twelve months of the date of enactment of the Surface Transportation Efficiency Act of 1991.";

(9) In subsection (i) by striking "for a highway project on that Federal-aid system to be served by such center or system" and inserting in lieu thereof "(c) for a center or system serving the Interstate System and section 120(a) for a center or system serving public roads off the Interstate System";

(10) In subsection (k)—

(A) by striking the words "Subject to compliance with subsection (g) of this section for the payments of just payments of just compensation, nothing" and inserting in place thereof the word "Nothing"; and

(B) by striking "on the Federal-aid highway systems";

(11) In subsection (m) by striking "Federal-aid primary highway" and inserting in lieu thereof "Surface Transportation Program";

(12) By repealing subsections (n) and (p).

(13) In subsection (f) by striking the period at the end of the first sentence and inserting in lieu thereof "giving priority for using these signs to local, non-franchised businesses.

(14) In subsection (f) by striking the period at the end of the second sentence and inserting in lieu thereof "giving priority for using these signs to local, non-franchised businesses."

(b) On a date no later than one year from the date of enactment of the Surface Trans-

portation Efficiency Act of 1991, the Department of Transportation shall promulgate uniform national regulations to implement this section.

(c) The amendments made by this section shall be effective upon the date of enactment of the Surface Transportation Efficiency Act of 1991: *Provided*, That any amendment which a State cannot implement without legislation shall be effective upon the date of enactment of the Surface Transportation Efficiency Act of 1991 or the end of the first regular legislative session in such State which is commenced after the date of enactment of this section, whichever is later.

SEC. 138. GROSS VEHICLE WEIGHT RESTRICTION.

(a) The fourth sentence of subsection 127(a) of title 23, is amended by adding after "thereof" the following: ", other than vehicles or combinations subject to subsection (d) of this section,"

(b) GROSS VEHICLE WEIGHT.—Section 127 of title 23, United States Code, is amended by adding a new subsection (d), to read as follows:

"(d)(1) A longer combination vehicle may continue to operate if and only if the Secretary of Transportation determines that the particular longer combination vehicle configuration was authorized by State officials pursuant to State statute or regulation conforming to this section and in actual, continuing lawful operation on or before June 1, 1991, or pursuant to section 335 of Public Law 101-516. All such operations shall continue to be subject to, at the minimum, all State statutes, regulations, limitations and conditions, including, but not limited to routing-specific and configuration-specific designations and all other restrictions, in force on June 1, 1991. Nothing in this subsection shall prevent any State form further restricting in any manner or prohibiting the operation of longer combination vehicles otherwise authorized under this subsection, except that such restrictions or prohibitions shall be consistent with the requirements of sections 2311, 2312, and 2316 of title 49, U.S.C. App. Any State further restricting or prohibition" the operations of longer combination vehicles shall, within 30 days, advise the Secretary of Transportation of such action and the Secretary shall publish a notice of such action in the Federal Register.

"(2) Within sixty days of the date of enactment of this Act, the Secretary shall publish in the Federal Register a complete list of those State statutes and regulations and of all limitations and conditions, including, but not limited to routing-specific configuration-specific designations and all other restrictions, governing the operation of longer combination vehicles otherwise prohibited under this subsection. No statute or regulation shall be included on the list published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of longer combination vehicles, not in actual, continuing operation on or before June 1, 1991. Except as modified pursuant to the fourth sentence of paragraph (1) of this subsection, the list shall become final within a further 60 days after publication in the Federal Register. Longer combination vehicles may not operate on the National System of Interstate and Defense Highways except as provided in the list.

"(3) For purposes of this section, a longer combination vehicle is any combination of a truck tractor and two or more trailers or semi-trailers which operate on the National System of Interstate and Defense Highways at a gross vehicle weight greater than 80,000 pounds.".

SEC. 139. NATIONAL MAXIMUM SPEED LIMIT.

(a) Section 141 of title 23, United States Code, is amended by striking subsection (a).

(b) Section 154 of title 23, United States Code, is amended to read as follows:

"SEC. 154. NATIONAL MAXIMUM SPEED LIMIT.

"(a) SPEED LIMIT.—A State shall not have (1) a maximum speed limit on any public highway within its jurisdiction in excess of 55 miles per hour other than highways on the Interstate System located outside of an urbanized area, (2) a maximum speed limit on any highway within its jurisdiction on the Interstate System located outside of an urbanized area in excess of 65 miles per hour, (3) a maximum speed limit on any highway within its jurisdiction in excess of 65 miles per hour located outside of an urbanized area which is; (A) constructed to Interstate standards in accordance with section 109(b) and connected to an Interstate highway posted at 65 miles per hour; (B) a divided 4-lane fully controlled access highway designed or constructed to connect to an Interstate highway posted at 65 miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of 65 miles per hour; or (C) constructed to geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and designated by the secretary as part of the Interstate System in accordance with section 139(c) or (4) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using that portion of the highway, if on November 1, 1973, that portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of that vehicle including any load thereon. Clause (4) shall not apply to any portion of a highway, during the time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on that portion of a highway.

"(b) SPEED DATA.—Each State shall submit to the Secretary speed-related data as the Secretary determines by rule is necessary for each 12-month period ending on September 30. The data shall be collected in accordance with criteria to be established by the Secretary and shall include data on citations and travel speeds on public highways with speed limits posted at or above 55 miles per hour.

"(c) MOTOR VEHICLE DEFINED.—As used in this section the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

"(d) CERTIFICATION.—Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with this section. The Secretary shall not approve any project under section 106 in any State which has failed to certify in accordance with this subsection. In preparing a certification under this subsection, the State shall consider the speed-related data it submits to the Secretary under subsection (b).".

PART B—NATIONAL RECREATIONAL TRAILS TRUST FUND ACT

SEC. 141. SHORT TITLE.

This Part may be cited as the "National Recreational Trails Trust Fund Act of 1991".

SEC. 142. CREATION OF NATIONAL RECREATIONAL TRAILS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9511. NATIONAL RECREATIONAL TRAILS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "National Recreational Trails Trust Fund", consisting of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(6), or section 9602(b).

"(b) EXPENDITURES FROM TRUST FUND.—Amounts in the National Recreational Trails Trust Fund shall be available for making expenditures to carry out the purposes of the National Recreational Trails Fund Act of 1991.".

(b) DEPOSIT OF UNREFUNDED HIGHWAY TRUST FUND MONEYS.— Section 9503(c) of the Internal Revenue Code of 1986 (relating to Highway Trust Fund) is amended—

(1) by adding at the end thereof the following new paragraph:

"(6) TRANSFERS FROM THE TRUST FUND FOR NONHIGHWAY RECREATIONAL FUEL TAXES.—

"(A) TRANSFER TO NATIONAL RECREATIONAL TRAILS TRUST FUND.—The Secretary shall annually pay from the Highway Trust Fund into the National Recreational Trails Trust Fund amounts (as determined by the Secretary) equivalent to 0.3 per centum of total Highway Trust Fund receipts, as adjusted by the Secretary pursuant to subparagraph (B).

"(B) ADJUSTMENT OF PERCENTAGE.—

"(i) FIRST YEAR.—Within one year after the date of enactment of this Act, the Secretary shall, based on studies of nonhighway recreational fuel usage in the various States, adjust the percentage of receipts paid into the National Recreational Trails Trust Fund to correspond to the revenue received from nonhighway recreational fuel taxes.

"(ii) SUBSEQUENT YEARS.—Not more frequently than once every 3 years, the Secretary may increase or decrease the percentage established under clause (i) to reflect, in the Secretary's estimation, changes in the amount of revenues received from nonhighway recreational fuel taxes.

"(iii) AMOUNT OF ADJUSTMENT.—The amount of an adjustment in the percentage stated in clause (ii) shall be not more than 10 per centum of that percentage in effect at the time the adjustment is made.

"(iv) USE OF DATA.—The Secretary shall make use of data on off-highway recreational vehicle registrations and use in making adjustments under clauses (i) and (ii).

"(C) DEFINITIONS.—For the purposes of this paragraph—

"(i) NONHIGHWAY RECREATIONAL FUEL TAXES.—The term "nonhighway recreational fuel taxes" means the taxes under sections 4041, 4081, and 4091 (to the extent attributable to the Highway Trust Fund financing rate) with respect to fuel used as nonhighway recreational fuel.

"(ii) NONHIGHWAY RECREATIONAL FUEL.—The term "nonhighway recreational fuel" means—

"(I) fuel used in vehicles and equipment on recreational trails or back country terrain, including use in vehicles registered for high-

way use when used on recreational trails, trail access roads not eligible for funding under title 23, United States Code, or back country terrain; and

"(II) fuel used in campstoves and other outdoor recreational equipment."; and (2) by striking paragraph (2)(C) and inserting the following:

"(C) EXCEPTION FOR USE IN AIRCRAFT AND MOTORBOATS, AND AS NONHIGHWAY RECREATIONAL FUEL.—This paragraph shall not apply to amounts estimated by the Secretary as attributable to—

"(i) use of gasoline and special fuels in motorboats or in aircraft, and

"(ii) use of gasoline as nonhighway recreational fuel as defined in paragraph (6)(C)(ii).".

(c) CONFORMING AMENDMENT.—Section 6421(e)(2) of the Internal Revenue Code of 1986 (defining off-highway business use) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR USE AS NONHIGHWAY RECREATIONAL FUEL.—The term "off-highway business use" does not include any use as nonhighway recreational fuel as defined in section 9503(c)(6)(C)(ii).".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 9511. National Recreational Trails Trust Fund.".

SEC. 143. NATIONAL RECREATIONAL TRAILS PROGRAM.

(a) IN GENERAL.—The Secretary, using amounts available in the Fund, shall administer a program allocating moneys to the States for the purposes of providing for and maintaining recreational trails.

(b) STATE ELIGIBILITY.—

(1) TRANSITIONAL PROVISION.—Until the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if such State's application proposes to use the moneys as provided in subsection (d).

(2) PERMANENT PROVISION.—On and after the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if—

(A) a recreational trail advisory board on which both motorized and non-motorized recreational trail users are represented exists within the State;

(B) in the case of a State that imposes a tax on nonhighway recreational fuel, the State by law reserves a reasonable estimation of the revenues from that tax for use in providing for and maintaining recreational trails; and

(C) the Governor of the State has designated the State official or officials who will be responsible for administering moneys received under this Act; and

(D) the State's application proposes to use moneys received under this Act as provided in subsection (d).

(c) ALLOCATION OF MONEYS IN THE FUND.—

(1) ADMINISTRATIVE COSTS.—No more than 3 per centum of the expenditures made annually from the Fund may be used to pay the cost to the Secretary for—

(A) approving applications of States for moneys under this Act;

(B) paying expenses of the National Recreational Trails Advisory Committee; and

(C) conducting national surveys of nonhighway recreational fuel consumption by State, for use in making determinations and estimations pursuant to this Act.

(2) ALLOCATION TO STATES.—

(A) AMOUNT.—Amounts in the Fund remaining after payment of the administrative costs described in paragraph (1), shall be allocated and paid to the States annually in the following proportions:

(i) EQUAL AMOUNTS.—50 per centum of such amounts shall be allocated equally among eligible States.

(ii) AMOUNTS PROPORTIONATE TO NONHIGHWAY RECREATIONAL FUEL USE.—50 per centum of such amounts shall be allocated among eligible States in proportion to the amount of nonhighway recreational fuel use during the preceding year in each such State, respectively.

(B) USE OF DATA.—In determining amounts of nonhighway recreational fuel use for the purpose of subparagraph (A)(ii), the Secretary may consider data on off-highway vehicle registrations in each State.

(d) USE OF ALLOCATED MONEYS.—

(1) PERMISSIBLE USES.—A State may use moneys received under this Act for—

(A) in an amount not exceeding 7 per centum of the amount of moneys received by the State, administrative costs of the State;

(B) in an amount not exceeding 5 per centum of the amount of moneys received by the State, operation of environmental protection and safety education programs relating to the use of recreational trails;

(C) development of urban trail linkages near homes and workplaces;

(D) maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;

(E) restoration of areas damaged by usage of recreational trails and back country terrain;

(F) development of trail-side and trail-head facilities that meet goals identified by the National Recreational Trails Advisory Committee;

(G) provision of features which facilitate the access and use of trails by persons with disabilities;

(H) acquisition of easements;

(I) acquisition of fee simple title to property from a willing seller, when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(J) construction of new trails on State, county, municipal, or private lands, where a recreational need for such construction is shown; and

(K) only as necessary and required by a State Comprehensive Outdoor Recreation Plan construction of new trails on Federal lands, where such construction is approved by the administering agency of the State, and the Federal agency or agencies charged with management of all impacted lands, such approval to be contingent upon compliance by the Federal agency with all other applicable laws, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, (16 U.S.C. 1600, et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701, et seq.).

(2) USE NOT PERMITTED.—A State may not use moneys received under this Act for—

(A) condemnation of any kind of interest in property;

(B) construction of any recreational trail for motorized use on or through any lands inventoried in the first Roadless Area Review and Evaluation, or pursuant to section 603(A) of the Federal Land Management Policy Act, unless such construction is permitted pursuant to a forest and resource management plan; or

(C) upgrading, expanding or otherwise facilitating motorized use or access to trails predominantly used by non-motorized trail users and on which, as of May 1, 1991, motorized use is either prohibited or has not occurred.

(3) GRANTS.—

(A) IN GENERAL.—A State may provide moneys received under this Act as grants to private individuals, organizations, city and county governments, and other government entities as approved by the State after considering guidance from the recreational trail advisory board satisfying the requirements of section 143(b)(2)(A), for uses consistent with this section.

(B) COMPLIANCE.—A State that issues such grants under subparagraph (A) shall establish measures to verify that recipients comply with the specified conditions for the use of grant moneys.

(4) ASSURED ACCESS TO FUNDS.—Except as provided under paragraphs (6) and (7)(B), not less than 30 per centum of the moneys received annually by a State under this Act shall be reserved for uses relating to motorized recreation, and not less than 30 per centum of those moneys shall be reserved for uses relating to non-motorized recreation.

(5) DIVERSIFIED TRAIL USE.—

(A) REQUIREMENT.—To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this Act in a manner that gives preference to project proposals which—

(i) provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of "recreational trail" in subsection (f)(5); or

(ii) provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

This paragraph shall remain in effect until such time as a State has allocated not less than 40 per centum of moneys received under this Act in the aforementioned manner.

(B) COMPLIANCE.—The State shall receive guidance for determining compliance with subparagraph (A) from the recreational trail advisory board satisfying the requirements of section 143(b)(2)(A).

(6) SMALL STATE EXCLUSION.—Any State with a total land area of less than 3,500,000 acres, and in which nonhighway recreational fuel use accounts for less than one per centum of all such fuel use in the United States, shall be exempted from the requirements of paragraphs (4) and (5)(A)(ii) of this subsection upon application to the Secretary by the State demonstrating that it meets the conditions of this paragraph.

(7) RETURN OF MONEYS NOT EXPENDED.—(A) Except as provided in subparagraph (B), moneys paid to a State that are not expended or dedicated to a specific project within four years after receipt for the purposes stated in this subsection shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (c).

(B) If approved by the State recreational trails advisory board satisfying the requirements of section 143(b)(2)(A), moneys paid to a State may be exempted from the requirements of paragraph (4) and expended or committed to projects otherwise stated in this subsection for a period not to exceed beyond 4 years after receipt, after which any remaining monies not expended or dedicated shall be returned to the Fund and shall

thereafter be reallocated under the formula stated in subsection (c).

(e) COORDINATION OF ACTIVITIES.—

(1) COOPERATION BY FEDERAL AGENCIES.—Each agency of the United States Government that manages land on which a State proposes to construct or maintain a recreational trail pursuant to this Act is encouraged to cooperate with the State and the Secretary in planning and carrying out the activities described in subsection (d). Nothing in this Act diminishes or in any way alters the land management responsibilities, plans and policies established by such agencies pursuant to other applicable laws.

(2) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition to making available moneys for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the property will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of a State's allocated moneys on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by those moneys.

(f) DEFINITIONS.—For the purposes of this section—

(1) ELIGIBLE STATE.—The term "eligible State" means a State that meets the requirements stated in subsection (b).

(2) FUND.—The term "Fund" means the National Recreational Trails Fund established by section 9511 of the Internal Revenue Code of 1986.

(3) NONHIGHWAY RECREATIONAL FUEL.—The term "nonhighway recreational fuel" has the meaning stated in section 9503(c)(6)(C)(ii) of the Internal Revenue Code of 1986.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) RECREATIONAL TRAIL.—The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a "National Recreation Trail" designated under section 4 of the National Trails System Act (16 U.S.C. 1243).

(6) MOTORIZED RECREATION.—The term "motorized recreation" may not, at the option of the State, include motorized conveyances used by persons with disabilities, such as wheelchairs.

SEC. 144. NATIONAL RECREATIONAL TRAILS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established the National Recreational Trails Advisory Committee.

(b) MEMBERS.—There shall be 10 members of the advisory committee, consisting of—

(1) 8 members appointed by the Secretary from nominations submitted by recreational trail user organizations, one each representing the following recreational trail uses:

(A) Hiking,

(B) Cross country skiing,

(C) Off-highway motorcycling,

(D) Snowmobiling,

(E) Horseback riding,

(F) All terrain vehicle riding,

(G) Bicycling,

(H) Four-wheel driving;

(2) an appropriate government official, including any official of State or local government, designated by the Secretary; and

(3) 1 member appointed by the Secretary from nominations submitted by water trail user organizations.

(c) CHAIR.—The Chair of the advisory committee shall be the government official referenced in subsection (b)(2), who shall serve as a non-voting member.

(d) SUPPORT FOR COMMITTEE ACTION.—Any action, recommendation, or policy of the advisory committee must be supported by at least 5 of the members appointed under subsection (b)(1).

(e) TERMS.—Members of the advisory committee appointed by the Secretary shall be appointed for terms of 3 years, except that the members filling five of the ten positions shall be initially appointed for terms of 2 years, with subsequent appointments to those positions extending for terms of 3 years.

(f) DUTIES.—The advisory committee shall meet at least twice annually to—

(1) review utilization of allocated moneys by States;

(2) establish and review criteria for trail-side and trail-head facilities that qualify for funding under this Act; and

(3) make recommendations to the Secretary for changes in Federal policy to advance the purposes of this Act.

(g) ANNUAL REPORT.—The advisory committee shall present to the Secretary an annual report on its activities.

(h) REIMBURSEMENT FOR EXPENSES.—Nongovernmental members of the advisory committee shall serve without pay, but, to the extent funds are available pursuant to section 143(c)(1)(B), shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

(i) REPORT TO CONGRESS.—Not later than 4 years after the date of enactment of this Act, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives, a study which summarizes the annual reports of the National Recreational Trails Advisory Committee, describes the allocation and utilization of moneys under this Act, and contains recommendations for changes in Federal policy to advance the purposes of this Act.

PART C—INTELLIGENT VEHICLE-HIGHWAY SYSTEMS ACT

SEC. 151. SHORT TITLE.

This Part may be cited as the "Intelligent Vehicle-Highway Systems Act of 1991".

SEC. 152. PURPOSE AND SCOPE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation (hereinafter referred to in this title as the "Secretary") shall conduct a program to promote and facilitate the implementation of Intelligent Vehicle-Highway Systems as a component of the Nation's surface transportation systems. The goals of such program shall include, but not be limited to—

(1) the widespread implementation of Intelligent Vehicle-Highway Systems to enhance the capacity, efficiency, and safety of the Federal-aid highway system, including as an alternative to additional physical capacity of that system;

(2) the enhancement, through more efficient use of the Federal-aid highway system, of the efforts of the several States to attain air quality goals, as established by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), as amended by Public Law 101-549 (104 t. 2399);

(3) the enhancement of safe and efficient operation of the Nation's highway systems;

(4) the development and promotion of Intelligent Vehicle-Highway Systems and an Intelligent Vehicle-Highway Systems industry in the United States, utilizing authority provided under section 307 of title 23, United States Code;

(5) the reduction of societal, economic, and environmental costs associated with traffic congestion; and

(6) the enhancement of United States industrial and economic competitiveness and productivity, by improving the free flow of people and commerce, and by establishing a significant United States presence in an emerging field of technology.

(b) COORDINATION.—The Secretary shall lead and coordinate an Intelligent Vehicle-Highway Systems program and shall foster its use as a key component of the Nation's surface transportation systems. As appropriate, the Secretary shall consult with the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Director of the National Science Foundation, and the heads of other interested Federal departments and agencies, in carrying out the purposes of this title. The Secretary shall strive to transfer Federally owned or patented technology to State and local governments and to the United States private sector. As appropriate, the Secretary shall maximize the involvement of the United States private sector, colleges and universities, and State and local governments in aspects of such programs, including design, conduct (including operations and maintenance), evaluation, and financial or in-kind participation.

(c) STANDARDS.—The Secretary shall develop and implement standards and protocols to promote the widespread use and evaluation of Intelligent Vehicle-Highway Systems technology as a component of the Nation's surface transportation systems. To the extent practicable, such standards and protocols shall promote compatibility among Intelligent Vehicle-Highway Systems technologies implemented throughout the several States. The Secretary is authorized to make use of existing standards-setting organizations as the Secretary determines appropriate.

(d) EVALUATION.—The Secretary shall establish guidelines and requirements for the evaluation of field and related operational tests carried out pursuant to section 155 of this Act.

(e) INFORMAITON CLEARINGHOUSE.—The Secretary shall establish a repository for technical and safety data collected as a result of Federally sponsored projects pursuant to this title, and shall make such information readily available, upon request, at an appropriate cost to all users, except for proprietary information and data. In carrying out the requirements of this subsection, the Secretary may delegate this responsibility, with continuing oversight by the Secretary, to an appropriate entity not within the Department of Transportation. For the purposes of carrying out the requirements of this subsection, such entity would be eligible for Federal aid, as specified in this title.

SEC. 153. ADVISORY COMMITTEE.

The Secretary is authorized to utilize one or more advisory committees in carrying out his responsibilities under this title. Any advisory committee so utilized shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.), and funding provided for any such committee shall be available from monies appropriated for advisory committees as

specified in relevant appropriations Acts, and from funds allocated for research, development, and implementation activities in connection with the Intelligent Vehicle-Highway Systems program under this title.

Sec. 154. Strategic Plan, Implementation, and Report to Congress.

(a) STRATEGIC PLAN.—

(1) STRATEGIC PLAN.—Not later than 12 months following the date of the enactment into law of this title, the Secretary shall formulate, and submit to Congress, a strategic plan for the Intelligent Vehicle-Highway Systems program under this title.

(2) SCOPE OF STRATEGIC PLAN.—In preparing such plan, the Secretary shall—

(A) specify the goals, objectives, milestones of such program and how specific projects relate to these, including consideration of the 5-, 10-, and 20-year timeframes for specified goals and objectives;

(B) detail the status and challenges and non-technical constraints facing the program;

(C) chart a course of action necessary to achieve the program's goals and objectives;

(D) provide for the development of standards and protocols to promote and ensure compatibility in the implementation of Intelligent Vehicle-Highway Systems technologies; and

(E) provide for the accelerated use of advanced technology to reduce traffic congestion along heavily populated and traveled corridors.

(b) IMPLEMENTATION REPORTS.—

(1) IMPLEMENTATION REPORTS.—Not later than 24 months after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Congress a report on the implementation of the strategic plan required in subsection (a) of this section.

(2) SCOPE OF IMPLEMENTATION REPORTS.—In preparing such report, the Secretary shall—

(A) analyze the possible and actual accomplishments of Intelligent Vehicle-Highway Systems projects in achieving congestion, safety, environmental, and energy conservation goals, as described in this title;

(B) specify cost-sharing arrangements made, including the scope and nature of Federal investment, in any research, development, or implementation project under such program;

(C) assess non-technical problems and constraints identified as a result of each such implementation project; and

(D) include, if appropriate, any recommendations for legislation or modification to the strategic plan required in subsection (a) of this section.

(c) REPORT TO CONGRESS.—

(1) REPORT TO CONGRESS.—In cooperation with the Attorney General and the Secretary of Commerce, the Secretary shall prepare and submit, within 24 months following the date of enactment of this title, a report to Congress addressing the non-technical constraints and barriers to all aspects of the innovation of such program under this title.

(2) SCOPE OF REPORT TO CONGRESS.—In preparing such report, the Secretary shall—

(A) address antitrust, privacy, educational and staffing needs, patent, liability, standards and other constraints, barriers, or concerns relating to such program;

(B) recommend legislation and other administrative action necessary to further the Intelligent Vehicle-Highway Systems program under this title; and

(C) address ways to further promote industry and State and local government involvement in such program.

(3) UPDATE OF REPORT.—Within 5 years following such date of enactment, the Secretary shall prepare an update of such report.

SEC. 155. TECHNICAL, PLANNING, AND PROJECT ASSISTANCE.

(a) TECHNICAL ASSISTANCE AND INFORMATION.—The Secretary is authorized to provide planning and technical assistance and information to State and local governments seeking to use and evaluate Intelligent Vehicle-Highway Systems technologies. In doing so, the Secretary shall assist State and local officials in developing provisions for implementing areawide traffic management control centers, necessary laws to advance such systems, the infrastructure for such existing and evolving systems, and other necessary activities to carry out the Intelligent Vehicle-Highway Systems program under this title.

(b) PLANNING GRANTS.—Subject to the availability of funds, the Secretary is authorized to make grants for feasibility and planning studies to be conducted by State and local governments. Such grants shall be made at such time, in such amounts, and subject to such conditions as the Secretary may determine.

(c) TRAFFIC MANAGEMENT SYSTEMS.—Any interagency traffic and incident management entity, including independent public authorities or agencies, contracted to a State department of transportation for the implementation of traffic management systems of designated corridors, is eligible to receive Federal transportation funds under this title through the appropriate State department of transportation.

(d) FUNDING OF PROJECTS.—In deciding which projects or operational tests relating to Intelligent Vehicle-Highway Systems to fund utilizing authority provided under section 307 of title 23, United States Code, the Secretary shall—

(1) give the highest priority to those projects that would contribute to the national goals and objectives specified in the Intelligent Vehicle-Highway Systems strategic plan required pursuant to section 154 of this title, minimize the relative percentage of Federal contributions to total project costs, but not including Federal-aid funds;

(2) seek to fund operational tests that advance the current State of knowledge and, where appropriate, build on successes achieved in previously funded work involving such programs; and

(3) require that operational tests utilizing Federal funds pursuant to this Act have a written evaluation of the IVHS technologies investigated and key outcomes of the investigation, consistent with the guidelines developed pursuant to section 152(d) of this Act.

(e) AUTHORITY TO USE FUNDS.—Each State and eligible local entity is authorized to use funds provided under this Act for implementation purposes in connection with the Intelligent Vehicle-Highway Systems program.

SEC. 156. APPLICATIONS OF TECHNOLOGY.

(a) CONGESTED CORRIDORS PROGRAM.—The Secretary shall designate transportation corridors in which application of Intelligent Vehicle-Highway Systems will have particular benefit and, through financial and technical assistance, shall assist in the implementation of such systems. In designating such corridors, the Secretary shall focus on automatic vehicle identification, electronic toll collection, highway advisory radio, variable message signage, advanced traveler information systems, and other steps that would reduce congestion, enhance safety, and promote a smoother flow of traffic throughout the corridors.

(b) PRIORITIES.—In designating and providing funding for such corridors, the Secretary shall allocate not less than 50 per centum of the funds appropriated pursuant to this section to eligible State or local entities for application in not less than 3 but not more than 10 corridors with the following characteristics:

(1) traffic density (as a measurement of vehicle miles traveled per road mile) at least 1.5 times the national average;

(2) severe or extreme nonattainment for ozone, as determined by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act, as amended by Public Law 101-549 (104 t.2399);

(3) a variety of types of transportation facilities, such as highways, bridges, tunnels, toll and non-toll;

(4) inability to significantly expand existing surface transportation facilities;

(5) a significant mix of passenger, public transportation, and commercial motor carrier traffic;

(6) complexity of traffic patterns; and

(7) potential contribution to the implementation of the Secretary's strategic plan developed pursuant to section 154 of this title.

(c) ADDITIONAL FUNDING.—The balance of funds provided under this section shall be allocated to eligible State or local entities for application in corridors with a significant number of the characteristics listed in subsection (a) of this section.

SEC. 157. AUTHORIZATIONS.

(a) CONGESTED CORRIDORS PROGRAM.—For the congested corridors program under section 156, within funds authorized to be deducted pursuant to section 104(a) of title 23, United States Code, there is authorized to be appropriated $150,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(b) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under this Act shall remain available until expended.

(c) RESERVATION OF FUNDS.—Of the funds provided pursuant to subsection (a) of this section, not less than 5 per centum shall be reserved for innovative, high-risk operational or analytical tests that do not attract substantial non-Federal commitments but are determined by the Secretary as having significant potential to help accomplish long-term goals established by the strategic plan prepared pursuant to section 154 of this Act.

(d) FEDERAL SHARE PAYABLE.—The Federal share payable on account of activities authorized pursuant to this title shall not exceed 80 per centum of the cost. The Secretary may waive this restriction for projects undertaken pursuant to subsection (c) of this section.

SEC. 158. DEFINITIONS.

For the purposes of this part, the term—

(a) "Intelligent Vehicle-Highway Systems" means the development or application of electronics, communications, or information processing, including, but not limited to, advanced traffic management systems, advanced traveler information systems, and advanced vehicle communications systems, used singly or in combination to improve the efficiency and safety of surface transportation systems; and

(b) "corridor" means any major transportation route which includes some contribution of closely parallel limited access highways, major arterials, or transit lines; and, with regard to traffic incident management, it may also refer to more distant transportation routes that can serve as viable op-

tions to each other in the event of traffic incidents.

By Mr. PELL (by request):

S. 1206. A bill to amend the International Security and Development Cooperation Act of 1985 to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Commission for the Preservation of America's Heritage Abroad for carrying out that act; to the Committee on Foreign Relations.

U.S. COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD AUTHORIZATION

• Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to amend the International Security and Development Cooperation Act of 1985 to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Commission for the Preservation of America's Heritage Abroad for carrying out that act.

This proposed legislation has been requested by the U.S. Commission for the Preservation of America's Heritage Abroad, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the sectional analysis and the letter from the Executive Director of the U.S. Commission for the Preservation of America's Heritage Abroad, which was received on April 30, 1991.

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

S. 1206

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commission for the Preservation of America's Heritage Abroad Authorization Act of 1992."

AUTHORIZATION OF APPROPRIATIONS

SECTION 1. Section 1303 of the International Security and Development Act of 1985 (16 U.S.C. 469j) is amended to add the following:

"SEC. 1303 (i) There are authorized to be appropriated to carry out the purposes of this Section $50,000 for fiscal year 1992 and such sums as may be necessary for fiscal year 1993 consistent with the Budget Enforcement Act of 1990 (Public Law 101-508)."

SECTIONAL ANALYSIS

Section 1. This section authorizes appropriations of funds to CPAHA for its administrative expenses including the negotiation of bilateral agreements with the governments of European countries for the protection of certain cultural sites, and for the compilation of lists of landmarks which are associated with the foreign heritage of American citizens and which are in danger of deterioration or destruction because of crimes against humanity during World War II.

U.S. COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD,

Potomac, MD, April 25, 1991.

Hon. J. DANFORTH QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am submitting with this letter proposed legislation amending the International Security and Development Act of 1985 to authorize appropriations for the United States Commission for the Preservation of America's Heritage Abroad to carry out its responsibilities as specified in that Act.

The bill provides for authorization of appropriations for the Commission's operation during fiscal years 1992 and 1993. A Sectional Analysis explaining the proposed legislation is enclosed. This legislative proposal is needed to carry out the President's FY 1992 budget.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to the Congress and that its enactment would be in accord with the program of the President.

Respectfully,

JOEL L. BARRIES,
Executive Director.•

By Mr. DANFORTH (for himself, Mr. JEFFORDS, Mr. SPECTER, Mr. RUDMAN, Mr. CHAFEE, Mr. COHEN, Mr. DURENBERGER, Mr. HATFIELD, and Mr. DOMENICI):

S. 1207. A bill to strengthen and improve Federal civil rights laws, and for other purposes; to the Committee on Labor and Human Resources.

S. 1208. A bill to amend the Civil Rights Act of 1964 to clarify provisions regarding disparate impact actions, and for other purposes; to the Committee on Labor and Human Resources.

S. 1209. A bill to provide for damages in cases of intentional employment discrimination, and for other purposes; to the Committee on Labor and Human Resources.

CIVIL RIGHTS AND EMPLOYMENT DISCRIMINATION

Mr. DANFORTH. Mr. President, I will momentarily send to the desk for introduction three bills dealing with the issue of civil rights and employment discrimination. These three bills are cosponsored by nine Senators so far, and it is possible that before the close of business today other Senators will be added. The nine Senators including myself are Senators JEFFORDS, SPECTER, RUDMAN, CHAFEE, COHEN, DURENBERGER, HATFIELD, and DOMENICI.

Mr. President, for the past 2 years the most contentious issue we have had before the Congress has had to do with the possibility of overruling through legislation some five or six opinions of the U.S. Supreme Court on the question of employment discrimination. Last year, along with Senator JEFFORDS and Senator SPECTER, I was involved in attempting to mediate the differences between the civil rights community on one hand and the White House on the other hand to try to reach some reasonable consensus.

We came very close last year to accomplishing that objective. Twice, the President of the United States asked Senator JEFFORDS and Senator SPECTER and I to come to the White House to visit with him on the subject of civil rights. Twice, the President in the Oval Office looked us in the eye and told us that he wanted us to try to work out a compromise. There was absolutely no question in my mind last year, and there is absolutely no question in my mind this year, that President Bush wants Congress to pass civil rights legislation which he could sign.

The issue has become enormously divisive, seemingly more divisive with every passing day. But it is important to recognize that there truly is a common ground between the advocates of civil rights legislation in the House of Representatives and the Bush administration.

As Attorney General Thornburgh said just a few days ago, there was agreement on about 80 percent of the issues. What the nine Senators who are involved in this enterprise are attempting to do is to try to build on that common ground and develop a legislative package which has some chance of becoming law.

The President has sent to Congress his legislative ideas. I compliment him for that. But I believe there is virtually no chance that the President's legislation will be enacted into law in its present form.

The House of Representatives is about to pass its version of the civil rights bill. I believe that no matter how well meaning they are in the House of Representatives, there is almost no chance that that bill which passes the House will be enacted into law in its present form.

So the question, remains, how can we move forward? How can we come together with a reasonable accommodation that can become law? The nine Senators who are about to introduce this legislation have taken the point of view that instead of one indigestible lump, which was the problem last year, one major bill trying to encompass a number of different subjects, it would be better to attempt to break that indigestible lump into three more digestible pieces, so we have developed a package of three bills.

The first bill we believe to be almost entirely without controversy and a bill that can be enacted into law, we think, in very short order. It is a bill which would overrule five Supreme Court decisions. Those five Supreme Court decisions are decisions which most people believe should be overruled. This is not the stuff of the controversy that has been raging in the press and on television for the last number of weeks. This truly is a consensus package of proposals for overruling Supreme Court decisions which could be agreed on in very short order.

The second proposal deals with the more knotty issue of defining business necessity and overruling the Wards Cove case decision by the Supreme Court in 1989.

We believe that we have kept the middle ground in dealing with Wards Cove. We provide that the definition of selection practices is a manifest relationship to requirements for effective job performance. Then we say that in the case of nonselection practices, the practices must bear a manifest relationship to a legitimate business objective.

We further say that the plaintiffs in these cases must specify the objectionable practice. It is not enough to lump everything together in an indiscriminate mold. One of the concerns that the business community has had is that it is impossible to prepare a defense if there is no specificity in the complaint that is filed by the plaintiffs.

So specificity is required and we believe that in the definition of business necessity we have come up with a middle course definition, I am sure a definition that will be criticized from both left and right. But it is a reasonable effort to hit the middle.

The third bill has to do with damages. This too has been a very, very contentious issue. Right now in the case of intentional discrimination against a black person, under the law, the black person who has been discriminated against intentionally can recover not only for compensation for lost wages but also for pain and suffering without any limitation at all, and for punitive damages without any limitation at all.

Some organizations, particularly some women's groups, take the position that they should get exactly what the blacks have. However, under current law, while women and the disabled, people who are discriminated against for religious reasons, can get reinstated in the job and can get back pay, they are not entitled under present law to anything by way of pain and suffering or to anything by way of punitive damages. In other words, we have a situation under current law where blacks can get potentially an infinite recovery—women, the disabled, religious minorities can get zero.

It is our view, in this legislation, that somewhere between infinity and nothing there should be room for compromise.

So we have proposed that in the case of pain and suffering and in the case of punitive damages which in this legislation we call equitable penalty, there be caps, and that the caps be differentiated according to the size of the business—that a small employer have a lower cap than a large employer. So the caps in our legislation are $150,000 for an employer of over 100 for pain and suffering, same amount for equitable penalties; and $50,000 for an employer of 100 or less.

Furthermore, we have a provision by which the judge imposes the equitable penalty. We believe that this also adds a degree of certainty as far as the employer is concerned so that there is not the possibility of skyrocketing liability.

Mr. President, the theory in these three bills is very simple. The theory is that while there has been seemingly endless controversy in Congress and in Washington on the question of civil rights, there really is a broad consensus among the American people. I believe that the consensus is that people should be hired on the basis of ability, on the basis of their competence to do the job, and not on the basis of race, or religion, or disability, or anything else.

I think that the overwhelming majority of the people of this country think that discrimination is wrong, that discrimination should be prohibited as a matter of law, that people should not be discriminated against on the basis of their race or on the basis of any other matter of ethnicity or religion or disability.

That is what we attempt to do in this legislation. We attempt to make it possible for people who have been wronged to right this situation in court. We also attempt to make it possible for employers to defend themselves without the necessity of having to resort to quotas.

With respect to damages, we attempt to provide for fair remedies. But fair remedies to us do not include the possibility of hitting the jackpot, of striking gold in the court system.

Clearly, the ability of people to have wrongs redressed does not mean that their recovery should be totally quirky. It does not mean that they should be able to get anything that a clever lawyer could persuade the jury to award them. There should be some control on the amount of recovery.

That, then, is what we have attempted to do in these three bills. We have attempted to find what I am convinced is a national consensus for fairness. We have attempted to split the difference between the contending parties. We have attempted to put together something that is responsible and that we believe can become law.

Mr. President, I hope we will have an opportunity to pass this legislation. I want to again say that people who have been involved in this issue for a long period of time have, in my opinion, been involved for the best of motives, have been very concerned, particularly in recent weeks when there has been a lot of controversy relating to the motives of various people on both sides. I have no doubt whatever that people on both sides genuinely want to accomplish what is fair. They want to end discrimination; they want to correct mistakes that were made by the Supreme Court a couple of years ago. They want to do so without quotas.

I am absolutely convinced that the President of the United States wants to pass a civil rights law. And we hope to help him do just that.

So, Mr. President, I now send to the desk three bills for introduction and I ask unanimous consent that they be printed in the RECORD.

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

S. 1207

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 "Civil Rights Restoration Act of 1991".

SEC. 2. FINDING AND PURPOSE.

(a) FINDING.—Congress finds that legislation is necessary to provide additional protections against unlawful discrimination in employment.

(b) PURPOSE.—The purpose of this Act is to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

SEC. 3. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contracts.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 4. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A); and

(3) by adding at the end the following new subparagraph;

"(B) In a case where an individual proves a violation under section 703(k) and a respondent demonstrates that the respondent would have taken the same action in the absence of any discrimination, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), attorney's fees, and costs; and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 5. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 4 of this Act) is further amended by adding at the end the following new subsection:

"(l)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (3), an employment practice that implements and is within the scope of a litigated or consent judgment or order that—

"(i) was entered earlier than the date of the enactment of this subsection; and

"(ii) resolves a claim of employment discrimination under the Constitution or Federal civil rights laws,

may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might affect the interests of such person and that an opportunity was available to present objections to such judgment or order; and

(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who challenged such judgment or order prior to or after the entry of such judgment or order.

"(2)(A) Notwithstanding any other provision of law, and except as provided in paragraph (3), an employment practice that implements and is within the scope of a litigated or consent judgment or order that—

"(i) was entered not earlier than the date of the enactment of this subsection; and

"(ii) resolves a claim of employment discrimination under the Constitution or Federal civil rights laws,

may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, during the period of notice regarding the judgment or order described in subparagraph (A)—

"(I) was an employee of, former employee of, or applicant to, the respondent; and

"(II) prior to the entry of such judgment or order, had actual notice of the proposed judgment or order in sufficient detail to apprise such person—

"(aa) that such judgment or order might adversely affect the interests and legal rights of such person;

"(bb) of any numerical relief in the proposed judgment or order on the basis of race, color, religion, sex, or national origin for any job, position, or other employment opportunity;

"(cc) that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(dd) that such person would likely be barred from challenging the proposed judgment or order after such date; or

"(ii) by a person whose interests were adequately and competently represented by a similarly situated person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(3) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which the litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(4) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) or (2) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 6. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity or head of a Federal entity subject to section 717.".

SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an alleged unlawful employment practice occurs—

"(A) when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system or provision of the system; and

"(B) if the system is alleged to have been adopted for an intentionally discriminatory purpose, in violation of this title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.".

SEC. 8. AUTHORIZING AWARD OF EXPERT FEES.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 9. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), in inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 10. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)(2)) is amended to read as follows:

"(2) If a charge filed with the Commission is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the individual referred to in subsection (d). The individual may bring an action against the respondent named in the charge not earlier than 60 days after the date on which the charge was timely filed and not later than 90 days after the date of the receipt of the notice.".

SEC. 11. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to section 1977 of the Revised Statutes (42 U.S.C. 1981), this Act, and the amendments made by this Act shall, subject to paragraphs (2) through (5), apply with respect to any employee in an employment position in the Senate and any employing authority of the Senate.

(2) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment pursuant to the provisions described in paragraph (1) shall be investigated and adjudicated by the Senate Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(3) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the provisions described in paragraph (1).

(4) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the provisions described in paragraph (1), the Select Committee on Ethics, or such other entity as the Senate may designate, shall to the extent practicable apply the same remedies applicable to all other employees covered by the provisions described in paragraph (1). Such remedies shall apply exclusively.

(5) Exercise of rulemaking power.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (1) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (2), (3), and (4) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the purposes of this Act shall, subject to paragraph (2), apply with respect to any employee in an employ-

ment position in the House of Representatives and any employing authority of the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (42 U.S.C. 621 et seq.), section 1977 of the Revised Statutes, this Act, and the amendments made by this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, section 1977 of the Revised Statutes, this Act, and the amendments made by this Act, shall, subject to paragraphs (2) and (5), apply with respect to any employee in an employment position in an instrumentality of the Congress and any chief official of such an instrumentality.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section instrumentalities of the Congress include the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) or section 15 of the Age Discrimination in Employment Act of 1967 (42 U.S.C. 633a).

SEC. 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, mini-trials, and arbitration, is encouraged to resolve disputes arising under the Acts amended by this Act.

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect upon enactment.

(b) CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—The amendments made by section 5 shall apply to all proceedings pending on or commenced after June 12, 1989.

SEC. 14. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the applicaton of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

S. 1208

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 "Equal Employment Opportunity Act of 1991".

SEC. 2. FINDING AND PURPOSES.

(a) FINDING.— Congress finds that the decision of the Supreme Court in *Wards Cove Packing Co.* v. *Atonio*, 109 S. Ct. 2115 (1989) has weakened the scope and effectiveness of Federal civil rights protections.

(b) PURPOSES.—The purposes of this Act are—

(1) to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co.*, v. *Atonio* and to codify the meaning of business necessity used in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); and

(2) to provide statutory authority and guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

SEC. 3. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a particular employment practice or group of employment practices results in a disparate impact on the basis of race, color, religion, sex, or national origin; and

"(ii)(I) the respondent fails to demonstrate that the practice or group of practices is required by business necessity; or

"(II) the complaining party makes the demonstration described in subparagraph (C) with respect to a different employment practice or group of employment practices.

"(B)(i) With respect to an unlawful employment practice based on disparate impact as described in subsection (A), the complaining party shall identify with particularity each employment practice that is responsible in whole or in significant part for the disparate impact, except that if the complaining party can demonstrate to the court, after discovery, that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the group of employment practices as a whole may be analyzed as one employment practice.

"(ii) If the elements of a decisionmaking process are capable of separation for analysis, the complaining party must identify each element with particularity, and the respondent must demonstrate that the element or elements identified that are responsible in whole or in significant part for the disparate impact are required by business necessity. If the respondent demonstrates that a specific employment practice within a group of employment practices is not responsible in whole or in significant part for the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) An employment practice or group of employment practices responsible in whole or in significant part for a disparate impact that is demonstrated to be required by business necessity shall be lawful unless the complaining party demonstrates that a different employment practice or group of employment practices, which would have less disparate impact and make a difference in the disparate impact that is more than merely negligible, would serve the respondents as well.

"(2) In deciding whether a respondent has met the standards described in paragraph (1) for business necessity, the court may receive evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to the evidence as is appropriate.

"(3) A demonstration that an employment practice or group of employment practices is required by business necessity may be used as a defense only against a claim under this subsection.

"(4) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses an illegal drug as defined in schedules I and II of section 102)(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of rule, color, religion, sex, or national origin.

"(5) The mere existence of a statistical imbalance in the work force of an employer on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.

"(b) CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed to overrule any existing case concerning whether recovery is available under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) under a comparable worth theory.

SEC. 4. PROHIBITION AGAINST THE DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 3) is further amended by adding at the end the following new subsection:

"(l)(1) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment-related tests on the basis of race, color, religion, sex, or national origin.

"(2) Paragraph (1) shall not apply to a respondent seeking to comply with a court order aimed at remedying past discrimination."

SEC. 5. DEFINITIONS.

(a) IN GENERAL.—Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'group of employment practices' means a combination of particular employment practices in which each practice is responsible in whole or in significant part for an employment decision.

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices involving selection, that the practice or group of paractices bears a manifest relationship to requirements for effective job performance; and

"(2) in the case of other employment decisions not involving employment selection practices as described in paragraph (1), the practice or group of practices bears a manifest relationship to a legitimate business objective of the employer.

"(p) The term 'requirements for effective job performance' includes—

"(1) the ability to perform competently the actual work activities lawfully required by the employer for an employment position; and

"(2) any other lawful requirement that is important to the performance of the job, including, but not limited to, factors such as punctuality, attendance, a willingness to avoid engaging in misconduct or insubordination, not having a work history demonstrating unreasonable job turnover, and not engaging in conduct or activity that improperly interferes with the performance of work by others.

"(q) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity or head of a Federal entity subject to section 717."

(b) INTERPRETATION.—It is the intent of Congress in enacting sections 701(o) and 703(k) of the Civil Rights Act of 1964 (as added by subsection (a) of this section and subsection (a) of section (3) respectively) that the sections codify the meaning of business necessity used in *Griggs v. Duke Power Co.*, 401 U.S.C. 424 (1971) and overrule the treatment of business necessity as a defense in *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (1989), with respect to an employment practice or group of employment practices.

SEC. 6. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to the amendments made by this Act shall, subject to paragraphs (2) through (5), apply with respect to any employee in an employment position in the Senate and any employing authority of the Senate.

(2) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment pursuant to the provisions described in paragraph (1) shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(3) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the provisions described in paragraph (1).

(4) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the provisions described in paragraph (1), the Select Committee on Ethics, or such other entity as the Senate may designate, shall to the extent practicable apply the same remedies applicable to all other employees covered by the provisions described in paragraph (1). Such remedies shall apply exclusively.

(5) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (1) shall be within the exclusive jurisdiction. of the United States Senate. The provisions of paragraphs (2), (3), and (4) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the purposes of this Act shall, subject to paragraph (2), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and the amendments made by this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under title VII of the Civil Rights Act of 1964 and the amendments made by this Act shall, subject to paragraphs (2) and (5), apply with respect to any employee in an employment position in an instrumentality of the Congress and any chief official of such an instrumentality.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the Congressional Budget Office, the General Accounting Office, and the Office of Technology Assessment.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000c-16).

SEC. 7. CONSTRUCTION.

(a) IN GENERAL.—Except as provided in subsection (b)—

(1) nothing in this Act or the amendments made by this Act shall be construed to limit an employer in establishing job requirements that are otherwise lawful under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(2) nothing in title VII of the Civil Rights Act of 1964 or this Act shall be construed—

(A) to require or encourage an employer to adopt hiring or promotion quotas; or

(B) to prevent an employer from hiring the most effective individual for a job.

(b) REMEDIES, VOLUNTARY ACTIONS, AND AGREEMENTS.—Nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, voluntary employer actions for work force diversity, or affirmative action or conciliation agreements, that are otherwise in accordance with the law.

S.1209

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 "Civil Rights and Remedies Act of 1991".

SEC. 2. FINDING AND PURPOSE.

(a) FINDING.—Congress finds that additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace.

(b) PURPOSE.—The purpose of this Act is to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace.

SEC. 3. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

The Revised Statutes are amended by inserting after section 1977 the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) against a respondent who intentionally engaged in an unlawful employment practice prohibited under section 703 of the Act (42 U.S.C. 2000e-2) and engaged in the practice on the basis of the religion, sex, or national origin of an individual, the complaining party—

"(A) may recover the compensatory damages described in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent; and

"(B) may request that a court impose the equitable civil penalty described in subsection

(c) against the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a))) against a respondent who intentionally engaged in a practice that constitutes discrimination under section 102 of the Act (42 U.S.C. 12112), other than discrimination described in paragraph (3)(A) or (6) of subsection (b) of the section, against an individual, the complaining party—

"(A) may recover the compensatory damages described in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent; and

"(B) may request that a court impose the equitable civil penalty described in subsection (c) against the respondent.

"(3) NOTICE.—A complaining party who requests that a court impose an equitable civil penalty under subsection (c) shall provide notice of the request to the Chairman of the Equal Employment Opportunity Commission and the Secretary of Health and Human Services.

"(b) COMPENSATORY DAMAGES.—

"(1) DETERMINATION.—A complaining party may recover compensatory damages under subsection (a) if it is determined that the complaining party had demonstrated the existence of injury requiring compensation by clear and convincing evidence.

"(2) EXCLUSIONS.—Compensatory damages awarded under this section shall not include back pay, interest on back pay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The amount of compensatory damages awarded under this section against a respondent who is not a government, government agency, or political subdivision, for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed—

"(A) in the case of a respondent who has more than 100 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $150,000; and

"(B) in the case of a respondent not described in subparagraph (A), $50,000.

"(4) PREJUDGMENT INTEREST.—The court described in paragraph (1) shall not award prejudgment interest to a complaining party on compensatory damages awarded under this section in an action in which the aggrieved individual is an employee or applicant for employment described in section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)).

"(c) EQUITABLE PENALTY.—

"(1) DETERMINATION.—

"(A) IN GENERAL—A court shall impose an equitable civil penalty on a respondent under subsection (a) if the court finds that—

"(i) the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual; and

"(ii) the penalty is necessary to deter that respondent from engaging in such a discriminatory practice or such discriminatory practices in the future.

"(B) AMOUNT.—The court shall impose an equitable civil penalty sufficient to deter the respondent from engaging in such a discriminatory practice or discriminatory practices in the future.

"(2) EQUITABLE CONSIDERATIONS.—In making the finding described in paragraph (1)(A), a court may consider—

"(A) the nature of the discriminatory practice or practices that are the subjects of the action described in subsection (a);

"(B) the efforts of the respondent to instruct the managers, supervisors, and employees of the respondent about legal requirements regarding employment discrimination;

"(C) the nature of compliance programs, if any, established by the respondent to ensure that discriminatory practices do not occur in the workplace;

"(D) any lawful affirmative action undertaken by the respondent with respect to the group injured by the discriminatory practice or practices are the subject of the action described in subsection (a);

"(E) the availability to the aggrieved individual of an internal grievance procedure or remediation policy established by the respondent;

"(F) whether the respondent made a prompt investigation of the discriminatory practice or discriminatory practices;

"(G) the efforts of the respondent to correct the discriminatory practice or practices; and

"(H) the size of the respondent and the effect of the equitable civil penalty on the economic viability of the respondent.

"(3) LIMITATIONS.—The amount of an equitable civil penalty imposed under subsection (a) shall not exceed—

"(A) in the case of a respondent who has more than 100 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $150,000; and

"(B) in the case of a respondent not described in subparagraph (A), $50,000.

"(4) RECOVERY OF COSTS.—

"(A) AWARD OF FEES.—If a court imposes an equitable civil penalty in a case brought under this section, the court shall award reasonable attorney's and expert witness fees incurred by the complaining party in seeking the penalty.

"(B) RELATIONSHIP TO PENALTY.—The court shall not subtract the amount of the fees described in subparagraph (A) from the amount of the equitable civil penalty imposed against a respondent under this section.

"(5) APPLICATION OF PROCEEDS OF PENALTY.—

"(A) CORRECTION OF DISCRIMINATORY PRACTICES.—If a court determines, in the discretion of the court, that an equitable civil penalty imposed under this section is needed to correct discriminatory practices at the place of employment, or in the community, in which the discriminatory practice described in subsection (a) occurred, the penalty shall be expended all or in part, as directed by the court, to correct the discriminatory practices. The penalty may be expended to undertake actions such as public awareness or education programs regarding discrimination on the basis of race, color, religion, sex, or national origin, in order to eliminate future discrimination.

"(B) TRUST FUND.—

"(i) FULL PAYMENT.—If a court does not make the determination described in subparagraph (A), the penalty shall be deposited in the Equal Employment Enforcement Trust Fund, established in section 9511 of the Internal Revenue Code of 1986.

"(ii) PAYMENT IN PART.—If a court directs that part of the penalty shall be expended as described in subparagraph (A), the remainder of the penalty shall be deposited in the Fund.

"(C) DETERMINATION.—In making the determination described in subparagraph (A), the court may consider—

"(i) antidiscrimination and antiharassment policies and procedures established by the respondent, prior to the practice that is the subject of the action described in subsection (a), to ensure that discriminatory practices would not occur;

"(ii) corrective actions taken by the respondent on becoming aware of a claim that a discriminatory practice had occurred; and

"(iii) policies and procedures established by the respondent after the claim to ensure that discriminatory practices do not occur again.

"(d) JURY TRIAL.—

"(1) IN GENERAL.—If a complaining party seeks compensatory damages under this section, any party may demand a trial by jury.

"(2) DETERMINATIONS.—If a party requests a trial by jury in an action brought under this section—

"(A) the jury shall determine all factual issues related to liability; and

"(B) if the determination described in subsection (b)(1) is made—

"(i) the jury shall determine the amount of compensatory damages awarded to the complaining party; and

"(ii) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(e) DEFINITION.—As used in this section:

"(1) AGGRIEVED INDIVIDUAL.—The term 'aggrieved individual' means a person who has been subjected to a discriminatory practice.

"(2) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(3) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice'' means a practice described in paragraph (1) or (2) of subsection (a).".

SEC. 4. EQUAL EMPLOYMENT ENFORCEMENT TRUST FUND.

(a) ESTABLISHMENT.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end of the following new section:

SEC. 9511. EQUAL EMPLOYMENT ENFORCEMENT TRUST FUND.

"(a) CREATION OF FUND.—There is established in the Treasury of the United States a fund to be known as the Equal Employment Enforcement Trust Fund (referred to in this section as the 'Fund'), consisting of such amounts as may be appropriated or credited to the Fund as provided in this section.

"(b) TRANSFERS TO FUND.—There are appropriated to the Fund amounts equivalent to the additional revenues received in the Treasury as the result of the amendments made by section 3 of the Civil Rights and Remedies Act of 1991.

"(c) EXPENDITURES.—

"(1) PURPOSES.—

"(A) CIVIL RIGHTS ENFORCEMENT.—Fifty percent of the amounts in the Fund shall be available, to the extent provided in appropriation Acts, for the purposes of making expenditures to carry out section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

"(B) FAMILY VIOLENCE PROTECTION.—Fifty percent of the amounts in the Fund shall be available, to the extent provided in appropriation Acts, for the purposes of making expenditures to carry out section 303 of the Family Violence Prevention and Services Act (42 U.S.C. 10402).

"(2) PAYMENTS BASED ON ESTIMATES.—Payments under paragraph (1) shall be made on the basis of estimates by the Secretary of the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.".

(b) CONFORMING AMENDMENT.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended in the table of sections by adding at the end the following new item:

"Sec. 951. Equal Employment Enforcement Trust Fund.".

SEC. 5. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to the amendment made by this Act shall, subject to paragraphs (2) through (5), apply with respect to any employee in an employment position in the Senate and any employing authority of the Senate.

(2) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment pursuant to the provisions described in paragraph (1) shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(3) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the provisions described in paragraph (1).

(4) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the provisions described in paragraph (1), the Select Committee on Ethics, or such other entity as the Senate may designate, shall to the extent practicable apply the same remedies applicable to all other employees covered by the provisions described in paragraph (1). Such remedies shall apply exclusively.

(5) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (1) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (2), (3), and (4) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the purposes of this Act shall, subject to paragraph (2), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under the amendment made by this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under the amendment made by this Act, shall, subject to paragraph (2), apply with respect to any employee in an employment position in an instrumentality of the Congress and any chief official of such an instrumentality.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

SEC. 6. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be effected.

Mr. DURENBERGER. Mr. President, I am pleased to join my distinguished colleagues, Senators DANFORTH, RUDMAN, JEFFORDS, COHEN, CHAFEE, and HATFIELD, in today introducing a rational civil rights alternative. It is my belief that this bill will pave the way toward a meaningful resolution of the civil rights impasse that the Congress, the administration, business and civil rights groups thus far have been unable to resolve.

The legislation we are introducing consists of three distinct bills: The Civil Rights Restoration Act of 1991, the Equal Employment Opportunity Act of 1991, and the Civil Rights and Remedies Act of 1991.

The first of these three bills, the Civil Rights Restoration Act of 1991, incorporates all of the noncontroversial sections from last year's civil rights bill, and the second and third bills, the Equal Employment Opportunity Act of 1991, and the Civil Rights and Remedies Act of 1991, deal with employment practices that disproportionately affect women and minorities, and damages that are available in employment discrimination law suits, respectively.

By separating the noncontroversial issues contained in the first bill from those issues in the second and third bills, Congress may address immediately the injustices that have resulted from the Supreme Court's misinterpretation of U.S. civil rights law. At the same time, Congress is provided with the opportunity to act carefully to avoid quotas and runaway employment litigation, which are issues of great concern to all of us.

Mr. President, this Nation's civil rights laws are the means to ensure fair employment opportunities for all Americans. In Minnesota, we are keenly aware of the need for fair opportunity. In the past 10 years, Minnesota experienced a 4.9 percent increase in its white population, but a roughly 78 percent increase in black population, 42 percent increase in American Indian population, and 193 percent increase in the Asian American population.

The minority members of the Minnesota community deserves a fair chance at obtaining employment and entering the American economic mainstream. These three bills will help to provide that opportunity for members of those groups.

Mr. President, I have a long history of strongly supporting civil rights. In addition to being a principal sponsor of the Americans With Disabilities Act last year, I have authored the Economic Equity Act and have cosponsored the Equal Rights Amendment. Moreover, in previous years, I voted in favor of legislation that prevented recipients of Federal funds from discriminating on the basis of race, gender, religion, or national origin, and favored legislation that promoted equal access to voting. Based upon this record, there can be no doubt that I am an ardent and zealous champion of civil rights.

Accordingly, I encourage my colleagues to support our initiative, because it will provide immediate relief on the federal level for victims of discrimination.

The Civil Rights Restoration Act of 1991 overturns the Supreme Court's 1989 Patterson versus McLean Credit Union and Lorance versus AT&T decisions. All interested parties, including the administration, civil rights groups and business groups, agree that these two cases incorrectly narrowed the protections available to minorities.

In Minnesota, our legislature passed legislation immediately after Patterson and Lorance that created a State remedy to address these Supreme Court decisions. By separating the civil rights initiative into separate legislation, the U.S. Congress will be following Minnesota's example of dealing with the Patterson and Lorance prob-

lems head on to provide meaningful relief to those now denied a necessary employment discrimination remedy.

In addition, the Equal Employment Opportunity Act of 1991, and the Civil Rights and Remedies Act of 1991, broaden the ability of civil rights' plaintiffs to challenge employment actions and obtain appropriate relief, without promoting employment quotas. I am deeply concerned that Congress avoid encouraging employers to hire or promote applicants simply based upon an individual's skin color, gender, national origin or religion.

Accordingly, our bill overturns the Supreme Court's Wards Cove Packing versus Antonio decision, which placed additional and unfair burdens on plaintiffs challenging employment practices that disproportionately excluded minorities and women. At the same time, our bill requires plaintiffs to identify the specific employment practice or practices that cause the adverse impact on minorities, rather than allowing plaintiffs to sue based simply upon the employer having fewer minority employees than one would expect based upon the local population.

The Democratic alternative that is soon to be considered in the House of Representatives does not require plaintiffs to identify these specific employment practices and potentially requires employers to defend all of their employment practices without requiring a plaintiff to demonstrate that the practices caused an adverse impact. To allow such suits would encourage employers to "hire by the numbers" in order to avoid liability—and that is a quota. Especially when coupled with unlimited compensatory and punitive damages, I find that alternative unacceptable.

Mr. President, one of the reasons that I am cosponsoring these measures is because I believe that the bill supported by the administration fails to provide adequate remedies to victims of discrimination. For instance, the administration allows a jury to determine the damages for workplace racial harassment claims, but the Bush administration bill fails to provide the same jury trials for workplace sexual harassment claims. That is simply unfair.

The administration bill also lacks flexibility. Under the President's plan, employers of all sizes would be subject to potential liability of $150,000, even though many smaller employers would be bankrupted by such a large court award, and many large employers could afford that amount without great difficulty.

In contrast, the Civil Rights and Remedies Act of 1991 allows for juries to determine compensatory damages—for pain and suffering—subject to a cap of $50,000 for small employers and $150,000 for large employers. Following the Minnesota model, this initiative also provides for a civil equitable penalty, assessed by the court rather than by a jury, subject to the same $50,000/$150,000 cap.

Uniquely, our legislation encourages courts to require employers that have committed unfair employment practices to spend the civil penalty on race, gender, religion and/or national origin awareness and education programs for the employer's work force and/or in the surrounding community.

After consulting with numerous Minnesota business and civil rights groups, I endorse this use of penalties. Personally, I am convinced that it is ignorance that leads to prejudice, and therefore, the most socially useful expenditure of these penalties will be for such educational awareness programs.

Mr. President, I believe these bills provide adequate remedies for victims of discrimination without raising the specter of runaway jury awards. In my view, this is the best possible solution to the civil rights impasse between the administration, business groups, civil rights groups and Congress.

I urge my colleagues to shed partisanship and give serious consideration to the carefully crafted bills we have introduced today.

Mr. CHAFEE. Madam President, I am pleased to join with a number of my Republican colleagues in introducing a legislative package on civil rights. In one sense, it is with mixed feelings that I do so. I would have preferred to see a compromise reached last year. I certainly would have preferred avoiding the rancor and bitterness of the debate on civil rights that took place. But as no compromise has yet been reached and none seems to be in view, and since the parties appear to be irrevocably divided, we have joined in this undertaking.

In another sense, I join my colleagues with a real stirring of hope. By introducing a measure that falls somewhere in the middle of the competing proposals offered this year, we hope to move debate out of the realm of politics and sound bites, and into the realm of substance. Perhaps if that can be accomplished, we can get on with the matter at hand: Passing a good, fair bill that will afford civil rights protections to all Americans in the workplace.

Before I go further, I would like to state that I believe there are good faith efforts to get a bill. I commend President Bush for his support of civil rights legislation over the years. Indeed, as a Congressman from Texas, he supported civil rights legislation when it was far from popular to do so. I believe that the President indeed does want a civil rights bill, and I am hopeful we can obtain his support for the package of bills we are introducing.

Likewise, I hope that all parties who want a bill and are involved in this debate will give this package positive consideration.

I wish to state also, Madam President, that I like the company I am keeping. Sometimes in legislation one is associated with those for whom one really has a lot of respect, and that is my situation today. I respect the leader of our group in this effort, Senator DANFORTH, and I have equal respect for Senators HATFIELD, JEFFORDS, DOMENICI, SPECTER, RUDMAN, COHEN, and DURENBERGER. All of these Senators are good individuals, and all share a strong commitment to civil rights guarantees. Our effort today stems from this commitment. We want a good fair bill.

Madam President, it has been 2 years since the Supreme Court handed down a series of employment discrimination rulings that established far more stringent requirements than had previously existed in discrimination suits. The decisions had a serious and adverse impact on the ability of persons to fight against discrimination in the workplace. At worst, the Court took a 180-degree turn from what we in Congress over the years have tried to do. At best they took an unnecessarily severe interpretation of our intent. In my mind, these rulings need our attention. We wrote the statutes that the Court interpreted. We must be sure the rights guaranteed by those statutes remain intact.

As I see it, the great majority of Americans flatly oppose discrimination. I do not think there is any argument over that. One of the vital principles held by Americans is that no distinction should be drawn between persons solely because of some artificial factor—such as color, wealth, religion, background or nationality. If there is one concept that is part of the core of what it means to be an American, it is that each individual deserves to be treated fairly and equitably, regardless of who they are or what they look like.

Discrimination runs absolutely counter to that view. Hence, Americans have long supported civil rights protections, protections that truly belong to each and every one of us simply by virtue of our citizenship, and that sadly, are still necessary today. I think we all acknowledge that discrimination still exists, albeit often in a far more subtle and insidious form than in the past. Thus, it is important to keep the tools that are needed to fight discrimination at hand and available.

That is what this effort is about: Making sure these tools are available. To many, the issues regarding "business necessity" or "particularity," and the fights these issues cause, seem dry and detailed and overly fussy. Frankly, in some ways I agree. I think too much fierce debate has stemmed from one word or one phrase. Yet these esoteric terms are the tools I mentioned earlier, those that are needed to combat dis-

crimination. And thus they are important.

What exactly is in our three-bill package? First and foremost, we have chosen to separate out certain of the Supreme Court decisions from the others. One thing revealed during the 1990 legislative battle is that there is in fact general agreement on legislative solutions for some of the cases. Yet during last year's debate those sections of general agreement—on Patterson, Wilks, Lorance, and Price Waterhouse—were unfairly held hostage to the more controversial measures. The first bill, therefore, contains these areas of agreement. It seems to us it is important to do as much as we can right, while continuing to work on the remaining provisions. The sooner those sections become law, the better for workers who are victims of discrimination.

The second bill addresses disparate impact suits as tested by the Wards Cove case. This section clearly was the most controversial part of last year's bill, and is the main provision that invited accusations of quotas. Our legislation builds upon the conference report language of last year. It also builds upon the language discussed by the business and civil rights groups. We believe we have drafted the language in such a way as to avoid the quota problem. This is not a quota bill.

The third bill concerns the extension of compensatory and punitive damages for women, persons with disabilities, and others covered under title VII of the 1964 Civil Rights Act, who now have no recourse to anything more than back pay, attorneys' fees, injunctive relief, or reinstatement. One of the most difficult pieces of this puzzle was how to deal with the issue of damages. Damages do serve an important and useful purpose. They provide compensation to those who are injured, and they provide a strong deterrent against wrongdoing. However, there are many—and I admit I am one—who are concerned about the increasingly litigious nature of our society.

The question is how to ensure both that victims are compensated and that a deterrent value is kept alive, while at the same time preventing a limitless expansion of the system that, overall, is costing us very dearly. Thus, we have worked to craft a damages section that will make certain victims of discrimination are compensated for the real costs incurred as a result of the discrimination. However, we also believe there should be some limit on how much businesses may be fined for such activity, and that the fine itself should go toward fixing—either via the Employment Opportunities Commission or via the workplace itself—the real and harmful problem for which it was awarded.

So as I stated earlier, this is a compromise effort, the purpose of which is to move forward and gain some ground in the area of civil rights. The bill on damages may not be perfect. However, we are not going to gain any ground unless there are limits on the damages. That is clear from last year's debate, and it is clear from what we have seen this year.

Just a word about quotas. I do not doubt there will be those who will attempt to characterize this legislative package, as a proplaintiff quota bill, although I firmly believe that it will not lead to hiring by quota. On the other side of the ledger, there will be those who will characterize this bill as probusiness. I do not think it is pro either.

This package is meant to clarify and to restore civil rights as fairly as possible. It may not be everything. In fact, I suspect every single one of us, the cosponsors, has some concerns with different sections of this package. But we have concluded that we must present something to this body, and something reasonable, if we are to break out of the logjam that currently exists, move forward, and have a bill enacted into law. I might even venture that if this bill pleases no one, we may be on the right track.

My colleagues and I have spent the last 18 months, a year and a half, in an effort to pass a civil rights bill, one that may be signed into law. It has been a long process which has frustrated nearly everybody involved. Last year, we spent a lot of time and went nowhere. The President was not happy; the Senate was not happy; and the House was not happy. That process ended up being a futile effort—no legislation was approved. We believe that this package of bills is a good start. I hope that each of my colleagues in the Senate—from the Democratic or the Republican side—will give it their careful attention and consideration.

I hope cool heads will prevail. Certainly, there is room for discussion on each of these issues. But paramount to having an effective discussion is to first end the bitter debate that has consumed this body for month after month. I hope this is a major step in that direction.

I wish to thank the Chair. I particularly want to thank the distinguished Senator from South Carolina for his permitting me to proceed.

By Mr. PELL:

S. 1210. A bill to amend the Immigration and Nationality Act to provide for the deportation of aliens who are convicted of felony drunk driving; to the Committee on the Judiciary.

DEPORTING NON-U.S. RESIDENT DRUNK DRIVERS

• Mr. PELL. Mr. President, I am today introducing legislation that would allow for the deportation of resident aliens convicted of felony drunk driving. Specifically, my bill would allow for deportation of a non-U.S. citizen convicted of operating a motor vehicle while under the influence of alcohol or illegal drugs, in connection with a fatal crash or a crash in which serious bodily injury has been inflicted upon an innocent party.

Under current law, an alien residing in this country can be deported if he or she commits a crime involving "moral turpitude." Court decisions over the years have established that crimes such as murder, rape, assault, robbery and drug possession are crimes that demonstrate moral turpitude and are grounds for deportation.

However, a non-U.S. resident who gets behind the wheel of a motor vehicle after abusing alcohol or drugs and kills or injures an innocent victim, cannot be deported. Under current law, getting drunk and then killing someone with your car is not considered a sufficient enough demonstration of moral turpitude to warrant deportation.

Mr. President, drunk driving is not a simple traffic offense and should not be treated that way. Since the early 1980's, when I introduced the first in a series of laws forcing a crack-down on drunk drivers, there has been a wholesale change in the way society views drunk driving. I believe it is time for our deportation laws to reflect this fundamental change. An assault or killing committed by a drunk driver should be considered as grounds for deportation.

This legislation may seem draconian to some. Our country has always opened its arms to all people and it is a very serious step to deport someone from our shores. That is why my bill follows current deportation law and gives a presiding judge in a felony case involving an alien the power to recommend against deportation. My bill also specifically states that an alien cannot be deported if this action would subject the alien to persecution on account of race, religion or political opinion. I believe these safeguards will adequately protect aliens from the misapplication of this proposed law.

However, I realize that there may be a need to further modify this bill to accommodate the concerns of my colleagues and I am open to comments, suggestions or improvements.

In 1980, over half of all traffic fatalities in this country were alcohol related. In 1987—the last year statistics were available—this figure showed some decrease. The number of drunk driving fatalities is still much too high and it is up to Congress to look for new ways to deter drunk drivers. My bill will make a small contribution to accomplishing this goal because it will force a very specific group of drivers to think twice before drinking and driving.

Mr. President, the idea for this legislation was suggested to me by a group of people that has had more to do with

curbing drunk driving than all the Senators and Congressmen on Capitol Hill. Mothers Against Drunk Driving [MADD] recently marked its 10th anniversary and what this group has accomplished in the past 10 years is remarkable. Quite simply, in one short decade, MADD has changed the way we think about drunk driving and managed to save thousands of lives in the process.

It was MADD that told me about a recent drunk driving case in Florida, convincing me there was a need for my bill. The case involved a man who was living in Florida as an alien. He was convicted of drunk driving after causing an accident in which a 73-year-old woman received serious stomach wounds, a crushed pelvis, a punctured lung, and broken ribs. This was the third drunk driving conviction for this man. I share MADD's view that someone with a record such as this should be deported.

Unfortunately, the law does not allow us to deport a drunk driver who kills or injures someone. My bill would change that.

Mr. President, I ask that the full text of this bill be printed in the RECORD.

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

S. 1210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)) is amended—

(1) by striking out "or" at the end of paragraph (19);

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(21) has been convicted of operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance arising in connection with a fatal traffic accident or traffic accident resulting in serious bodily injury to an innocent party.".

(b) Section 241 of that Act is amended by adding at the end thereof the following:

"(h) Subsection (a)(21) shall not apply to any alien described in section 243(h).".●

By Mr. GRAHAM:

S. 1211. A bill to amend title XIX of the Social Security Act to permit the States the option of providing medical assistance to individuals with a family income not exceeding 300 percent of the income official poverty line with appropriate cost-sharing, and for other purposes; to the Committee on Finance.

S. 1212. A bill to amend title XVIII of the Social Security Act to provide coverage for certain preventive care items and services under part B and to provide a discount in premiums under such part for certain individuals certified as maintaining a healthy lifestyle; to the Committee on Finance.

S. 1213. A bill to amend title IX of the Public Health Service Act to require the Director of the Centers for Disease Control to acquire and evaluate data concerning preventative health and health promotion, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH LEGISLATION

Mr. GRAHAM. Mr. President, I rise for the purpose of introducing three health reform bills. The Nation has recently had an opportunity to see how our health care system can operate. When President Bush fell ill, he received the most comprehensive state-of-the-art health care available. He saw expensive physicians, underwent extensive tests. The health care system performed for him. But, Mr. President, if the President of the United States had been one of the 31 to 36 million individuals in this Nation without health insurance, he could have ended up in the emergency room for care, if he received any care at all.

The uninsured are a growing segment of the U.S. population. In 1987 the national medical expenditure survey found that 47.8 million people lacked insurance for all or a part of 1987; 34 to 36 million were uninsured on any given day; 24.5 million were uninsured throughout the entire year.

The following statistics are also from that same NME study. Nearly one in four children, children younger than the age of 18, were uninsured during all or part of the year. Given the need for early intervention and prevention in this critical population, this figure is particularly disturbing. Of non-Hispanic whites 18.6 percent were uninsured; 29.8 percent of black Americans, and 41.4 percent of Hispanic Americans were uninsured for all or part of the year.

According to the General Accounting Office, my State, the State of Florida, with 2.2 million uninsured, 21 percent of our State's population, ranks third in the United States in the number of uninsured persons.

Our health care system is in crisis, Mr. President. There are at least five reasons why this crisis exists.

Although health care coverage is not the only factor in determining health status, it is a key factor in improved health. Medical indigence is associated with lack of care and poor health status.

Two, the entire health care system suffers from being required to provide some care for the uninsured who cannot pay. The uninsured disproportionately seek care in hospital emergency rooms. For example, Jackson Memorial Hospital, the only public hospital in Dade County, Miami, FL, provided $204 million in uncompensated care charges for fiscal year 1990–91.

Health care costs are constantly escalating. According to HHS statistics, national health care spending increased 128 percent from 1980 to 1989 to $604 billion at the end of the last decade.

Employers are struggling to contain the cost of providing employee benefits, and the number of employers who offer benefits or enriched packages is rapidly declining.

Caring for the uninsured in the manner we do has financial and social costs as a fourth part of the health care crisis.

By receiving mostly emergency room care, the uninsured must forego primary care, hardly a cost effective use of funds. Through public programs and private insurance premiums we all pay these costs.

The uninsured pass their behavior patterns and societal inequities down to their families. There are other social costs as well. The inability to move from employment, to have mobility within the work force, is often due to fear of losing insurance coverage, such as the loss of coverage because of pre-existing conditions.

There is a built-in disincentive from leaving the welfare system because of the potential that has for losing Medicaid eligibility. As America ages, due to the economically devastating long-term care cost, unfortunately, Mr. President, the fact is that if you live long enough, there is a high possibility you will die medically indigent.

The last issue of the health care crisis is a philosophical one. Can your society continue to have a two-tiered health care system? Can we claim our system is the best in the world when so many have so little or no access.

Mr. President, I want to consider some of the components of our health care system in an attempt to evaluate this crisis. How has Medicaid fared? The Federal-State program providing medical assistance for those of low income in 1991 has covered about 27.3 million persons.

Due to Medicaid's categorical approach to eligibility, certain needy groups, primarily low-income men and childless couples, do not qualify for coverage.

In the late 1980's, cost containment efforts led to program freezes and reductions in eligibility and in provider payments.

Although Aid to Families for Dependent Children recipients represent about 75 percent of the Medicaid population of over 27 million Americans, 75 percent of Medicaid costs are for the care of the aged, blind, disabled, mostly for nursing home care.

Well, how is the workplace doing, Mr. President? United States employer-based insurance is the primary means of health care coverage. Sixty-six percent of the population—141 million workers—received such coverage according to the 1988 census. In 1988 the General Accounting Office found that

80 percent of the uninsured were either workers or dependents of workers.

Mr. President, I want to underscore that statistic: 80 percent of the uninsured Americans were either workers or dependents of workers.

Small businesses have little ability to spread risk over large numbers of employees, which increases their premiums. Small business insurance coverage then is subject to more exclusions based on health status.

Let us look at a third issue. How well have our preventative efforts worked? In 1985, less than 1 percent of the Federal Government's health care budget was targeted at prevention, at maintaining a high state of wellness.

The term "health care system" is in fact a misnomer. We have a crisis intervention system, with little attention to the maintenance and enhancement of individual Americans.

Philosophically, the Federal Government's involvement has been limited to intervention after major illness: sickness care, kidney dialysis, rather than hypertension medication. Economically, the Federal Government has focused resources on acute care despite the higher costs associated with such care.

Mr. President, the administration estimates that Medicare will spend $116.7 billion during fiscal year 1992 for the health care services for 33 million Americans. But it only will cover mammograms, pap smears, and certain immunizations for treatment purposes. That is the extend to which a $116 billion health care program orients itself toward maintaining a high level of health among older Americans.

The Public Health Service has recently put forth a document, "Healthy People 2000; National Health Promotion and Disease Prevention Objectives." This survey contains a national strategy for preventing major chronic illnesses, injuries, and infectious disease, reiterating that we can no longer afford not to invest in prevention.

There are examples, Mr. President, of where our system is working. I would just like to mention a few with which I am personally familiar in my own State.

In Dade County, FL, a mobile van unit, Medivan, offers primary care to elderly persons living in Dade County and Broward County. These are persons largely unserved, indigent, living in rural or inner-city areas; 2.3 million people in my State receive Medicare benefits, a system neither means tested nor workplace based.

In Dundee, FL, the research program runs a national renowned longitudinal study of 2,500 persons over the age of 65 who undergo yearly free physical exams and counseling. Florida Medicaid is operating four school-based health insurance programs under a demonstration which provides services for previously uninsured children and requires participants to cost share for services from 130 to 185 percent of the poverty level.

Mr. President, how do we hope to build on the existing system's strength and improve its weaknesses? Today I am introducing three health care reform bills based on access, cost, prevention, and research. These bills are not a panacea. They do, however, present a starting point for what we all anticipate will be a national debate commencing soon in this Congress on the future of American health care.

I know that the current occupant of the chair, both from his experience as Governor of the State of Nebraska, and now as a Member of the U.S. Senate, will be a major participant in that debate.

The first of the three bills that I am introducing today is the Medicaid Glide Slope Act of 1991. This bill would allow States to optionally increase Medicaid coverage for all individuals up to the age of 65 to a level to be determined by the State.

Mr. President, this chart summarizes the basic approach of the Medicare glide slope bill. It builds upon the existing Medicaid Program, whatever that program happens to be in an individual State. Then it allows a State, at the State's option, to provide for a glide slope, or actually a stairstep of Medicaid services, between the current extent of Medicaid eligibility and 200 percent above the poverty level. As the indivdual's income increases, their share of the cost of this program would commensurately increase. And between 200 percent of poverty and 300 percent of poverty, there will be the provision allowing individuals to pay in the full cost and gain the benefits of Medicaid health benefits.

This would allow States to establish a Medicaid sliding scale based on income for all individuals wishing to buy coverage and cost share up to 200 percent of the poverty level, and allows States to permit individuals up to 65 and small businesses to buy Medicaid coverage at 100 percent of the average per person cost, up to a percent of the poverty level.

It does not include in the calculation of those average costs the costs incurred for custodial care in the premiums, as these services tend to be the costliest and the least used by the population which would be eligible to participate in this program. It limits what an individual or family would be required to pay to participate to no more than 10 percent of that family's income.

How would the bill work? Let us assume that a State chooses to allow a Medicaid buy-in from 150 to 200 percent of poverty under the Florida Medicaid Program. For example, the average per person cost, minus the custodial nursing home coverage is, in 1989 dollars, $2,944.

With the poverty level of a family of 3 at 130 percent of the poverty level, which in Florida in 1989 would have been $13,368, the family would have paid in premiums of 30 percent of $2,934, or $1,764. However, because of the 10 percent maximum, that family would be able to purchase full Medicaid coverage for a family of 3 for $1,336.

This bill would reduce the disincentive for those who risk losing Medcaid coverage. By accepting income in excess of current Medicaid income limits, it would eliminate the cliff effect where eligibility ends by phasing in coverage with individual financial participation.

It utilizes an existing in-place delivery system. It allows participants to contribute to the program and offsets some of the costs to the State and Federal Government. It allows States to decouple eligibility levels from the current categorical requirements. As the Presiding Officer knows, today, in order to be eligible for Medicaid, one must generally have first been eligible for some other form of welfare, such as AFDC, aid to families with dependent children. This decoupling would facilitate the administration of the overall Medicaid Program.

This would save States money on the front end, as indigent persons could receive medical care from the primary care physician, not requiring the current excessive use of emergency room care. It would allow States flexibility to increase Medicaid coverage according to that individual State's needs and aspirations.

Mr. President, I am introducing a second bill, which would increase Medicaid preventative care coverage. An optional Medicaid immunization health exam, screening benefit, this would provide covered services for such things as physical exams, certain laboratory and screening provisions, counseling services, and other services for high-risk individuals, and immunizations.

This would be an elective program, Mr. President. The beneficiaries who elected to receive this coverage would pay a premium of $5.10 per month. There would be no copayment or deductible.

The bill follows the well-known U.S. Preventive Services task force guidelines on covered services for the elderly. In determining the premium level, it utilized the 1990 study for the Actuary Research Corp., which estimated the cost to provide the above preventative services under Medicaid.

What are the goals of this second measure, Mr. President? As the American population ages, older Americans can increase the healthiness; they can avoid early incapacitation if the emphasis shifts from crisis care to prevention. The increased preventative coverage will eliminate long-term cost for diagnosis and treatment.

Mr. President, I am introducing a third bill to evaluate preventative activities and to formulate practice guidelines. This bill would authorize the Centers for Disease Control to make grants to entities to evaluate which preventative screening and health promotion activities achieved the highest cost benefit and health improvement, utilizing the data to consider these procedures and activities and set appropriate practice guidelines to be contained in a clearing house at the Centers for Disease Control.

It requires this clearing house to disseminate such things as model insurance packages based on these findings. So that insurance coverage employers, governments, and individuals could evaluate what combination of insurance benefits have the highest potential return in terms of the reduction and the prevention of illness and disease, States and insurance companies would be encouraged to utlize this available information.

This third bill would provide a national, well publicized, comprehensive evaluation which is utilized in policymaking and in formulating insurance benefit packages. It would encourage the Federal Government and employees to begin health promotion activities, which in turn reduce long-term health care costs and premature disease and mortality,

It would assist the Department of Health and Human Services in achieving Healthy People 2000 objectives. A provision which is not contained in this bill, but which I believe this data might allow this and future Congresses to consider, would be to begin to tie eligibility for the tax deduction for health insurance to the inclusion within that health insurance of standards of practice that would promote wellness and the prevention of illness and disease.

Mr. President, how will these reform efforts improve and build upon our current health care system? These bills will not provide the answer to our health needs but they are a crucial way to begin addressing the health care crisis our Nation is facing by building upon and reforming our current system.

The Medigap glideslope bill does not address several important issues such as cost containment, physician reimbursement, rising Medicaid cost in proportion of State budgets. Most health care experts agree that health care costs continue to spiral out of control. Doctors are facing lagging Medicaid reimbursement. Administrative houses in States cannot continue to consume their portion of rising Medicaid costs and continue to balance their budgets. The Federal Government may have to assume more of the Medicaid costs in the future.

As you might recall, Mr. President, one of the components of President Reagan's new federalism was for the Federal Government to assume a larger, possibly even the total cost of the income maintenance programs in this country, specifically including the cost of Medicaid. That debate is one for another day. It is my feeling that these issues will be debated in the health reform discussions which our body will soon face and will be included in any serious health care reform effort.

Mr. President, although I do not now have budget estimates for these bills, it has been suggested that they are very compatible in costs to the determinations reached by the Pepper Commission which studied the issue of the provision of expanded health care particularly for older Americans. I am requesting a comprehensive evaluation of these proposals from the Congressional Budget Office.

Mr. President, difficult decisions await all of us as we consider the direction of health care reform. I am pleased that the issue has received this level of discussion of Congress and I hope that these proposals will facilitate the creation of a system which provides health care services to all Americans.

Mr. President, I ask unanimous consent that the full text of the three bills, a section-by-section summary of each of the bills and the accompanying support letters be printed in the RECORD immediately following my remarks.

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

S. 1211

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Medicaid Glideslope Act of 1991".

(b) REFERENCES IN ACT.—Except as otherwise provided in this Act, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 2. OPTIONAL EXPANSION OF MEDICAID COVERAGE TO INDIVIDUALS WITH FAMILY INCOMES NOT EXCEEDING 300 PERCENT OF THE INCOME OFFICIAL POVERTY LINE.

(a) STATE OPTION.—Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)), as amended by section 4713(a) of the Omnibus Budget Reconciliation Act of 1990, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by inserting "and" at the end of subparagraph (F); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) at the option of the State, but subject to subsection (z)(2) and section 1916(g)(5), for making medical assistance available to individuals who are described in subsection (z)(1);".

(b) DESCRIPTION OF GROUP.—Section 1902 (42 U.S.C. 1396a), as amended by section 4755(a)(2) of the Omnibus Budget Reconciliation Act of 1990, is amended by adding at the end the following new subsection:

"(z)(1) An individual is described in this paragraph if—

"(A) the individual is not otherwise covered under this title and not eligible to receive coverage under title XVIII of this Act; and

"(B) the family income of the individual does not exceed 300 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(G)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B); and

"(B) family income shall be determined in accordance with a methodology that is no more restrictive than the methodology employed under title XVI of this Act, and costs incurred for medical care or any other type of remedial care shall not be taken into account.".

(c) BENEFITS.—Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)), as amended by sections 4402(d) and 4713(a)(1)(D) of the Omnibus Budget Reconciliation Act of 1990, is amended, in the matter following subparagraph (G)—

(1) by striking "; and (XI)" and inserting ", (XI)";

(2) by striking ", and (XI)" and inserting ", and (XII)"; and

(3) by inserting before the semicolon at the end the following: ", and (XIII) the medical assistance made available to an individual described in subsection (z)(1) shall include only the care and services described in paragraphs (1), (2)(A), (3), (4)(B), (4)(C), and (5) of section 1905(a), and at the option of the State, any service described in section 1905(a)(22)".

(d) PREMIUMS AND COST SHARING.—Section 1916 (42 U.S.C. 1396o) is amended—

(1) in subsection (b), by striking "(A) or (E)" and inserting "(A), (E), or (G)"; and

(2) by adding at the end the following new subsection:

"(g)(1) the State plan shall provide that—

"(A) if the State elects under section 1902(a)(10)(G) to make eligible under this title individuals whose family income does not exceed 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, no premium, deduction, cost sharing, or similar charge may be imposed; and

"(B) if the State elects under such section to make eligible under this title individuals whose family income exceeds the income level determined by such State under subparagraph (B), such election must exceed such income level by 100 percentage points and must provide for a monthly premium and copayments as determined by the State in accordance with paragraphs (2) and (3), respectively.

"(2)(A) Except as provided in subparagraph (C), the amount of the monthly premium imposed under a State plan for any individual described in paragraph (1)(B) shall equal the applicable percentage of the national per capita costs of this title (other than with respect to medical assistance described in paragraphs (4)(A), (7), (14), and (18) of section 1905(a)).

"(B) For the purposes of this paragraph, the applicable percentage equals 10 percentage points for each 10 percentage point bracket (or any portion thereof) such individual's family's income exceeds the income level described in paragraph (1)(A), but shall not exceed 100 percentage points.

"(C) Notwithstanding any other provision of this subsection, the aggregate amount of premiums imposed on the family of any such individual shall not exceed 10 percent of the family income.

"(3) The amount of the copayment imposed under a State plan for any individual described in paragraph (1)(B) shall be determined by such State and shall only apply with respect to such individual whose family income equals or exceeds 150 percent of such income official poverty line.

"(4) The State plan shall provide that a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) may pay to the State on behalf of an individual who is an employee of the small business concern, the full amount of any premium and copayment under this subsection.

"(5)(A) Except as provided in subparagraph (B), the State plan shall provide that an individual who is enrolled in health insurance plan or program to which an employer makes contributions in the preceding calendar year, or is otherwise enrolled in the preceding calendar year in a private health insurane plan or program, shall not be eligible in the following calendar year to receive coverage for medical assistance pursuant to section 1902(a)(10)(G).

"(B) Subparagraph (a) shall not apply to any individual who is unemployed at the time such individual submits an application for coverage under section 1902(a)(10)(G).

"(6) The State plan shall provide, where appropriate, medical assistance to individuals eligible to receive coverage for medical assistance pursuant to section 1902(a)(10)(G) through public school-based health care programs.".

(e) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10)(C) (42 U.S.C. 1396a(a)(10)(C)) is amended by striking "(A) of (E)" in the matter preceding clause (i) and inserting "(A), (E), or (G)".

(2) Section 1902(a)(17) (42 U.S.C. 1396(a)(17)) is amended by striking "and (m)(4)" and inserting "(m)(4), and (z)(2)".

(3) Section 1903(f)(4) (42 U.S.C. 1396b(f)(4)) is amended by striking "or 1905(p)(1)" and inserting "1905(p)(1), or 1902(z)(1)".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished on or after July 1, 1992.

SECTION-BY-SECTION ANALYSIS OF THE MEDICAID GLIDESLOPE ACT 1991

SEC. 1. SHORT TITLE. The title would be referred to as the "Medicaid Glideslope Bill of 1991."

SEC. 2. Optional Expansion of Medicaid Coverage to Individuals with Family Incomes Not Exceeding 300 Percent of the Income Official Poverty Level. This section would allow states to optionally expand Medicaid coverage to a level to be determined by the state for all individuals up to age 65 and not exceeding 100 percent of the federal poverty level.

Once states determine that level, states could establish a Medicaid sliding fee scale based on income for a subsequent 100 percent increase for all individuals wishing to buy coverage and not exceeding 200 percent of the poverty level. For the buy in portion, individuals would pay 10 percent of national program costs per person for each 10 percent of income. This percentage of premium costs would increase by each additional 10 percent of the poverty level.

Total premiums could not exceed 10 percent of individual or family income. The premium, which is determined per average national Medicaid program costs, would not include nursing home costs.

States also could permit individuals up to 65 years and small businesses to buy Medicaid coverage at total per person program costs up to 300 percent of the poverty level.

Persons from 150-300 percent of the poverty level would pay a copayment to be determined by the state.

Persons would receive the current minimum benefit package available under Medicaid: inpatient hospital care, outpatient hospital care, laboratory and x-ray services, early and periodic screening, diagnostic, and treatment services, family planning services, physician, and dental care. States could opt to provide additional services.

The section does not allow persons who have received employer provided health insurance in the past year to receive coverage unless they are unemployed.

The state could provide medical assistance to eligible individuals through public school-base health care programs.

S. 1212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTIVE COVERAGE OF PERIODIC HEALTH EXAMINATION UNDER MEDICARE PART B PROGRAM

(a) IN GENERAL.—

(1) Section 1862(a)(7) of the Social Security Act (42 U.S.C. 1395y(a)(7)) is amended by inserting "except as provided in subsection (j)," immediately after "(7)".

(2) Section 1862 of such Act (42 U.S.C. 1395y) is amended by adding at the end the following new subsection:

"(j)(1)(A) In the case of an individual who (in such manner and for such period as the Secretary shall provide) elects to receive coverage for the services described in this subsection and pay the additional premium required under section 1839(g), the exclusion from coverage under subsection (a)(7) shall not apply to expenses incurred for services described in paragraph (2) furnished by a primary care physician (as described in paragraph (3)) during an annual periodic health examination (without regard to the location at which such services are furnished) to diagnose or prevent illness or injury.

"(B) An election under this subsection shall be in such form and manner and for such period as the Secretary may prescribe in regulations.

"(2) The services described in this paragraph shall include—

"(A) the taking of a health history;

"(B) a physical examination, including for all individuals examination for height, weight, blood pressure, visual acuity, hearing, and palpitation for preclinical disease;

"(C) laboratory and screening procedures, including—

"(i) nonfasting total blood cholesterol;

"(ii) fecal occult blood testing;

"(iii) for women, mammogram and Pap smear (as provided in paragraph (4)); and

"(iv) for individuals identified as being at high risk with respect to specific medical conditions—

"(I) fasting plasma gluscoe;

"(II) tuberculin skin test;

"(III) electrocardiogram;

"(IV) dipstick urinalysis;

"(VI) thyroid function test; and

"(VI) sigmoidoscopy;

"(D) counseling services, including—

"(i) counseling for—

"(I) exercise;

"(II) smoking cessation;

"(III) substance abuse; prevention

"(IV) injury prevention;

"(V) dental health; and

"(VI) mental health;

"(ii) for individuals identified as being at high risk for specific medical conditions, counseling for—

"(I) estrogen replacement therapy;

"(II) aspirin therapy; and

"(III) skin protection from ultraviolet light; and

"(iii) advising patients on the need to visit eye specialists for glaucoma testing; and

"(E) immunizations (including administration) (as provided in paragraph (4))—

"(i) as indicated for any individual, for—

"(I) tetanus;

"(II) diphtheria;

"(III) influenza; and

"(IV) pneumonia; and

"(II) as indicated for any individual identified of being at high risk for contracting hepatitis, for hepatitis B.

"(3) For purposes of this subsection, the term 'primary care physician' includes a physician (described in section 1861(r)(1)) who is a family practitioner, internal medicine specialist, general preventive medicine specialist, obstetrical or gynecological specialist, pediatrician, or any other physician conducting a periodic health examination.

"(4) For purposes of this subsection, a mammogram, Pap smear, or immunizations described in paragraph (2)(E), shall be covered and paid for under this subsection during an annual periodic health examination only to the extent that such services are not otherwise covered and paid for under this part.".

(b) ADDITIONAL PREMIUM FOR INDIVIDUALS ELECTING TO RECEIVE COVERAGE.—Section 1839 of such Act (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g) Notwithstanding any other provision of this section, the amount of the monthly premium otherwise determined under this section with respect to an individual for months occurring in a calendar year shall be increased by $5.10 with respect to any individual who elects to receive coverage for the services furnished in connection with a periodic health examination described in section 1862(j).".

(c) PAYMENT AND WAIVER OF COPAYMENTS.—

(1) Section 1833(a)(1) of such Act (42 U.S.C. 13951(a)(1)) is amended by striking "and (N)" and by adding at the end the following: "(O) with respect to expenses incurred for the services furnished in connection with a periodic health examination described in section 1862(j), the amounts paid shall be 100 percent of the reasonable charges for such services or the fee schedule amount determined under section 1848 for such services,".

(2) The second to last sentence of section 1866(a)(2)(A) of such Act (42 U.S.C. 1395cc(a)(2)(A)) is amended by inserting after "with the first opinion)," the following: "with respect to services furnished in connection with a periodic health examination described in section 1862(j),".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to services furnished after December 31, 1992.

SEC. 2. COVERAGE OF CERTAIN IMMUNIZATIONS UNDER MEDICARE PART B PROGRAM.

(1) by striking "and" at the end of subparagraph (A),

(2) by inserting "and" at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

"(C) such immunizations as the Secretary designates for prevention or treatment of tuberculosis,

meningococcal meningitis, tetanus, and such other infectious diseases as the Secretary determines present a public health problem, furnished to individuals who, as determined in accordance with regulations promulgated by the Secretary, are at high risk of contracting any of such diseases; and".

(b) WAIVER OF COPAYMENT.—

(1) Section 1833(a)(1) of such Act (42 U.S.C. 13951(a)(1)) is amended in subdivision (B) by striking "1861(s)(10)(A)" and inserting "1861(s)(10)".

(2) The second to last sentence of section 1866(a)(2)(A) of such Act (42 U.S.C. 1395cc(a)(2)(A)) (as amended by section 1 of this Act) is further amended by striking "1861(s)(10)(A)" and inserting "1861(s)(10)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items and services furnished after December 31, 1992.

SEC. 3. MEDICARE PART B HEALTHY LIFESTYLE PREMIUM DISCOUNT.

(a) IN GENERAL.—Section 1839 of the Social Security Act (42 U.S.C. 1395r) (as amended by section 1 of this Act) is further amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding any other provision of this section, the amount of the monthly premium otherwise determined under this section with respect to an individual for months occurring in a calendar year shall be reduced by $1 if the individual is certified by a physician for that year (in accordance with procedures established by the Secretary in regulations) as an individual who maintains a healthy lifestyle.

"(2) An individual may be certified as maintaining a healthy lifestyle under paragraph (1) if—

"(A) the individual does not use any tobacco or tobacco product,

"(B) the individual does not consume medically detrimental amounts of alcohol, and

"(C) the weight of the individual is within a weight range that is appropriate for an individual of the same age and health status

"(D) the individual does not use illegal substances."

(b) CONFORMING CHANGES.—Section 1839 of such Act (42 U.S.C. 1395r) is further amended—

(1) in subsection (a)(2) by striking "provided in subsections (b) and (e)" and inserting "otherwise provided in this section".

(2) in subsection (a)(3) by striking "subsection (e)" and inserting "this section".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to premiums imposed after December 31, 1992.

SECTION-BY-SECTION ANALYSIS OF THE MEDICARE PREVENTION BILL

Sec. 1. Elective Coverage of Periodic Health Examination Under Medicare Part B Program. The section would allow Medicare Part B beneficiaries to elect to receive additional coverage for services provided during a periodic health examination by a primary care physician if beneficiaries pay an additional $5.10 premium per month. Participants would not pay a deductible or copayment.

Covered services include: the taking of a health history, a physical examination, laboratory and screening procedures, including nonfasting total blood cholesterol, fecal occult blood testing, for women, mammograms and Pap smears, for high risk individuals, fasting plasma glucose, tuberculin skin tests, electrocardiograms, dipstick urinalysis, thyroid function tests, and sigmoidoscopies, counseling for a healthy lifestyle, and for certain high risk conditions, immunizations for tetanus, diphtheria, influenza pneumonia, and for high risk individuals, hepatitis and hepatitis B.

Mammograms, pap smears, and immunizations which are covered under current law, shall be included only to the extent that such services are not otherwise covered under current law. Effective date would December 31, 1991.

Sec. 2. Coverage of immunizations under Medicare Part B Program. The section authorizes Medicare Part B coverage of immunizations for prevention and treatment of tuberculosis, influenza, memingococcal meningitis, tetanus, and hepatitis and hepatitis B for individuals at high risk of contracting such diseases. Effective date would be after December 31, 1991.

Sec. 3. Medicare Part B Health Lifestyle Premium Discount. The optional premium would be reduced by $1.00 if an individual is certified by a physician for that year as maintaining a healthy lifestyle. A healthy lifestyle means the individual does not: use any tobacco or tobacco product, consume medically deterimental amounts of alcohol, use illegal substances, maintain a weight that is inappropriate for an individual of a certain age and health status. Effective date would be after December 31, 1991.

S. 1213

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

(1) organizations have recently displayed a greater interest in the relationship between the health practices of their employees and the expenditures incurred due to the behavior of such employees;

(2) several private organizations, universities, and business coalitions now use public and private funds to evaluate medical and health promotion work place programs;

(3) a national, well publicized, comprehensive evaluation of the health benefit and cost effectiveness of health promotion and prevention programs has not been provided for the purposes of public and private decision making;

(4) in order to combat the escalating costs of health care, a longitudinal evaluation of the type described in paragraph (3) could be utilized by the public, insurance companies, health care providers, and public health programs to provide the care that best saves money and improves the quality of life; and

(5) a long term evaluation of health promotion and prevention activities and the utilization of research gained as a result of such evaluation would reduce long term health care costs and premature disease and mortality.

SEC. 2 EVALUATION OF HEALTH PREVENTION AND PROMOTION PROGRAMS.

Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 905. COMPREHENSIVE EVALUATION OF HEALTH PREVENTION AND PROMOTION PROGRAMS.

"(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, may award competitive grants to eligible entities for the purpose of enabling such entities to carry out evaluations of the type described in subsection (c).

"(b) REQUIREMENTS.—

"(1) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section an entity shall—

"(A) be a public, nonprofit, or private entity or a university;

"(B) prepare and submit to the Secretary an application at such time, in such form, and containing such information as the Secretary may require; and

"(C) meet any other requirements the Secretary determines appropriate.

"(2) TYPES OF ENTITIES.—In awarding grants under this section, the Secretary shall consider applications from entities proposing to conduct evaluations using community programs, managed care programs state and county health departments, public education campaigns, and other appropriate programs. The Secretary shall ensure that no less than 50 percent of the grants awarded under this section be awarded to entities that will use funds received under such grants to conduct evaluations in the work place.

"(c) USE OF FUNDS.—

"(1) EVALUATIONS.—Amounts provided under a grant awarded under this section shall be used to conduct evaluations to determine which preventative health screenings and health promotion activities achieve the highest cost-benefit and health improvement in order to monitor practices and trends in preventative medical care and technology and to evaluate other areas determined appropriate by the Secretary.

"(2) USE OF CERTAIN INDIVIDUALS.—In conducting an evaluation under this section, an entity shall ensure that data concerning women, minorities, older individuals, dependents, individuals with different income levels, retirees, and individuals from diverse geographical backgrounds, are obtained.

"(3) MINIMUM SERVICES.—In conducting an evaluation under this section it is suggested that a minimum level of screening and other activities should be performed, that shall include—

"(A) blood pressure screening and control (to detect and control hypertension and coronary heart disease);

"(B) early cancer screenings;

"(C) blood cholesterol screening and control combined with stress management;

"(D) smoking cessation programs;

"(E) substance abuse programs;

"(F) dietary and nutrition counseling;

"(G) physical fitness counseling; and

"(H) stress management.

"(4) USE OF EXISTING DATA.—In conducting evaluations under this section, entities shall use existing data and health promotion and screening programs where practicable.

"(d) SITES.—

"(1) SELECTION.—Recipients of grants under this section should select evaluation sites under such grant that present the greatest potential for new and relevant knowledge.

"(2) NUMBER OF SITES.—Not less than three nor more than five sites shall be selected by a recipient under paragraph (1).

"(3) NUMBER OF EVALUATIONS.—Not more than five evaluations shall be operated within the same community.

"(e) REPORTING REQUIREMENTS.—

"(1) REPORTS BY GRANTEES.—Not later than 1 year after receiving a grant under this section, and at least once during every 1-year thereafter, an entity receiving a grant under this section shall prepare and submit to the Secretary a report containing a description of the activities conducted under the grant during the period for which the report is prepared, and the findings derived as a result of such activities.

"(2) CLEARINGHOUSE.—

"(A) ESTABLISHMENT.—The Secretary shall establish a clearinghouse to collect, store, analyze and make available data provided to the Secretary by entities conducting evaluations under this section.

"(B) USE OF DATA.—The clearinghouse shall use data obtained under this section to—

"(i) consider and rank health prevention and promotion activities and procedures in terms of quality, cost, and short- and long-term improvement;

"(ii) consider cost-benefit and quality of life improvements, and other areas determined appropriate by the Secretary, and to establish and disseminate practice guidelines for appropriate care to State and county health departments, State insurance departments, insurance companies, employers, and others determined appropriate by the Secretary; and

"(iii) prepare model prevention insurance packages for dissemination to State insurance departments and entities utilizing information disseminated under this section.

"(C) AVAILABILITY OF INFORMATION.—The clearinghouse shall make all information obtained under this section available to State, county and local health departments, insurers, and other entities determined appropriate by the Secretary.

"(f) TERM OF EVALUATIONS.—Evaluations conducted under this section shall be for a period of not less than 3 years nor more than 5 years. The Secretary may provide an extension of such period if determined appropriate.

"(g) CONSULTATION.—The Director of the Centers for Disease Control shall consult with the Administrator of the Agency for Health Care Policy and Research concerning activities conducted under this section that involve matters or data that is under the control of the Administrator.

"(h) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, an amount equal to $500,000 for each site within a community that the Secretary intends to provide assistance to under this section in fiscal years 1992, and such sums as may be necessary during each of the fiscal years 1993 through 1996.

"(2) ADMINISTRATIVE COSTS.—There are authorized to be appropriated for administrative costs under this section, $1,000,000.

"(3) LIMITATION.—Amounts appropriated under this section shall not be utilized to provide services.".

SECTION-BY-SECTION ANALYSIS OF THE CDC-PREVENTION BILL

Sec. 1. Findings. The section reports that employers are interested in the relationship between health practices and health care costs of employees. A national, comprehensive evaluation of the health and cost benefit and cost effectiveness of health promotion and prevention programs has not been provided for policy making purposes. Such a long term evaluation and the utilization of research gained by employers, public health programs, and other appropriate entities would reduce long term health care costs and premature disease and mortality.

Sec. 2. Evaluation of Health Prevention and Promotion Programs. The section authorizes the Centers for Disease Control (CDC) to make grants to public, nonprofit, and private entities to evaluate which preventive screenings and health promotion activities achieve the highest cost-benefit and health improvement and to monitor practices and trends in wellness medical care and technology.

The data will be utilized to consider and rank certain procedures and activities in terms of quality, cost, short and long term improvement and to set guidelines for appropriate practice and, specifically, to provide information on benefit packages that are prevention oriented and cost effective to state, county, and local health departments, and insurance companies. 50% percent of evaluations will occur in the work place, the others will occur in community programs, managed care programs, state, county, and local health departments, and other appropriate entities.

Evaluations would run for 3-5 years, with yearly reports to CDC. Between 3-5 communities could be utilized for evaluation purposes. In a community, contractors may operate up to 5 evaluations. $500,000 per site would be authorized for FY 92 and $1 million would be authorized for administrative costs. Such sums as necessary would be authorized for FY 93-96.

It will be suggested but not required that evaluated programs provide certain health promotion screenings and benefits. Once the study is completed, the information would be made available by the Federal government through a clearinghouse established within CDC.

The clearinghouse will be required to disseminate information and a model insurance package to insurance companies, state, county, and local public health units, and other appropriate entities. States and insurance companies would be encouraged to utilize the available information on health promotion and prevention activities.

AMERICAN COLLEGE OF PREVENTIVE MEDICINE,
Washington, DC, May 30, 1991

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: The American College of Preventive Medicine (ACPM) is pleased to endorse two important bills you will be introducing:

1. A bill to amend title XVIII of the Social Security Act to provide coverage for certain preventive care items and services under part B and to provide a discount in premiums under such part for certain individuals certified as maintaining a healthy lifestyle; and

2. A bill to amend title IX of the Public Health Service Act to require the Director of the Centers for Disease Control to acquire and evaluate data concerning preventive health and health promotion and other purposes.

As the national medical specialty society representing preventive medicine physicians, the American College of Preventive Medicine seeks to advance the science and practice of preventive medicine. ACPM is extremely heartened by the introduction of these bills and is pleased to be able to offer its strong endorsement.

The first bill represents an important landmark for disease prevention and health promotion not only by providing a package of preventive services but by providing proven effective services. ACPM is pleased to have been able to work with your excellent staff on this legislative proposal and is convinced of the importance of having the bill consistent with recommendations contained in the highly regarded and scientifically sound *Guide to Clinical Preventive Services.*

The second bill is consistent with ACPM priorities and represents an important step in the critical ongoing process of establishing a solid scientific base for disease prevention and health promotion activities and interventions.

ACPM strongly supports these legislative proposals and would be happy to continue to work with you and your staff on preventive medicine initiatives.

Sincerely,

SUZANNE DANDOY, MD,
President.

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS,
McLean, VA, June 3, 1991.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the Association of State and Territorial Health Officials (ASTHO), which represents the chief health officer from each state, I am writing in support of your initiative which will provide resources to evaluate which preventive screenings and health promotion activities achieve the highest cost-benefit and health improvement outcomes. As the debate over health insurance reform continues and as prevention takes a priority in that debate, the information supplied through your legislation will be crucial in determining effective prevention services.

ASTHO applauds your leadership in this area and hopes to work with you to strengthen the bill as it moves forward. Please contact Valerie Morelli, Associate Director, if ASTHO can be of assistance.

Sincerely yours,

GEORGE K. DEGNON,
Executive Vice President.

WELCOA,
May 21, 1991.

Senator BOB GRAHAM,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: I am writing in support of the proposed legislation that would amend title IX of the Public Health Service Act by establishing an Office for Health Promotion and Prevention Evaluation Planning. Organizations continue to show greater interest in health promotion activity for their employees and the potential impact these activities have on an employee's health status and health care expenditures. Although a few of the larger organizations such as AT&T and Johnson & Johnson have provided evaluation studies, there is a great need to undertake a national, well publicized, comprehensive evaluation of health improvement and cost efficiency of health promotion and prevention programs.

The outcomes of this type of approach will yield only positive results. With well documented information, more worksites will opt to begin health promotion activities which in turn will yield a healthier workforce and lower health care costs.

I urge you to continue your efforts to win support for this bill.

Sincerely,

HAROLD S. KAHLER, Jr., Ph.D.,
President.

STANFORD CENTER FOR RESEARCH IN DISEASE PREVENTION,
Palo Alto, CA, May 22, 1991.

Senator BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: Thank you and Ms Susan Emmer for our correspondence during the last two months focused on your new bill to amend the Public Health Service Act to conduct a national demonstration and evaluation of the health and cost efficacy of health promotion programs in the worksite. After reading the draft of your new bill I am writing in strong support of your bill.

Although approximately twenty five (25) demonstration and evaluation projects of comprehensive programs have been conducted to date, these studies are lacking in the uniformity of intervention and analysis which is needed for a national demonstration stated in your bill. Given the existence of these prototype programs, this bill would provide an excellent opportunity for public-private collaboration. Corporations can provide access to a broad cross section of the United States population, academic centers can provide the intervention and analysis, and the US Government can serve a vital leadership function. Most of all, an effort as indicated in your bill would have far reaching public policy applications.

With the extensive sophistication in community based, health interventions and the Corporation Health Program of the Stanford Center, we would be willing to participate in such a project. Also, there are seventeen (17) major corporations (See enclosure) with whom we have worked for seven years. Given our track record, it is certain that a majority of these companies would serve as demonstration sites.

Your proposed bill is timely, necessary, and totally feasible. It represents an excellent example of a public-private initiative which would provide a data base for informed public policy focused on the national crisis in medical costs.

Sincerely yours,

DR. KENNETH R. PELLETIER,
Senior Clinical Fellow.

By Mr. SPECTER:

S. 1214. A bill to direct the Secretary of Health and Human Services to treat physicians services furnished in Lancaster County, PA, as services furnished in a No. II locality for purposes of determining the amount of payment for such services under part B of the Medicare Program; to the Committee on Finance.

CHANGE IN DESIGNATION OF LANCASTER COUNTY, PA, FOR PURPOSES OF MEDICARE SERVICES

Mr. SPECTER. Mr. President, I join today with my colleague in the House of Representatives, Congressman ROBERT WALKER, in introducing a bill to change the designation of Lancaster County for the purpose of Medicare reimbursement. This bill, the Lancaster County Medicare Reimbursement Act of 1991, would correct an imbalance that has existed for many years in the calculations for reimbursement under part B of Medicare for doctors who live in Lancaster County, PA.

Pennsylvania, as with many other States, is divided into four geographic classes for purposes of Medicare reimbursement, with class I receiving the highest reimbursement rates. Only Philadelphia and Pittsburgh fall into this category as medical centers, while class II is for major metropolitan areas. Class III is designated for lesser metropolitan areas, and class IV, in which Lancaster County falls, is for rural areas.

Lancaster may have been a rural county when the original designation was made in 1970. However, since the original designation, Lancaster has developed into a major metropolitan area of more than 400,000 residents, with a high standard of living and access to major social and cultural events. Of 67 counties in the Commonwealth of Pennsylvania, Lancaster is one of the 6 counties that has a population of over 400,000. Moreover, of the 13 Pennsylvania counties designated as class II, in which Lancaster County deserves to be included, only 4 counties are larger than Lancaster. Accordingly, the bill I am introducing will adjust the discrepancy by having Lancaster County designated in class II, where it deservingly belongs.

In spite of all the evidence, the Health Care Financing Administration has refused to change Lancaster's charge class, even though Pennsylvania Blue Shield has already changed Lancaster County's designation for its private business from class IV to class II.

As there may be many rural counties in your own State that are experiencing this unfair treatment, I am hopeful that you will see this legislation as a matter of fairness, and not as a parochial or atypical situation. Nor is this bill without a precedent, as just last year, the Senate passed a similar measure for rural Harvey County in Kansas.

I urge my colleagues to join me in supporting this legislation, which will restore equitable treatment to the doctors of Lancaster County, as well as to ensure the best possible treatment to our Medicare beneficiaries.

I ask unanimous consent that the full 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. 1214

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF PHYSICIAN'S SERVICES FURNISHED IN LANCASTER COUNTY IN DETERMINING PAYMENT AMOUNTS UNDER MEDICARE.

With respect to physicians' services furnished in Lancaster County, Pennsylvania, on or after the date of the enactment of this Act, the Secretary of Health and Human Services shall use a number II locality as the locality applicable under section 1842(b) of the Social Security Act in determining the amount of payment made for such services under part B of the Medicare Program.

By Mr. GORTON (for himself, Mr. NUNN, Mr. MCCAIN, Mr. INOUYE, Mr. COCHRAN, Mr. DECONCINI, and Mr. CRAIG):

S. 1215. A bill to amend the Public Health Service Act to establish a program to fund maternity home expenses and improve programs for the collection and disclosure of adoption information, and for other purposes; to the Committee on Labor and Human Resources.

ADOPTION ASSISTANCE AND MATERNAL CERTIFICATES ACT

Mr. GORTON. Mr. President, today I rise to introduce legislation that will create a support network and offer counseling to those mothers who choose both to put their child up for adoption, and for those families who wish to adopt.

This legislation lends support to young mothers who wish to consider adoption as an option, but who do not have the guidance and counseling to pursue that path. It also will ensure that adopted children and families receive the same benefits as biological families: Placing more emphasis on the special needs of all involved in the adoption process.

Sadly, in the United States today, one in four children is born into a single-parent home. The number of children in single female-headed households has increased 81 percent over the past 20 years, and this rise is one of the root causes of family disintegration in our Nation.

The Adoption Assistance and Maternal Certificates Act begins to address the myriad of delemmas plaguing young mothers by creating a new grant program that provides maternal health certificates to low-income pregnant women who enter maternity homes. To assure support for these women, the program is established with a matching grant from the State or participating home.

Maternity homes provide young women a safe haven in which they can experience good counseling, a structured environment, and a variety of other services such as schooling, job counseling, and prenatal care.

In addition, this measure encourages collection of information on adoption in the United States in order to provide a better understanding of the adoption alternative, and requires that agencies provide all available information on a child to a prospective foster or adoptive parent. The agency reimbursement rate is increased when a child is placed within 3 months of becoming legally free for adoption and equal treatment is required for adoptive parents in insurance policies and parental leave benefits.

Mr. President, enactment of this bill will promote permanent, adoptive homes, reduce the number of children in our Nation's foster care programs, and will provide for the best interests of the adoptive child. I encourage my colleagues to join in giving women another choice.

Mr. President, I thank particularly the distinguished Senator from Georgia [Mr. NUNN] whose efforts in my behalf have been of great assistance, and several other original cosponsors who agreed to join in this effort.

I ask unanimous consent that the text of my bill be printed in the RECORD following my remarks.

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

S. 1215

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 "Adoption Assistance and Maternal Certificates Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) in the United States today, 25 percent of children are born into single parent homes;

(2) the number of children in single female-headed homes has increased 81 percent, rising from 7,500,000 in 1970 to 13,500,000 in 1988;

(3) the rise in single-parenthood is one of the root causes of family disintegration in the Nation today;

(4) adoption addresses the problem of family disintegration at the beginning by getting children into solid, two-parent homes and giving birthmothers the opportunity to mature before taking on the adult responsibilities of child-rearing;

(5) adoption is the least chosen option for women in crisis pregnancies, as evidenced by the fact that adoptions have decreased by 38,000 since 1970;

(6) currently, only 6 percent of all teenage mothers choose adoption;

(7) young, unmarried women who make an adoption plan for babies are more likely to complete high school, less likely to live in poverty, and less likely to receive public assistance than single parents;

(8) 60 percent of welfare recipients are, or were at one time, teenage mothers;

(9) several studies show that, when compared to teenagers who keep their babies, teenage mothers who choose adoption are less likely to have repeat unwed pregnancies;

(10) adoption is a good plan for a baby, as demonstrated by the fact that 90 percent of adopted children live with two married parents and 54 percent of the children live in homes with family income three times higher than poverty level;

(11) adopted children have been found to have more confidence than children that are not adopted;

(12) maternity homes provide young mothers a safe haven away from peer pressure and time to consider thoughtfully the best plan for themselves and their babies;

(13) young mothers in maternity homes receive good counseling, a structured environment, and a variety of other services such as schooling, job counseling, and prenatal care;

(14) the relinquishment rate at maternity homes is significantly higher than the general adoption placement rate;

(15) St. Anne's Maternity Home in California reports a 22 percent rate of relinquishment compared to a general rate of relinquishment of only 5 percent in California;

(16) there are approximately 300,000 children in foster care, of whom only 36,000 are legally free and waiting for adoption;

(17) sadly, 40 percent of the children in foster care have been in the system 2 or more years, while 25 percent have been in foster care at least 3 years; and

(18) 60 percent of children in foster care are classified as "special needs" children, meaning they have physical or emotional difficulties, belong to sibling groups, or are minorities or older children.

SEC. 3. MATERNAL HEALTH CERTIFICATES.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART M—MATERNAL HEALTH AND ADOPTION

"SEC. 399F. MATERNAL HEALTH CERTIFICATES PROGRAM.

"(a) GRANTS.—The Secretary shall award grants to 10 States to enable such States to establish programs to provide maternal health certificates to eligible women within such States.

"(b) STATE ELIGIBILITY.—To be eligible to receive a grant under subsection (a), a State shall prepare and submit to the Secretary, an application at such time, in such form, and containing such information as the Secretary shall require, including—

"(1) an assurance that the State shall establish a maternal health certificates program in accordance with this section;

"(2) an assurance that the State shall establish procedures to comply with the requirements of subsection (f)(3); and

"(3) the name of an agency designated by the State to administer the maternal health certificates program.

"(c) ELIGIBLE WOMEN.—To be eligible to receive a maternal health certificate under a program established under this section, a woman shall—

"(1) be a pregnant female;

"(2) have an annual income (within the meaning of section 1612(a) of the Social Security Act (42 U.S.C. 1382a(a)) but not including the income of, or support received by the woman from, parents, guardians, or the father of the child) that does not exceed 175 percent of the State poverty level;

"(3) be a current resident of a maternity home, on a waiting list for such a home, or receiving outpatient services from such a home;

"(4) prepare and submit, to the State agency designated under subsection (b)(3), an application at such time, in such form, and containing such information as such agency shall require, including—

"(A) the name and address of the maternity home in which the woman resides or intends to reside, or from which the woman intends to receive services; and

"(B) the rates charged by the maternity home and the estimated length of time the woman expects to stay or receive services from the home; and

"(5) comply with any other requirements determined appropriate by the Secretary.

"(d) MATERNITY HOME ELIGIBILITY.—To be eligible to receive a maternal health certificate as payment for services provided to a eligible woman under a program established under this section, a maternity home shall—

"(1) be a residence for pregnant women;

"(2) have the capacity to serve at least four pregnant women concurrently;

"(3) be licensed or approved by the State; and

"(4) provide to eligible women and, where appropriate, to their babies a range of services that are in accordance with the standards promulgated by the Secretary under subsection (g), including standards regarding—

"(A) room and board;

"(B) medical care for the women and their babies, including prenatal, delivery, and post-delivery care;

"(C) instruction and education concerning future health care for both the women and babies;

"(D) nutrition and nutrition counseling;

"(E) counseling and education concerning all aspects of pregnancy, childbirth, and motherhood;

"(F) general family counseling, including child and family development education;

"(G) adoption counseling, which can include referral to a licensed nonprofit adoption agency, if the home is not such an agency;

"(H) counseling and services concerning education, vocation, or employment; and

"(I) reasonable transportation services.

"(e) USE OF CERTIFICATES.—A woman who receives a certificate awarded under a program established under this section shall use such certificate to pay the costs associated with the residence of or services provided to the woman in a maternity home. Such costs shall be reasonably related to the range of services described in subsection (d)(4).

"(f) LIMITATIONS ON CERTIFICATES.—

"(1) TIME.—Certificates awarded under a program established under this section shall cover expenses incurred during a period that shall end not later than 1 month after the birth of the baby to the eligible woman.

"(2) AMOUNT.—The amount of a certificate awarded under a program established under this section shall not exceed, during the period in which the certificate is valid—

"(A) in the case of a resident, $80 per day; and

"(B) in the case of a woman receiving outpatient services, $50 per day.

"(3) MATCHING REQUIREMENT.—Procedures established under subsection (b)(2) shall require that—

"(A) the State agency designated under subsection (b)(3);

"(B) the maternity home receiving a certificate under a program established under this section; or

"(C) both the State agency and the maternity home receiving the certificate;

provide an amount that is at least equal to the amount of the certificate awarded to an eligible woman for the payment of the costs associated with providing residence or services to the woman in a maternity home.

"(g) REGULATIONS.—Not later than 90 days after the date of the enactment of this part, the Secretary shall promulgate regulations to establish the standards described in subsection (c)(4). In promulgating the regulations, the Secretary shall consider such standards as the Council on Accreditation for Families and Children may determine to be appropriate.

"(h) PARTICIPATION IN AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM.—Notwithstanding any other provision of this section, no woman shall be required to participate in the program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) to be eligible for a maternal health certificate under this section.

"(i) PROHIBITION ON SUPPLANTING OF SERVICES.—No maternal health certificate issued under this section shall be used to supplant existing State, county, or local government

funds that are used to provide services similar to those described in subsection (d)(4) for low-income pregnant females.

"(j) EVALUATION.—

"(1) IN GENERAL.—The Secretary shall provide, through grants or contracts, for the continuing evaluation of programs established under this section, to determine—

"(A) the effectiveness of such programs in achieving the goals stated in paragraph (3) in general, and in relation to cost;

"(B) the impact of such programs on related programs, including programs under titles IV, V, and XIX of the Social Security Act (42 U.S.C. 601 et seq., 701 et seq., and 1396 et seq.) and titles X and XX of this Act; and

"(C) the structure and mechanisms for the delivery of services for such programs.

"(2) COMPARISONS.—The Secretary shall include in evaluations under paragraph (1), where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

"(3) GOALS.—For purposes of paragraph (1)(A), the goals of this section shall be to—

"(A) increase the availability of services to low-income pregnant eligible women;

"(B) improve the physical and psychological health of such a woman;

"(C) ensure a safe and healthy pregnancy, delivery, and postpartum period for the woman;

"(D) promote the delivery of a healthy baby to the woman;

"(E) increase the knowledge of the woman regarding proper health and nutrition for the woman and her baby;

"(F) increase the ability of the woman to support herself financially;

"(G) help the woman make an informed decision whether to parent her baby or to make an adoption plan for her baby;

"(H) increase the ability of the woman to support her baby financially and emotionally, if the woman so chooses; and

"(I) assist the woman in placing her baby for adoption, if the woman so chooses.

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $40,000,000 for each of the fiscal years 1992 through 1994.".

SEC. 4. DATA COLLECTION.

Part M of title III of the Public Health Service Act (as added by section 3 of this Act) is amended by adding at the end the following new section:

"SEC. 399G. DATA COLLECTION.

"(a) DATA.—Not later than 90 days after the date of the enactment of this part, the Secretary shall promulgate final regulations to ensure the inclusion, in the system for which the Secretary promulgated regulations under section 479(b)(2) of the Social Security Act (42 U.S.C. 679(b)(2)), of—

"(1) data concerning adoptions arranged through private agencies that receive Federal assistance; and

"(2) to the extent such data are voluntarily released by private agencies that receive no Federal assistance, data concerning adoptions arranged through the agencies.

"(b) DISCLOSURE AND CONFIDENTIALITY.—The regulations promulgated under subsection (a) shall provide for the establishment of procedures—

"(1) for the disclosure by the Secretary of aggregate information collected under this section relating to adoption and foster care in the United States; and

"(2) for the maintenance of confidentiality by the Secretary, the agencies described in subsection (a)(1), and the agencies described in subsection (a)(2) to the extent such agencies collect information under this section, of information collected under this section with respect to the identity of an individual, unless the Secretary obtains the prior written consent of the individual whose identity the information would reveal.".

SEC. 5. DISCLOSURE REGULATIONS.

Part M of title III of the Public Health Service Act (as added by section 3 and amended by section 4) is further amended by adding at the end the following new section:

"SEC. 399H. ADOPTION DISCLOSURE REGULATIONS.

"(a) IN GENERAL.—Not later than 90 days after the date of enactment of this part, the Secretary of Health and Human Services shall promulgate regulations that require an adoption or foster care agency that receives Federal assistance to disclose, to prospective adoptive and foster parents of a child, and only to such parents, information about the history of the child, including—

"(1) the medical and treatment history of the child;

"(2) information about the social background of the child;

"(3) information about the placement of the child; and

"(4) any record of abuse or neglect of the child.

"(b) CONFIDENTIALITY.—The regulations promulgated under subsection (a) shall specify procedures—

"(1) for disclosing the information described in subsection (a); and

"(2) for maintaining the confidentiality of any information collected under this section that would reveal the identity of an individual who placed a child into adoption or foster care, or committed any criminal act with respect to the child, unless the Secretary obtains the prior written consent of the individual whose identity the information would reveal.".

SEC. 6. EQUAL INSURANCE COVERAGE FOR ADOPTED CHILDREN.

(a) DEFINITIONS.—

(1) INSURANCE CONTRACT.—The term "insurance contract" means a contract for health or life insurance, as determined under State law, which provides coverage of a family.

(2) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, a child placed for adoption, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(b) NONDISCRIMINATION.—It shall be unlawful for any person to discriminate against an individual with respect to the making, performance, modification, or termination of an insurance contract, or the enjoyment of any benefit, privilege, term, or condition of an insurance contract, on the basis of the fact that a son or daughter of the individual is not a biological child of the individual.

(c) RIGHT TO BRING CIVIL ACTION.—

(1) IN GENERAL.—Subject to the limitations contained in this section, any person may bring a civil action to enforce the provisions of this section in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) TIMING OF COMMENCEMENT OF CIVIL ACTION.—No civil action may be commenced under paragraph (1) later than 1 year after the date of the last event that constitutes the alleged violation.

(3) VENUE.—An action brought under paragraph (1) in a district court of the United States may be brought in any appropriate judicial district under section 1391 of title 28, United States Code.

(4) RELIEF.—In any civil action brought under paragraph (1), the court may—

(A) grant as relief against any respondent that violates any provision of this title—

(i) any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate; and

(ii) such damages as the court determines appropriate, plus interest on the total monetary damages calculated at the prevailing rate; and

(B) award to a prevailing party (other than the United States) in the action a reasonable attorney's fee.

(d) CONSTRUCTION.—Nothing in this section shall be construed to require any person to make, perform, modify, or terminate an insurance contract, or extend any benefit, privilege, term, or condition of the contract that the person would not otherwise have provided to an individual with a biological child.

SEC. 7. EQUAL LEAVE BENEFITS FOR ADOPTIVE PARENTS.

(a) DEFINITIONS.—As used in this section:

(1) COMMERCE.—The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (3) and (1), respectively, of section 120 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (3) and (1)).

(2) EMPLOY.—The term "employ" has the meaning given the term in section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)).

(3) EMPLOYEE.—The term "employee" means any individual employed by an employer.

(4) EMPLOYER.—The term "employer" means any person engaged in commerce or in any industry or activity affecting commerce.

(5) EMPLOYMENT BENEFITS.—The term "employment benefits" means all benefits provided or made available to employees by an employer, including health insurance, sick leave, and annual leave, regardless of whether such benefits are provided by a policy or practice of an employer or through an "employee welfare benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(6) LEAVE BENEFIT.—The term "leave benefit" means—

(A) any leave provided by the employer to enable a parent to prepare for the arrival of a son or daughter or to care for a son or daughter;

(B) any right to reemployment with the employer after the leave described in subparagraph (A); and

(C) any right to the receipt of pay or employment benefits, or the accrual of seniority, during the leave described in subparagraph (A).

(7) PARENT.—The term "parent" means the biological parent of the child or an individual who stands in loco parentis to a child when the child is a son or daughter.

(8) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, a child placed for adoption, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(b) NONDISCRIMINATION.—It shall be an unlawful employment practice for an employer to discriminate against an employee with respect to a term or condition of any leave benefit on the basis of the fact that a son or daughter of an employee is not a biological child of the employee.

(c) RIGHT TO BRING CIVIL ACTION.—

(1) IN GENERAL.—Subject to the limitations contained in this section, any person may bring a civil action against an employer to enforce the provisions of this section in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) TIMING OF COMMENCEMENT OF CIVIL ACTION.—No civil action may be commenced under paragraph (1) later than 1 year after the date of the last event that constitutes the alleged violation.

(3) VENUE.—An action brought under paragraph (1) in a district court of the United States may be brought in any appropriate judicial district under section 1391 of title 28, United States Code.

(4) RELIEF.—In any civil action brought under paragraph (1), the court may—

(A) grant as relief against any respondent that violates any provision of this title—

(i) any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate; and

(ii) damages in an amount equal to any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate; and

(B) award to a prevailing party (other than the United States) in the action a reasonable attorney's fee.

(d) CONSTRUCTION.—Nothing in this section shall be construed to require an employer to provide any leave benefit that the employer would not otherwise have provided to an employee with a biological child.

SEC. 8. PAYMENTS TO STATES FOR EXPEDITED PLACEMENT UNDER THE ADOPTION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 474(a)(3) of the Social Security Act (42 U.S.C. 674(a)(3)), as amended by section 5071 of the Omnibus Budget Reconciliation Act of 1990, is amended—

(1) by redesignating subparagraph (C) as subparagraph (D);

(2) by striking "and" at the end of subparagraph (B); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) 80 percent of so much expenditures as are for the recruitment of adoptive parents in any case where the placement for adoption of a child with special needs occurs not later than 3 months after the child is determined under State law to be legally free for adoption, and".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made for each quarter beginning on or after 60 days after the date of enactment of this Act.

SEC. 9. EXTENSION OF ARMED SERVICES ADOPTION EXPENSE REIMBURSEMENT.

(a) IN GENERAL.—Section 638(h) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (101 Stat. 1106; 10 U.S.C. 113 note) is amended—

(1) in paragraph (1), by striking ", and before October 1, 1990"; and

(2) in paragraph (2), by striking ", and before October 1, 1990".

(b) CONFORMING AMENDMENTS.—Section 638 of such Act is amended—

(1) in subsection (a)—

(A) in the heading, by striking "Test program" and inserting "Program"; and

(B) by striking "test program" each place the term appears and inserting "program"; and

(2) in subsection (h)—

(A) in the heading, by striking "Test program" and inserting "Program"; and

(B) by striking "test program" and inserting "program".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply as if in effect on October 1, 1990.

By Mr. GORTON (for himself, Mr. KENNEDY, Mr. KOHL, Mr. DIXON, Mr. COHEN, Mr. GORE, and Mr. D'AMATO):

S. 1216. A bill to provide for the deferral of enforced departure and the granting of lawful temporary resident status in the United States to certain classes of nonimmigrant aliens of the People's Republic of China; to the Committee on the Judiciary.

CHINESE STUDENT PROTECTION ACT

Mr. GORTON. Mr. President, at the close of the 101st Congress last year, my final remarks on this floor constituted an exhortation, a reprimand, if you will. Those few of my colleagues who remained on the floor that night might remember my lament that we were leaving undone a good and noble deed, leaving undone a job we had begun, but had neither energy nor will to complete.

On that night in October, Mr. President, exhaustion was the legacy of our long and difficult debate concerning the Federal budget and other pressing, last-minute legislation. With those contentious issues settled, our first thoughts—indeed, our only thoughts, it seems—were of home. We had families to see, elections to attend to, private lives to resume. But there were others that night, Mr. President, whose thoughts also were, and are, of home—the Chinese students visiting America when their worlds were set awry by the events of June 4, 1989.

We had attempted to address their dilemma in the Immigration Act of 1990, but the necessary language was dropped in the conference report, due more to lack of time than lack of purpose. We promised ourselves that the plight of these students would be our first order of business upon convening for the 102d Congress.

Then we would have time, Mr. President. There would be no burdensome debates awaiting our return. Revived and renewed, we would turn our energies to the dilemma of these patient young people.

But I need not remind any Member of this body that we began the 102d Congress engaged in a profound and momentous debate of another nature. Once again the best and brightest young people of China, those whose dreams of democracy are in our keeping, were asked to wait while we attended to more urgent matters.

Mr. President, it is enough. Enough waiting, enough postponement of lives, enough procrastination.

Yesterday was June 4 in Beijing, Mr. President, 2 years since the bloody travesty of Tiananmen Square. Two years since the yearning for democracy sweeping the globe was quashed in China. Two years in which our memories of a young man standing down a tank have begun to fade.

But those who dream of democracy in China have not forgotten, Mr. President. In the Chinese language the word for little bottles—"xiao ping"—sounds like the name of the aging leader of China, Deng Xiao Ping. Yesterday, as the second anniversary of the massacre at Tiananmen Square approached, the forced silence in China was interrupted by the defiant sound of breaking little bottles, an oppressed people's courageous reminder that their memories have not faded, and will never fade.

The Chinese Government continues to take steps to hide, if it cannot dispel, those memories. It attempts to quell dissent before it is rekindled. The air of oppression continues to hang heavy in China. But the scattered tinkling of broken glass cuts through that fog of oppression. Rays of hope filter through to those who continue to nurture the dream of a people.

Now it is June 4 in this country, Mr. President, and it is time for this great body to recognize and give substance to those dreams as it began, but failed to do last year.

Mr. President, today I am introducing for myself, Mr. KENNEDY, Mr. KOHL, Mr. DIXON, Mr. COHEN, Mr. GORE, and Mr. D'AMATO, legislation that completes our long-postponed job. It will codify for visiting Chinese students the short-term protections of the Executive order issued by the President in the spring of 1990. It would allow the students to remain safely in this country until January 1, 1994, during which time they may change or adjust their status as immigration numbers become available. Appropriate work and travel authorization and documentation are also provided for.

But more importantly for these young proponents of freedom, and for those in China who derive renewed hope from the fate of their compatriots in America, it will allow Chinese students in this country to make concrete plans for their futures: If by October 1, 1993, the President has not certified to Congress that it is safe for them to return to their homeland, then these students, the cream of Chinese society, will have the right to apply for temporary resident satus, the first step to becoming American citizens.

Mr. President, the thoughts that I just mentioned contain the mundane words of a country whose freedom was long ago achieved and sustained: "Legislation," "codify," "safely," "rights," "citizens." How easily, how dryly,

those words of freedom flow daily from our lips and pens. Do we ever feel anymore the flutter of exhultation, the tumult of hope, that our forefathers felt in a small harbor in Boston as they fought and died for the meaning behind these words?

Broken bottles or boxes of tea. What is the difference, really, Mr. President? Freedom's dream was made real by our ancestors and given into our keeping. We can do no less than pass it along to those whose own freedom is still but a dream.

Mr. President, today, June 4, I ask this great body for its support of legislation that will codify the dreams of those who would break bottles to build democracy.

Mr. President, I ask unanimous consent that a copy of the bill in its entirety 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. 1216

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 "Chinese Student Protection Act of 1991".

SEC. 2. DEFERRAL OF ENFORCED DEPARTURE.

(a) DURATION OF STATUS.—Nationals of the People's Republic of China described in section 245B(a)(1)(B) of the Immigration and Nationality Act, as added by section 3 of this Act, shall have their enforced departure deferred from the United States until—

(1) January 1, 1994, or

(2) July 1, 1994, in the event that the President on or before October 1, 1993, has not certified to the Congress that conditions in the People's Republic of China permit such nationals to return to that country in safety.

(b) TRAVEL DOCUMENTS.—The Secretary of State and the Attorney General shall take all steps necessary with respect to such People's Republic of China nationals—

(1) to waive through the period of deferral of enforced departure the requirement of a valid passport; and

(2) to process and provide necessary documents, both within the United States and at United States consulates overseas, to facilitate travel across the borders of other nations and reentry into the United States in the same status that such People's Republic of China nationals had upon departure from the United States.

(c) WAIVER OF TWO-YEAR HOME COUNTRY RESIDENCE REQUIREMENT.—The two-year home country residence requirement shall not apply to any People's Republic of China national whose enforced departure has been deferred under subsection (a).

(d) ADMINISTRATIVE PROVISIONS.—(1) Any People's Republic of China national whose enforced departure was deferred under subsection (a) shall be deemed to be in lawful status throughout the period of such deferral for purposes of adjustment of status or change of nonimmigrant status.

(2) The Attorney General shall provide to any People's Republic of China national whose enforced departure has been deferred under subsection (a) notice of any expiration of nonimmigrant status in lieu of instituting deportation proceedings and shall provide to such national an explanation of options available.

(e) AUTHORIZATION OF TRAVEL ABROAD.—During the period that a national of the People's Republic of China is in deferral of enforced departure status under subsection (a), the Attorney General shall, in accordance with regulations, permit such national to return to the United States after such brief and casual trips abroad as reflect an intention on the part of such national to continue residence in the United States.

(f) EMPLOYMENT AUTHORIZATION.—During the period that a national of the People's Republic of China is in deferral of enforced departure status under subsection (a), the Attorney General shall grant such national authorization to engage in employment in the United States and shall provide such national with an "employment authorized" endorsement or other appropriate work permit.

SEC. 3. ADJUSTMENT OF STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

The Immigration and Naturalization Act is amended by inserting after section 245A the following new section:

"SEC. 245B. ADJUSTMENT TO LAWFUL TEMPORARY RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

"(a) ADJUSTMENT OF STATUS.—The status of a national of the People's Republic of China shall be adjusted by the Attorney General to that of an alien lawfully admitted for temporary residence—

"(1) if the President has not determined and so certified to Congress on or before October 1, 1993 that conditions in the People's Republic of China permit such aliens to return to that country in safety; and

"(2) if the alien—

"(A) applies for such adjustment during the 9-month period prior to July 1, 1994;

"(B) establishes that the alien—

"(i) lawfully entered the United States before April 11, 1990, as a nonimmigrant described in subparagraph (F) (relating to students), subparagraph (J) (relating to exchange visitors) or subparagraph (M) (relating to vocational students) of section 101(a)(15) of the Immigration and Nationality Act, or changed status to that of a nonimmigrant described in any such subparagraph before April 11, 1990;

"(ii) held a valid visa under any such subparagraph or were otherwise in lawful status as of April 11, 1990; and

"(iii) has resided continuously in the United States since June 4, 1989 (other than brief, casual, and innocent absences); and

"(C) meets the requirements of section 245A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(4)), except that membership in the Communist Party of the People's Republic of China or any subdivision thereof shall not constitute an independence basis for denial of adjustment of status if membership was involuntary or nonmeaningful and if the alien on or before the date of adjustment of status terminates such membership and renounces communism.

"(b) IMPLEMENTING REGULATIONS.—Not later than January 1, 1993, the Attorney General shall prescribe regulations for the acceptance and processing of applications.

"(c) STATUS AND ADJUSTMENT OF STATUS.—The provisions of subsections (b), (c) (6) and (7), (d), (f), (g), and (h) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) shall apply to aliens provided temporary residence under subsection (a) in the same manner as they apply to aliens provided lawful temporary residence status under section 245(a) of such Act.

"(d) WAIVER OF TWO-YEAR HOME COUNTRY RESIDENCE REQUIREMENT.—The two-year home country residence requirement shall not apply to any national of the People's Republic of China who would otherwise be eligible for adjustment of status under this section but for that requirement.".

Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of legislation that seeks to protect a small group of individuals, who, without the protection of the United States, almost assuredly face persecution in their homeland. The bill, the Chinese Student Protection Act of 1991, will make sure that students from China studying here in the United States will have the full assurance of Congress that they will not be sent back to their homeland against their will.

I am well aware, as I am sure are most of my colleagues, that under Presidential Executive order, those Chinese students studying in our Nation will be protected until January 1, 1994, but what will happen beyond that date remains a mystery. The bill that Senator GORTON and I are introducing today will allow these students to stay in our Nation until January 1, 1994, and will allow them to change their current immigration status within that time. In addition, should the President certify 3 months prior to the January 1, 1994, deadline that it is not safe for these students to return to China, then these students would be allowed to apply for temporary resident status in the United States. This would be the first step toward American citizenship.

Two years ago today, the Government of the People's Republic of China brutally put to an end the brief experiment in democracy undertaken in Tiananmen Square. We cannot forget the Goddess of Democracy, fashioned after our own Statue of Liberty, being torn down by Chinese troops. We cannot forget that lone individual standing defiantly in front of a column of tanks. We cannot forget the hundreds and perhaps thousands of individuals who were killed for daring to dream of a government where the people determine the rule of law.

Our collective memory cannot be allowed to lapse. Sadly though, to many in our Nation, Tiananmen Square is as far away mentally as it is physically. However, to a certain group of students here in our Nation, the struggle is very much alive. We cannot and should not force these students to return to a government that has demonstrated a willingness to imprison and execute the supporters of the democracy movement in China. I am pleased to join Senator GORTON in cosponsoring this bill and I call upon my colleagues to join us in support of this important legislation.

Thank you, Mr. President.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1217. A bill to establish a field office of the Federal Emergency Management Agency in the State of Hawaii; to the Committee on Governmental Affairs.

ESTABLISHMENT OF A FEMA FIELD OFFICE IN HAWAII

• Mr. AKAKA. Mr. President, for myself and my senior colleague, Senator INOUYE, I am introducing legislation today that would require the Federal Emergency Management Agency [FEMA] to establish a permanent field office in the State of Hawaii to serve the disaster needs of the Pacific area.

Mr. President, it is an unfortunate but true fact that the Pacific area suffers from the highest frequency and magnitude of disasters of any FEMA region. In the last 15 years, there have been a total of 33 Presidential declarations of a major disaster in the region, and 7 additional requests that were not declared. FEMA's responsibilities in the area are enormous: its seven Pacific jurisdictions include American Samoa, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Guam, Hawaii, the Republic of the Marshall Islands, and the Trust Terroritory of the Pacific, also known as the Republic of Palau. These Pacific jurisdictions are located throughout a vast area of the Pacific Ocean covering distances greater than the length and breadth of the U.S. mainland. The State of Hawaii, with a longitude of 155 W and latitude of 20 N, is the most northerly and easterly of the jurisdictions; the Republic of Palau is the farthest west at longitude 135 E, while American Samoa is the most southerly at latitude 14 S.

Its my belief that establishing a field office in Hawaii would measurably aid FEMA in servicing the victims of disasters in the South Pacific. Because Hawaii is 2,400 miles closer to FEMA's South Pacific responsibilities than the San Francisco regional office, such a facility would improve the agency's response to disasters occurring in these areas, if only in terms of reducing travel time and easing the physical and mental toll such travel must take on FEMA personnel and their ability to perform at maximum efficiency. Recent experience clearly demonstrated the difficulty FEMA had in dispatching its employees to hardship areas in the Federated States of Micronesia and Palau. Proximity would also facilitate contacts with local governments, aid in identifying local volunteers and disaster reservist workers, encourage provision of services in a more balanced, culturally and linguistically appropriate manner, and enhance coordination of disaster functions with other federal agencies with disaster responsibilities in the area, such as CINCPAC, the Coast Guard, the Army Corps of Engineers, or the Department of the Interior, all of which have a significant presence in Hawaii and are vital to FEMA's preparedness, response, and recovery efforts.

Mr. President, the recent General Accounting Office [GAO] report entitled "Disaster Assistance: Federal, State, and Local Response to Natural Disasters Need Improvement," which evaluated FEMA's response to Hurricane Hugo and the Loma Prieta earthquake, clearly points out that FEMA requires more staffing throughout the system, particularly in geographically distant areas. Chapter 3 of the report states:

> FEMA's staffing inadequacies were most visible in the Caribbean shortly after Hugo struck. FEMA's New York regional office, which is responsible for the Caribbean, initially deployed a small crew of managers to Puerto Rico and the Virgin Islands with little equipment or other resources. Unprepared for the level of devastation, this crew was overwhelmed by the work needed to establish offices, coordinate with other agencies, and begin the response and recovery efforts.

The report also noted that FEMA did not have sufficient bilingual staff on hand to deal with Hugo's victims in the Caribbean, which further hampered the relief effort.

It is obvious from the GAO study that FEMA needs to have additional, appropriately trained staff who are placed closer to potential disaster sites. FEMA's experience in the Caribbean is applicable to the South Pacific, which arguably has a greater need for FEMA resources than any other region, including the Caribbean. Indeed, the Insular Pacific region has more cultural and linguistic variances than any I can think of, covering a far larger geographic area, consequently presenting FEMA with a significantly greater logistical and administrative problem. Many other agencies with far fewer responsibilities have established representation in the area.

Mr. President, the need for a satellite office to meet the unique needs of the State of Hawaii is also clear cut. First, Hawaii suffers from one to two natural disasters a year, and an additional five or six lesser events about which FEMA is consulted or advised; a permanent agency staff in the islands would make it much easier for FEMA and the relevant State officials to coordinate efforts to address these emergencies as well as participate in joint exercises and training seminars.

Second, the Kilauea Volcano disaster on the Big Island requires constant attention because of its unique, ongoing nature; as my colleagues may be aware, the length of eruptions cannot be accurately predicted—some go on for hundreds of years. In addition, the unpredictability and potential violence of volcanic lava flows—so tragically illustrated in yesterday's eruption of Mount Unzen in southern Japan which killed at least a dozen people—may require a level of response from FEMA that is immediate rather than merely soon.

Third, the fact that units of government in Hawaii are organized differently from those on the mainland—into island size counties that function similar to mainland cities—requires special consideration from FEMA. The agency must develop special expertise, first-hand knowledge, and close contact with Hawaii's Civil Defense in order to make FEMA's system work effectively in the Hawaiian legal and administrative environment. For example, traditional State and interstate "mutual aid" as practiced in the mainland does not work the same in the islands. Staffing and logistics support mechanisms present certain obstacles given the great distances from California, all of which may be affected by natural or artificial hazards.

Finally, FEMA must improve its working relationship with other Federal agencies already established in Hawaii, particularly two I have already mentioned, CINCPAC and the Corps of Engineers. Both of these military resources are called upon and employed frequently in support of Presidential disaster declarations, both in Hawaii and in the Pacific Insular area. The need for an ongoing, close working relationship is obvious. Also, a number of academic and political organizations with which FEMA works closely are located in Hawaii, such as the East-West Center and the Pacific Basin Development Council.

Mr. President, I truly regret the need for this legislation, which I estimate will cost less than half a million dollars annually. I had originally hoped that FEMA would take the initiative in establishing a permanent presence in Hawaii to serve the Pacific region on its own, without the necessity for congressional intervention, but this has not come to pass.

I first asked Director Wallace Stickney to consider the initiative seriously during his confirmation hearings before the Senate Governmental Affairs Committee last summer, shortly after the President had formally declared the Kalapana area of Hawaii a disaster area in the wake of renewed activity by Kilauea Volcano. Soon after, in August 1990, the results of a committee oversight hearing I chaired in Hawaii on FEMA's activities with respect to the Kalapana disaster further convinced me that the ongoing nature of the emergency required more than a transient agency presence in the State. I therefore wrote the Director in January formally asking him to consider establishing a FEMA satellite office in Hawaii.

Unfortunately, Mr. President, FEMA's response to my request is a perfect example of our Government's often bizarre, catch-22 mentality. Signed by Associate Director Grant Peterson, FEMA's reply stated that the Agency agreed with my contention "that the Pacific has been one of the

most disaster prone regions for which FEMA has responsibility for providing disaster assistance," and that it planned to conduct a study of the feasibility of permanent staff presence in Hawaii. However, Mr. Peterson then went on to say that "due to the current disaster workload in the Pacific, FEMA resources are strained in our Region IX office in San Francisco, which has responsibility for the Pacific area, and it is not possible at this time to devote the time or staff necessary for a complete and comprehensive study on the feasibility of opening a permanent field office in Hawaii.

Mr. President, my inquiry itself has clearly shown the need for permanent representation. FEMA's absurd response in effect says that, "we have a problem, but because we have a problem, we don't have the time or resources to look at a solution to the problem." This argument is also absurd for two other reasons: First, the savings FEMA would incur from not having to fly as many staff from San Francisco and other regions to various points in the Pacific—and the inevitable adverse effect of such travel on staff efficiency—alone would offset much of the cost of establishing and maintaining a permanent staff in Hawaii. Second, FEMA is already establishing a satellite office in Puerto Rico to serve the Caribbean region, and has advertised for positions to fill the office. Without taking anything away from the need for a Puerto Rico office, the need for a satellite office in the Pacific is at least as great, if not greater. Yet, while a Puerto Rico office is being established, Hawaii with its greater need is not. Frankly, this does not reflect well on FEMA's ability to develop intelligent, consistent policies.

Needless to say, I am very disappointed by FEMA's inaction on this issue. It takes only common sense to understand that establishing a FEMA field office in Hawaii would vastly improve the agency's operational efficiency in the Pacific region. Indeed, as I have said, the facility would likely help pay for itself in transportation savings. I am beginning to wonder whether FEMA's unwillingness or inability to carry out an initiative of this size may extend to larger matters that may affect the safety not only of the Pacific region, but of all other regions as well. I sincerely hope not, Mr. President.

Thank you, Mr. President. I urge my colleagues to support this small, but important measure, which would mean so much for the welfare of disaster victims throughout the Pacific area.●

By Mr. BAUCUS (for himself and Mr. CHAFEE):

S. 1218. A bill to enhance the conservation of exotic wild birds; to the Committee on Environment and Public Works.

S. 1219. A bill to enhance the conservation of exotic wild birds; to the Committee on Environment and Public Works.

CONSERVATION OF EXOTIC WILD BIRDS

● Mr. BAUCUS. Mr. President, today Senator CHAFEE and I, and Representatives STUDDS and BIELENSON, are introducing legislation to conserve wild populations of parrots and other exotic birds, to provide humane treatment of these birds during capture and transport, and to improve the process of importing and quarantining these birds.

The United States is the world's largest consumer of wild-caught exotic birds. We bring into this country each year more than 500,000 parrots and other birds that are taken from the wild.

International trade in many wild-caught, exotic birds species for use as pets is not sustainable, and this trade, in conjunction with habitat destruction and local use, is contributing to a significant decline in these species throughout the world. Consequently, the United States has a responsibility, as the largest market for exotic, wild-caught birds, to eliminate its imports of these birds.

Many nations have partially or totally restricted their exports of live indigenous bird species, but other nations, principally from Argentina, Guiana, Honduras, Tanzania, Senegal, and Indonesia, continue to supply large numbers of wild-caught birds for the international pet trade.

The Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES] in 1976 urged exporting countries to restrict gradually the collection of wild animals for the pets trade, and recommended that all contracting Parties, including the United States, encourage the breeding of animals for this purpose with the objective of eventually limiting the keeping of pets to those species which can be bred in captivity.

Today, however, current international trade control mechanisms remain inadequate. They are not based on a review of U.S. trade data or on a review of the status of the species in the wild. In addition, many exporting nations lack sufficient resources to adequately assess the effects of trade on their wild avian populations and rare, therfore, unable to determine whether their exports are detrimental to the species in the wild.

Conservation of these wild avian species will be promoted by encouraging the purchase of captive-bred exotic birds for the pet market in lieu of wild-caught birds and facilitating domestic and foreign captive breeding of exotic avian species, thereby reducing the demand for wild-caught exotic birds in the United States and relieving the pressure on wild populations of exporting countries.

Although some efforts have been successful in reducing mortality of birds during transport to and quarantine in the United States, import-associated mortality remains a serious concern.

Clearly, the effectiveness of current Federal regulations and procedures implementing the wildlife trade control provisions of the Endangered Species Act, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Lacey Act, the Animal Welfare Act, and other Federal statutes, and the division of agency responsibilities created thereby, needs to be improved.

Three years ago, the World Wildlife Fund convened a Cooperative Working Group on Bird Trade made up of a wide range of organizations with a common interest in the conservation and humane treatment of birds, including conservation groups, aviculturists, the pet industry, and zoological interests.

In April 1991 most of the members of the Working Group World Wildlife Fund, American Association of Zoological Parks and Aquariums, American Pheasant and Waterfowl Society, Association of Avian Veterinarians, American Federation of Aviculture, International Council for Bird Preservation, National Audubon Society, Pet Industry Joint Advisory Council, and TRAFFIC [USA]—reached agreement on a draft bill to create a comprehensive Federal program to regulate imports and transfers of exotic wild birds.

I am pleased today to sponsor, with Senator CHAFEE and my colleagues in the House, a slightly modified version of this legislation drafted by the Working Group.

Under this legislation, imports of exotic, wild-caught birds for the pet trade would be phased out over the next 5 years and captive breeding efforts would be encouraged. Consequently, the bill seeks to curtail the adverse effects of international trade on wild bird populations while preserving a supply of imported birds for aviculture and captive-bred birds for the domestic pet market.

The bill also would decrease mortality and improve humane treatment and health care of exotic wild birds by reforming the process by which these birds are imported. And it would encourage the public to purchase captive-bred birds in lieu of wild-caught birds.

I also am joining Senator CHAFEE in introducing a modified version of a bill that also is being introduced today in the House by Representatives STUDDS and BEILENSON and supported by Defenders of Wildlife, the Humane Society of the United States, the ASPCA, the Animal Welfare Institute, the International Wildlife Coalition, and the Environmental Investigation Agency.

This second bill would place an immediate ban on the importation of wild-caught birds for pets.

The bill also would require marking of all birds bred in captivity to aid consumers in distinguishing between wild-caught birds and captive-bred birds.

And the bill would require that persons who import wild-caught birds for captive breeding show that wild populations of those birds will not be affected adversely by their importation.

Both of the bills I am sponsoring share the goal that the trade in wild birds for pets should be eliminated. The bills, however, take different approaches toward achieving this goal which will have to be resolved in the coming months.

Nevertheless, I am confident that we will succeed in this effort, and that we will enact legislation in this Congress that places the United States at the forefront of international efforts to conserve the wild birds of this planet.●

● Mr. CHAFEE. Mr. President, I am pleased to join Senator BAUCUS in sponsoring legislation to restrict capture and trade in wild birds. This trade, together with the destruction of habitat, threatens the continued existence of many species of exotic birds and has already driven several species, such as macaws and cockatoos, to the brink of extinction. As the world's largest importer of these wild, exotic birds, it is essential that the United States act quickly to put an end to this destructive trade.

Many States and organizations, including the pet industry, share concern over our Nation's contribution to the decline in wild bird populations throughout Africa, Central and South America and Asia, and are working together to curtail imports of wild birds for the pet trade. Senator BAUCUS and I are introducing two bills today that, while they differ in the particulars, both seek the same goal: conservation of exotic wild birds. Similar bills are being introduced by Representative STUDDS in the House of Representatives. Both bills are the product of compromise and difficult negotiations and, as the Congress considers these bills, I hope we can reach consensus on the best approach.

There are many disturbing aspects of the wild bird trade. A shocking percentage—bordering on 50 percent—of these birds die during capture, holding and shipment. Further, the Department of Justice has estimated that 150,000 exotic birds are smuggled across the Mexican border each year. Given that legal imports of these birds hover around half a million, the large number of birds that are being illegally smuggled across just one of our borders is particularly troublesome.

Exotic birds are popular pets in America and it is by no means our intention to eliminate this option. The answer lies in captive breeding. Captive breeding efforts have increased in recent years and it is likely that U.S. aviculturists will soon be able to supplant the wild-caught stocks with their own. At this time, captive-bred birds are generally more expensive than their wild-caught counterparts, a condition which favors exploitation of wild birds.

Ironically, pet store operators and pet owners report that captive bred birds are better-behaved and are often worth the price differential when it comes to making good pets. In New York State, where a 1984 law prohibits the sale of wild-caught exotic birds, many bird store owners confirm that customers prefer the same tame, captive-bred birds.

While most commercially desirable species are available through captive breeders, a few are not. That, and the desire to encourage bird-breeding programs, is why the legislation being introduced today allows for the continued import of wild birds as necessary for the stocking of captive breeding efforts.

Over the past few years, U.S. imports of wild birds have declined significantly. This is likely a result of public awareness regarding the rapid depletion of wild bird populations and, the increased availability of captive-bred stocks. I believe this trend indicates that the American people are ready to support legislation to stop trade in wild birds.

Mr. President, many of the wild birds supplying the pet trade are already recognized internationally as problem species because it is clear that trade is detrimentally affecting their survival or, in many cases, because there is simply inadequate information to determine the status of the species in the wild. I urge my colleagues to get behind this effort to promote the conservation of wild birds and to support this legislation that will end the importation and sale of these birds as pets.●

By Mr. DECONCINI (for himself, Mr. GRASSLEY, Mr. PELL, Mr. STEVENS, Mr. WALLOP, Mr. LUGAR, Mr. PRESSLER, Mr. BRADLEY, Mr. CRAIG, Mr. D'AMATO, Mr. GLENN, Mr. SASSER, Mr. KERRY, Mr. SIMON, Mr. DIXON, Mr. KENNEDY, Mr. MITCHELL, Mr. COHEN, Mr. ROBB, Mr. MOYNIHAN, Mr. JEFFORDS, Mr. RIEGLE, Mr. LAUTENBERG, Mr. KOHL, Mr. BROWN, Mr. CHAFEE, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. CONRAD, Mr. COCHRAN, Mr. SARBANES, Mr. BRYAN, Mr. BIDEN, Mr. DODD, Ms. MIKULSKI, Mr. JOHNSTON, Mr. WARNER, Mr. THURMOND, Mr. NUNN, Mr. PACKWOOD, Mr. DOLE, Mr. HATCH, Mr. BREAUX, Mr. LIEBERMAN, Mr. ADAMS, Mr. MURKOWSKI, Mr. SPECTER, Mr. REID, Mr. HOLLINGS, Mr. SHELBY, Mr. DOMENICI, Mr. HATFIELD, Mr. GORE, and Mr. CRANSTON):

S.J. Res. 154. Joint resolution to designate August 1, 1991, as "Helsinki Human Rights Day"; to the Committee on the Judiciary.

HELSINKI HUMAN RIGHTS DAY

● Mr. DECONCINI. Mr. President, as cochairman of the Commission on Security and Cooperation in Europe, known as the Helsinki Commission, I am pleased to introduce today, together with 50 of my colleagues, a joint resolution that authorizes and requests the President of the United States to designate August 1, 1991, as "Helsinki Human Rights Day."

Sixteen years ago, on August 1, 1975, representatives from 35 countries joined together in signing the final act of the Conference on Security and Cooperation in Europe [CSCE], commonly referred to as the Helsinki accords. This agreement covers every aspect of East-West relations, including military security, scientific and cultural exchanges, trade and economic cooperation, as well as human rights and human contacts.

The CSCE participating states, which include all European States, except at this time Albania, the Union of Soviet Socialist Republics, Canada and the United States, have made a commitment to adhere to the principles of human rights and fundamental freedoms as embodied in the Helsinki accords. The principles contained in these accords require the participating states to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion." They further address a principle which is central to the underlying purpose of the Helsinki agreement; the unrestrained movement of people, ideas and information.

My colleagues and I are introducing Helsinki Human Rights Day in a greatly changed climate. With the dramatic historical changes in Central and Eastern Europe and the Union of Soviet Socialist Republics, we have witnessed substantial improvements in compliance by many signatory states, though problems persist.

There can be little doubt that the Helsinki process, in general, has been instrumental in focusing attention on human rights. As a result, it has improved tangibly the lives of millions of people. The flow of people and ideas is gradually widening, and the prison gates have opened to those who were previously sentenced for calling on their governments to live up to their commitments under the Helsinki accords. The once formidable intellectual, spiritual, and physical barriers between East and West are now weak and slowly crumbling.

These changes are dynamic. A decade ago, many Americans placed lighted

candles in their windows to protest the imposition of martial law in Poland and the outlawing of Solidarity. Today, a former chairman of Solidarity is President of Poland.

Vaclav Havel, a world-renowned Czechoslovak playwright, spent time in prison for his human rights activities. Today, he is Czechoslovakia's freely elected President. The Berlin Wall has crumbled and the two German States have been unified. Free and fair elections have been held throughout Central and Eastern Europe and the Soviet Union.

Just recently, the Soviet Union passed in principle a far-reaching and eagerly awaited law on entry and exit for its citizens. It is our hope that the Soviet Government will move quickly to implement this historic legislation and to permit the remaining refusenik families to leave the Soviet Union.

On November 21, 1990, representatives from the signatory states signed the Charter of Paris for a New Europe, a document which has added clarity and precision to the obligations undertaken by the states signing the Helsinki accords.

These improvements are a testament to the efficacy of the Helsinki process and are, according to many leading Eastern Europeans, in part due to the consistent and persistent pressure from the West and from the United States Congress. We can be proud of our record of strong support for the Helsinki process, and one of the reflections of our support has been the annual Helsinki Human Rights Day resolution.

Despite the positive changes that have taken place since the Helsinki accords were signed, our goal toward the realization of an ultimately free, open, and humane Europe has not been met. CSCE faces new challenges—to expand and firmly root democratic pluralism, to encourage market economies, and to ensure minority rights and self-determination.

We believe it is important, therefore, that the President reaffirm the United States commitment to the Helsinki accords and convey to all signatories that respect for human rights and fundamental freedoms is a vital element of continuing progress in the ongoing Helsinki process.

This resolution requests the President to continue his efforts to achieve full implementation of the human rights and humanitarian provisions of the Helsinki accords by raising the issue of noncompliance on the part of any CSCE State which may be in violation. It further requests the President, in view of the considerable progress made to date, to develop new proposals to advance the human rights objectives of the Helsinki process, and in so doing address the major problems that remain, including the question of self-determination of peoples.

By proclaiming August 1, 1991, as "Helsinki Human Rights Day," we reaffirm our commitment to the principles governing the Helsinki accords, principles that mirror those upon which our own Constitution is based.

I urge each Member of this body to support this joint resolution and I ask unanimous consent that the text be printed in the RECORD at this point.

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

S.J. RES. 154

Whereas August 1, 1991, is the sixteenth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (CSCE) (hereafter in this preamble referred to as the "Helsinki accords");

Whereas on August 1, 1975, the Helsinki accords were agreed to by the Governments of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, and Yugoslavia;

Whereas the Helsinki accords express the commitment of the participating States to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion";

Whereas the participating States have committed themselves to "ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration of Principles and other CSCE commitments";

Whereas the participating States have committed themselves to "respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States";

Whereas the participating States have recognized that respect for human rights is an essential aspect for the protection of the environment and for economic prosperity;

Whereas the participating States have committed themselves to respect fully the right of everyone to leave any country, including their own, and to return to their country;

Whereas the participating States have affirmed that the "ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right to freely express, preserve and develop that identity without any discrimination and in full equality before the law";

Whereas the participating States recognize that "democratic government is based on the will of the people, expressed regularly through free and fair elections; and democracy has as its foundation respect for the person and the rule of law; and democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person";

Whereas on November 21, 1990, the heads of state or government from the signatory States signed the Charter of Paris for a New Europe, a document which has added clarity and precision to the obligations undertaken by the States signing the Helsinki accords;

Whereas the Conference on Security and Cooperation in Europe has made major contributions to the positive developments in Eastern and Central Europe and the Union of Soviet Socialist Republics, including greater respect for the human rights and fundamental freedoms of individuals and groups;

Whereas the Conference on Security and Cooperation in Europe provides an excellent framework for the further development of genuine security and cooperation among the participating States; and

Whereas, despite significant improvements, all participating States have not yet fully implemented their obligations under the Helsinki accords: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) August 1, 1991, the sixteenth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (hereinafter referred to as the "Helsinki accords") is designated as "Helsinki Human Rights Day";

(2) the President is authorized and requested to issue a proclamation reasserting the American commitment to full implementation of the human rights and humanitarian provisions of the Helsinki accords, urging all signatory States to bide by their obligations under the Helsinki accords, and encouraging the people of the United States to join the President and Congress in observance of Helsinki Human Rights Day with appropriate programs, ceremonies, and activities;

(3) the President is further requested to continue his efforts to achieve full implementation of the human rights and humanitarian provisions of the Helsinki accords by raising the issue of noncompliance on the part of any signatory State which may be in violation;

(4) the President is further requested to convey to all signatories of the Helsinki accords that respect for human rights and fundamental freedoms is a vital element of further progress in the ongoing Helsinki process; and

(5) the President is further requested, in view of the considerable progress made to date, to develop new proposals to advance the human rights objectives of the Helsinki process, and in so doing to address the major problems that remain, including the question of self-determination of peoples.

SEC. 2. The Secretary of State is directed to transmit copies of this joint resolution to the Ambassadors to the United States of the other thirty-three Helsinki signatory States.●

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S.J. Res. 155. Joint resolution commemorating the 250th anniversary of the arrival of Vitus Bering in America; to the Committee on the Judiciary.

THE 250TH ANNIVERSARY OF THE ARRIVAL OF VITUS BERING IN AMERICA

Mr. STEVENS. Mr. President, I rise today to introduce a joint resolution to pay tribute to an event of great historical significance to our country: The 250th anniversary of the Vitus Bering expedition to America.

Upon arriving in Alaska in 1741, Bering had achieved an important goal: he found a link between Asia and America. In a period of relatively rapid expansion, beginning with settlements built in the Aleutian Islands to those on Kodiak Island and in Puget Sound, the Russians firmly established their culture, trade, and religion on the North American Continent.

The Russians left our continent in 1867 after Secretary Seward successfully negotiated the purchase of Alaska which became a territory of the United States. The legacy and traditions of the Russian culture live on. Today, not only do we share a cultural heritage in the Arctic, the ties which have bound our Nations together are becoming stronger. As our relationship with the Soviet Union has warmed, tourism and cultural interaction between our countries is beginning to thrive. My resolution would not only celebrate the arrival of Vitus Bering in America, it welcomes our new relationship with the Soviet Union.

Mr. MURKOWSKI. Mr. President, I rise today to commemorate the 250th anniversary of the departure from Kamchatka of the Bering expedition to Alaska. The U.S.S.R. Russian America Committee in Vladivostok will be issuing a proclamation concerning the anniversary to the peoples and Governments of the U.S.S.R. and the United States simultaneously with this resolution.

The U.S. Bering/Chirkov-91 Committee of the Alaska Historical Society is planning jubilee events in Sitka, Cordova, Kodiak, and Unalaska with an international conference in Anchorage in August. In the Soviet Union, celebrations will be taking place in Vladivostok, Petropavlovsk-Kamchatka, Irkutsk, and Bering Island.

The history of this significant voyage in the late 1700's is fascinating. In the summer of 1741, Peter the Great sent vitus Bering, a captain in the Russian Imperial Navy, to explore the ocean between Russia and America. Bering set out in the *St. Peter* with Lt. Alexaii Chirikov cocaptaining a sister vessel, the *St. Paul*. The two vessels left Petropavlovsk in Kamchatka on June 4, 1741. They were soon separated on June 20. The two independently found land in July 1741. They discovered the coast of southeastern Alaska, portions of its southern coast, and some of the Aleutian Islands.

Chirikov's vessel became lost and he and his crew returned that summer to Kamchatka. Bering's ship wrecked on Bering Island, and the crew was forced to spend the winter there. Bering and half of his crew died of scurvy that winter. The survivors managed to repair the ship and return to Kamchatka the next summer. These voyages were the beginning of the Russian discovery of America.

On the *St. Peter* was an extraordinary man, Georg Wilhelm Steller. He was a German naturalist and a member of the Imperial Academy of Sciences. While on the voyage, he visited Kayak Island and the Shumagin Islands. He gathered and recorded information and specimens invaluable to future naturalists. During the crew's 8 months on Bering island, he found a cure for scurvy from local herbs and roots, and saved some of the dying crew. He left descriptions of the arctic fox, the sea otter, the now-extinct sea cow, and a bird named after him, the Steller Jay.

Alaska's heritage is filled with Russian history. Alaska's Russian history and the 250th anniversary of Bering's momentous and daring voyage to Alaska will be celebrated in Alaska and Siberia this summer. Alaskans and Siberians are working together to melt the ice curtain across the Bering Strait. Joint efforts like these help to bring Alaskans and Siberians together, which will in turn increase trade and tourism through the creation of joint ventures. The future of Alaskan-Siberian relations might lie in the discovery and celebration of its past.

ADDITIONAL COSPONSORS

S. 98

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 98, a bill to amend the National Aeronautics and Space Administration Authorization Act, fiscal year 1989.

S. 183

At the request of Mr. HELMS, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 183, a bill to amend title 18, United States Code, to establish fair competition between the private sector and the Federal Prison Industries.

S. 240

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 240, a bill to amend the Federal Aviation Act of 1958 relating to bankruptcy transportation plans.

S. 280

At the request of Mr. DOLE, the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 280, a bill to provide for the inclusion of foreign deposits in the deposit insurance assessment base, to permit inclusion of nondeposit liabilities in the deposit insurance assessment base, to require the FDIC to implement a risk-based deposit insurance premium structure, to establish guidelines for early regulatory intervention in the financial decline of banks, and to permit regulatory restrictions on brokered deposits.

At the request of Mr. SASSER, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 280, supra.

S. 323

At the request of Mr. CHAFEE, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 499

At the request of Mr. LUGAR, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 499, a bill to amend the National School Lunch Act to remove the requirement that schools participating in the school lunch program offer students specific types of fluid milk, and for other purposes.

S. 614

At the request of Mr. DASCHLE, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 614, a bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes.

S. 619

At the request of Mr. BRADLEY, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 619, a bill to establish a Link-up for Learning demonstration grant program to provide coordinated services to at-risk youth.

S. 679

At the request of Mr. BRADLEY, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 679, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income payments made by public utilities to customers to reduce the cost of energy conservation service and measures.

S. 765

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer Social Security taxes on cash tips.

S. 840

At the request of Mr. DURENBERGER, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 840, a bill to amend the Internal Revenue Code of 1986 to provide a simplified method for computing the deductions allowable to home day care providers for the business use of their homes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Louisiana

[Mr. JOHNSTON] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 849

At the request of Mr. LIEBERMAN, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 849, a bill to amend the Emergency Planning and Community Right-To-Know Act of 1986.

S. 860

At the request of Mr. SIMON, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 860, a bill to support democracy and self-determination in the Baltic States and the republics within the Soviet Union.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor 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. 884

At the request of Mr. PACKWOOD, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Indiana [Mr. LUGAR], the Senator from Arizona [Mr. MCCAIN], and the Senator from Louisiana [Mr. BREAUX] 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. 911

At the request of Mr. KENNEDY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 911, a bill to amend the Public Health Service Act to expand the availability of comprehensive primary and preventative care for pregnant women, infants and children and to provide grants for home-visiting services for at-risk families, to amend the Head Start Act to provide Head Start services to all eligible children by the year 1994, and for other purposes.

S. 964

At the request of Mr. MCCAIN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 964, a bill to establish a Social Security Notch Fairness Investigatory Commission.

S. 1021

At the request of Mr. MCCAIN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1021, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of long-term care insurance and accelerated death benefits, and for other purposes.

S. 1035

At the request of Mr. SIMON, the names of the Senator from Iowa [Mr. GRASSLEY], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 1035, a bill to amend section 107 of title 17, United States Code, relating to fair use with regard to unpublished copyrighted works.

S. 1087

At the request of Mr. HARKIN, the names of the Senator from Arizona [Mr. DECONCINI] and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 1087, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 100th anniversary of the Pledge of Allegiance to the flag.

S. 1107

At the request of Mr. SHELBY, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1107, a bill to amend title 38, United States Code, to provide for the payment, on an interim basis, of compensation, dependency, and indemnity compensation, and pension to veterans and their survivors and dependents if their claims for those benefits are not decided by the Department of Veterans Affairs within specified time limits.

S. 1130

At the request of Mr. KASTEN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1130, a bill to amend the Internal Revenue Code of 1986 to provide for rollover of gain from sale of farm assets into an individual retirement account.

S. 1160

At the request of Mr. D'AMATO, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1160, a bill to amend and extend programs under the Urban Mass Transportation Act of 1964.

S. 1197

At the request of Mr. KENNEDY, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1197, a bill to amend the Public Health Service Act concerning family planning and to provide for the availability of information and counseling regarding pregnancies, and for other purposes.

SENATE JOINT RESOLUTION 6

At the request of Mr. JOHNSTON, the names of the Senator from Montana [Mr. BURNS], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 6, a joint resolution to designate the year 1992 as the "Year of the Wetlands."

SENATE JOINT RESOLUTION 8

At the request of Mr. BURDICK, the names of the Senator from Montana [Mr. BURNS, the Senator from South Carolina [Mr. HOLLINGS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Idaho [Mr. SYMMS), The Senator from Connecticut [Mr. LIEBERMAN], the Senator from Arizona [Mr. DECONCINI], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Kansas [Mr. DOLE], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors 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, the November 22, 1992, as "National Family Week."

SENATE JOINT RESOLUTION 36

At the request of Mr. PRESSLER, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Joint Resolution 36, a joint resolution to designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month."

SENATE JOINT RESOLUTION 72

At the request of Mr. SPECTER, the names of the Senator from California [Mr. CRANSTON], the Senator from Texas [Mr. BENTSEN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Washingtion [Mr. ADAMS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Utah [Mr. HATCH], the Senator from New York [Mr. D'AMATO], the Senator from Georgia [Mr. FOWLER], and the Senator from Florida [Mr. MACK] were added as cosponsors of Senate Joint Resolution 72, a joint resolution to designate the week of September 15, 1919, through September 21, 1991, as "National Rehabilitation Week."

SENATE JOINT RESOLUTION 73

At the request of Mr. SPECTER, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 73, a joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 74

At the request of Mr. LIEBERMAN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from New Jersey [Mr. BRADLEY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from South Dakota [Mr. DASCHLE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Florida [Mr. GRAHAM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Alabama [Mr. HEFLIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Wisconsin [Mr. KASTEN], the Senator from Massachusetts [Mr. KERRY], the Senator from Wisconsin [Mr. KOHL], the Senator from Michigan [Mr. LEVIN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Georgia [Mr. NUNN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Michigan [Mr. RIEGLE], the Senator from Tennessee [Mr. SASSER], the Senator from North Carolina [Mr. SANFORD], the Senator from Illinois [Mr. SIMON], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from

South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 74, a joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 95

At the request of Mr. PELL, the names of the Senator from Nebraska [Mr. EXON], the Senator from Arizona [Mr. DECONCINI], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of Senate Joint Resolution 95, a joint resolution designating October 1991 as "National Breast Cancer Awareness Month."

SENATE JOINT RESOLUTION 107

At the request of Mr. MOYNIHAN, the names of the Senator from Washington [Mr. ADAMS], the Senator from North Dakota [Mr. BURDICK], the Senator from Montana [Mr. BURNS], the Senator from North Dakota [Mr. CONRAD], the Senator from Kansas [Mr. DOLE], the Senator from Washington [Mr. GORTON], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Rhode Island [Mr. PELL], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 107, a joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

SENATE JOINT RESOLUTION 115

At the request of Mr. MOYNIHAN, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Nevada [Mr. BRYAN], the Senator from Rhode Island [Mr. PELL], and the Senator from Florida [Mr. MACK] were added as cosponsors 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 121

At the request of Mr. DECONCINI, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Maryland [Ms. MIKULSKI], the Senator from Delaware [Mr. BIDEN], the Senator from South Carolina [Mr. THURMOND], the Senator from Washington [Mr. GORTON], the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. CONRAD], the Senator from Hawaii [Mr. INOUYE], the Senator from New York [Mr. MOYNIHAN], the Senator from Florida [Mr. GRAHAM], the Senator from Connecticut [Mr. DODD], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Oregon [Mr. PACKWOOD], the Senator from North Carolina [Mr. SANFORD], the Senator from Rhode Island [Mr. PELL], the Senator from Missouri [Mr. DANFORTH], the Senator from Michigan [Mr. RIEGLE], the Senator from Indiana [Mr. COATS], the Senator from Florida [Mr. MACK], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 121, a joint resolution designating September 12, 1991, as "National D.A.R.E. Day."

SENATE JOINT RESOLUTION 125

At the request of Mr. SIMON, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Rhode Island [Mr. PELL], the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of Senate Joint Resolution 125, a joint resolution to designate October 1991 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 126

At the request of Mr. HATFIELD, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Joint Resolution 126, a joint resolution to designate the second Sunday in October of 1991 as "National Children's Day."

SENATE JOINT RESOLUTION 130

At the request of Mr. LAUTENBERG, the names of the Senator from Illinois [Mr. SIMON], the Senator from Hawaii [Mr. AKAKA], the Senator from Iowa [Mr. GRASSLEY], the Senator from Wisconsin [Mr. KASTEN], the Senator from Wisconsin [Mr. KOHL], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Idaho [Mr. CRAIG], the Senator from Montana [Mr. BURNS], the Senator from Missouri [Mr. DANFORTH], the Senator from Tennessee [Mr. SASSER], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Indiana [Mr. COATS], the Senator from Colorado [Mr. BROWN], the Senator from North Carolina [Mr. HELMS], the Senator from Missouri [Mr. BOND], and the Senator from Tennessee [Mr. GORE], were added as cosponsors of Senate Joint Resolution 130, a joint resolution to designate the second week in June as "National Scleroderma Awareness Week."

SENATE JOINT RESOLUTION 133

At the request of Mr. HOLLINGS, the name of the Senator from North Carolina [Mr. SANFORD], was added as a cosponsor of Senate Joint Resolution 133, a joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and over 7 million survivors of cancer alive today because of cancer research.

SENATE JOINT RESOLUTION 144

At the request of Mr. D'AMATO, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Alabama [Mr. SHELBY], were added as cosponsors of Senate Joint Resolution 144, a joint resolution to designate May 27, 1991, as "National Hero Remembrance Day."

SENATE CONCURRENT RESOLUTION 35

At the request of Mr. GLENN, the names of the Senator from Illinois [Mr. DIXON], the Senator from Mississippi [Mr. LOTT], the Senator from Maine [Mr. MITCHELL], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Tennessee [Mr. GORE], were added as cosponsors of Senate Concurrent Resolution 35, a concurrent resolution expressing the sense of the Congress that the awarding of contracts for the rebuilding of Kuwait should reflect the extent of military and economnic support offered by the United States in the liberation of Kuwait.

SENATE CONCURRENT RESOLUTION 40

At the request of Mr. D'AMATO, the names of the Senator from Tennessee [Mr. GORE], the Senator from Colorado [Mr. WIRTH], and the Senator from New York [Mr. MOYNIHAN], were added as cosponsors of Senate Concurrent Resolution 40, a concurrent resolution expressing the sense of the Congress that the Federal Republic of Germany and the Republic of Austria should take all applicable steps to halt the distribution of neo-Nazi computer games and prosecute anyone found in possession of these materials to the full extent of the law.

SENATE CONCURRENT RESOLUTION 41

At the request of Mr. PELL, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from Tennessee [Mr. GORE], were added as cosponsors of Senate Concurrent Resolution 41, a concurrent resolution to express the sense of the Congress that Tibet, including those areas incorporated into the Chinese provinces of Sichuan, Yunnan, Gansu, and Qinghai that have historically been a part of Tibet, is an occupied country under established principles of international law whose true representatives are the Dalai Lama and the Tibetan Government in exile as recognized by the Tibetan people.

SENATE RESOLUTION 123

At the request of Mr. KASTEN, the names of the Senator from New Hampshire [Mr. RUDMAN], the Senator from Arizona [Mr. MCCAIN], and the Senator from Montana [Mr. BURNS], were added as cosponsors of Senate Resolution 123, a resolution relating to State taxes for mail-order companies mailing across State borders.

SENATE CONCURRENT RESOLUTION 45—RELATIVE TO TRADE WITH THE SOVIET UNION

Mr. DECONCINI submitted the following concurrent resolution; which was referred to the Committee on Finance.

S. CON. RES. 45

Whereas the number of citizens being permitted to leave the Union of Soviet Socialist Republics shows a pattern of increased liberalization of the Soviet Government's emigration practices;

Whereas the Supreme Soviet has committed itself to fully respect the right of its citizens to leave and return to their country under the Helsinki Final Act, all Conference on Security and Cooperation in Europe commitments, and the International Convenants on Human Rights;

Whereas the President has determined that the Union of Soviet Socialist Republics has met the requisite conditions to justify a 12-month extension of the waiver authority under section 402(c) of the Trade Act of 1974; and

Whereas, despite passage of the Law on Entry and Exit by the Supreme Soviet of the Union of Soviet Socialist Republics on May 20, 1991, barriers to emigration still exist: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(a) It is the sense of the Congress that, before recommending in 1992 a waiver of the provisions of section 402 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432 (a) and (b)) with respect to the Union of Soviet Socialist Republics, the President should take into consideration—

(1) whether each objective described in subsection (b) has been met with respect to the Union of Soviet Socialist Republics;

(2) whether each such objective will be met during the period of the waiver; and

(3) whether the law and the intent of the Union of Soviet Socialist Republics are in fact resulting in a sustained pattern of emigration and a cessation of hidden barriers to emigration.

(b) The objectives described in this subsection are as follows:

(1) All individuals, who for at least 5 years have been refused permission to emigrate from the Union of Soviet Socialist Republics, are given permission to emigrate.

(2) Restrictions on freedom of movement, including those pertaining to secrecy, are not being abused or applied in an arbitrary manner.

(3) A fair, impartial, and effective administrative or judicial appeals process exists for those who have been denied permission to emigrate.

(4) The Government of the Union of Soviet Socialist Republics is ensuring that its laws, regulations, practices, and policies conform with the Government's international obligations and commitments, including the relevant provisions of the Helsinki Final Act and all Conference on Security and Cooperation in Europe commitments.

Mr. DECONCINI. Mr. President, on June 3, 1991, President Bush made the decision to grant the Soviet Union a 1 year waiver of the Jackson-Vanik amendment to the 1974 Trade Act. This amendment linked U.S. Soviet trade to human rights by denying Communist countries most-favored-nation [MFN] trading status until they permitted substantive and sustained emigration. On December 29, 1990, President Bush notified House Speaker FOLEY that he was waiving the Jackson-Vanik restriction against the Soviet Union for 6 months. Until then, the United States had denied the Soviets MFN because of that country's flagrant violations of its international commitments to respect the right of its citizens to freedom of movement.

During the Gorbachev era and particularly in the last 2 years, however, we have been seeing a marked improvement in Soviet emigration practices. In 1989, according to statistics provided by the National Conference on Soviet Jewry, Jewish emigration was 71,217. That number more than doubled to 186,815 in 1990 and through the end of April 1991 those emigrating had reached 57,800.

On May 20, 1991, the Supreme Soviet, after several lengthy delays, passed in principle a new law on exit and entry from the Soviet Union. It is a law that leaves many questions unanswered and a law that will not even be fully implemented until January 1993.

Last December, Congressman STENY HOYER and I, as co-chairman and chairman of the Helsinki Commission, stated we would be willing to see MFN status granted to the Soviets under certain conditions: Increased emigration, an emigration law, good faith implementation of the law, and the release of long-term refuseniks.

As I mentioned, we have seen progress on all four points, but serious questions remain. For example, we have to ask why there are, 3 years after the signing of the Vienna concluding document of the conference on security and cooperation in Europe [CSCE], more than 150 long-term refusenik families. The Vienna concluding document specifically states that the signatory states will take "the necessary steps to find solutions as expeditiously as possible, but in any case within 6 months, to all applications based on the human contacts provisions of the Helsinki final act and the Madrid concluding document.

One such case is Leonid Kosharovsky, brother of former 17-year refusenik Yuli Kosharovsky. Leonid's wife and his two daughters were allowed to emigrate to Israel in February 1990. However, due to a second degree security classification from Leonid's work more than 10 years ago, Leonid is still denied permission to emigrate. I might add that the plant where Leonid worked was opened to American arms inspectors as part of the INF Treaty verification that was signed by the United States and Soviet Union on December 8, 1987.

Cases such as Leonid Kosharovsky's illustrate the arbitrary and cynical nature which still influences Soviet emigration policy when it comes to state secrets.

I have several concerns about the newly passed emigration law. Under the law, the Soviet Government can deny visas for up to 5 years to individuals who possess state secrets. While the law states that the limit should not exceed 5 years, it would allow a committee under the Soviet Cabinet of Ministers to extend the period of visa denial. Secrecy refuseniks attempting to appeal their visa denial could do so only once every 3 years.

The law would also continue the Soviet practice of requiring persons applying to emigrate to produce an affidavit stating that they owe no outstanding financial obligations to their parents or ex-spouse. Thus, citizens of legal age could have their emigration request blocked by their parents, or an ex-spouse.

A section of the new law also requires those persons subject to military service to serve their military term before being allowed to emigrate. This effectively denies a large segment of the Soviet population its right to freedom of movement.

Because the pattern of implementation remains so cloudy, I am introducing a Senate concurrent resolution that highlights those aspects of Soviet emigration policy that are still a serious cause for concern. Congressman HOYER is introducing identical legislation in the House.

My legislation sends a message to the Soviet Government that Soviet emigration policy will be judged according to the international commitments that government has pledged to honor. Between now and June of 1992, when a Jackson-Vanik waiver will again be addressed by Congress, the Soviets must demonstrate how sincere they are about implementing a truly free and just emigration policy.

The legislation I am introducing today expresses the sense of the Congress that the President should consider the following objectives before providing in 1992 a waiver of the Jackson-Vanik trade restrictions with respect to the Soviet Union.

First, all individuals who, for at least 5 years, have been refused permission to emigrate from the Soviet Union, are given permission to emigrate.

Second, restrictions on freedom of movement, including those pertaining to secrecy, are not being abused or applied in an arbitrary manner.

Third, a fair, impartial, and effective administrative or judicial appeals process exists for those who have been denied permission to emigrate.

Fourth, the Government of the Soviet Union is ensuring that its laws, regulations, practices, and policies conform with their obligations under international obligations and commitments, including the relevant provisions of the Helsinki Final Act and all Conference on Security and Cooperation in Europe [CSCE] commitments.

Mr. President, I urge all of my colleagues to support this resolution.

SENATE RESOLUTIONS 135—AMENDING THE STANDING RULES OF THE SENATE

Mr. HOLLINGS (for Mr. MITCHELL) submitted the following resolution; which was considered and agreed to:

S. RES. 135

Resolved, That paragraph 2 of rule XXV of the Standing Rules of the Senate is amended as follows:

Strike "16" after "Environment and Public Works" and insert in lieu thereof "17".

Strike "18" after "Foreign Relations" and insert in lieu thereof "19".

Strike "14" after "Government Affairs" and insert in lieu thereof "13".

That paragraph 3 (a) of rule XXV of the Standing Rules of the Senate is amended for the One Hundred Second Congress as follows:

Strike "18" after "Small Business" and insert in lieu thereof "19".

SENATE RESOLUTION 136—MAKING CERTAIN MAJORITY COMMITTEE APPOINTMENTS

Mr. HOLLINGS (for Mr. MITCHELL) submitted the following resolution; which was considered and agreed to:

S. RES. 136

Resolved, That the Senator from Pennsylvania (Mr. WOFFORD) is hereby appointed to serve as a member on the Committee on Environment and Public Works, the Committee on Foreign Relations, and the Committee on Small Business.

SENATE RESOLUTION 137—MAKING A MINORITY PARTY APPOINTMENT TO THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HOLLINGS (for Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 137

Resolved, That the following Senator (Mr. Chafee) shall be added to the minority party's membership on the Senate Committee on Banking, Housing, and Urban Affairs for the One Hundred Second Congress until November 6, 1991.

AMENDMENTS SUBMITTED

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

PRESSLER (AND OTHERS) AMENDMENT NO. 280

Mr. PRESSLER (for himself, Mr. GRASSLEY, Mr. SASSER, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. SIMPSON and Mr. DASCHLE) proposed an amendment to the bill (S. 173) to permit the Bell Co. to conduct research on, design, and manufacture telecommunications equipment, and for other purposes, as follows:

On page 8, line 12, strike "and".

On page 8, line 15, insert "regulated" immediately after "all".

On page 8, line 18, immediately after "equipment", insert a comma and "including software integral to such telecommunications equipment including upgrades,".

On page 9, line 1, strike "other" and insert in lieu thereof regulated local exchange telephone carrier".

On page 9, line 3, immediately after "equipment", insert a comma and "including software integral to such telecommunications equipment' including upgrades".

On page 9, line 3, immediately "manufacture", insert "for use with the public telecommunications network".

On page 9, line 5, insert "purchasing" immediately before "carrier", and strike the period and insert in lieu thereof a semicolon.

On page 9, between lines 5 and 6, insert the following:

"(9)(A) such manufacturing affiliate shall not discontinue or restrict sales to other regulated local telephone exchange carriers of any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers; except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit under a marginal cost standard implemented by the Commission on the sale of such equipment;

"(B) in reaching a determination as to the existence of reasonable demand as referred to in subparagraph (A), the Commission shall within sixty days consider—

"(i) whether the continued manufacture of the equipment will be profitable;

"(ii) whether the equipment is functionally or technically obsolete;

"(iii) whether the components necessary to manufacture the equipment continue to be available;

"(iv) whether alternatives to the equipment are available in the market; and

"(v) such other factors as the Commission deems necessary and proper;

"(10) Bell Telephone Companies shall, consistent with the antitrust laws, engage in joint network planning and design with other regulated local telephone exchange carriers operating in the same area of interest; except that no participant in such planning shall delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment; and

"(11) Bell Telephone Companies shall provide, to other regulated local telephone exchange carriers operating in the same area of interest, timely information on the planned, deployment of telecommunications equipment, including software integral to such telecommunications equipment, including upgrade;

On page 9, strike all on lines 20 through 24.

On page 10, line 1, strike "(4)" and insert in lieu thereof "(3)".

On page 11, line 7, insert "(1)" immediately after "(h)".

On page 11, between lines 13 and 14, insert the following:

"(2) Any regulated local telephone exchange carrier injured by an act or omission of a Bell Telephone Company or its manufacturing affiliate which violates the requirements of paragraph (8) or (9) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequences of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

CABLE TELEVISION CONSUMER PROTECTION ACT

GORTON AMENDMENT NO. 281

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, as follows:

At the appropriate place, insert the following:

SEC. . Section 623 of the Communications Act of 1934 (47 U.S.C. 543), as amended by this Act, is further amended by adding at the end the following new subsection:

"(i) A cable operator shall not charge a subscriber for any video programming that the subscriber has not affirmatively requested. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such programming shall not be deemed to be an affirmative request for such programming.".

Mr. GORTON. Mr. President, the Senate Commerce Committee recently considered and approved S. 12, the Cable Television Consumer Protection Act. I am a cosponsor of this bill and strongly believe in the need to encourage competition to the local cable monopoly. Unlike virtually any other business operating in the United States today, cable companies have the ability to charge rates and provide services without either the check of government regulation or the check provided by similarly competing companies.

Many of us have heard from our constituents who are tired of both high rates and poor service. We receive letters every week from cable subscribers who do not believe they should be charged for converter boxes or second outlets.

Soon, Mr. President, our mailboxes will be flooded by a new wave of consumer complaints about the cable companies latest marketing ploy. TCI, the largest cable company, has dreamed up a brilliant new strategy designed to assure a high viewership of its newest movie channel called Encore. TCI expects that it may get 60 or 70 percent of all their subscribers to take this new service. This marketing strategy is dependent upon one simple premise—that the consumer either will not even realize that he or she is subscribing to Encore or will not bother to act to prevent charges from accruing to his or her monthly bill.

You might ask, "how could the consumer possibly be unaware of a new service he has purchased?" Quite simply. Under TCI's new plan, you automatically buy the service, unless you call up the TCI office and cancel it! This practice, which fortunately is no longer used by most businesses, is known as a negative option. Its success relies on the fact that most customers do not scrutinize their junk mail and bill inserts with a fine tooth comb.

I have the unusual distinction, Mr. President, of having received two such

negative options, one in Seattle and one here in Washington, DC, an option which I suggest every other Member of this body who lives in the District of Columbia will have received by now.

I have here, Mr. President, a copy of Encore's promotional material. At a quick glance, it appears to be a colorful, glossy brochure advertising a new movie channel. I dare guess most of us would imagine that this is another movie channel that we could opt to add to our regular cable service. There certainly is not much on the cover of the brochure or on the inside fold that would cause us to believe this is an out of the ordinary promotion. If I had not already known about Encore, I do not think I would have been alerted by this little line way down here on the bottom that states, "Inside important information regarding your cable bill and the new Encore optional pay channel." Opening this brochure all the way, you will see a complete listing of all the movies which you will receive for free in the month of June. Not until, and unless, you read all of the text on the bottom half of the brochure will you even realize that you will be billed every month for Encore unless you call this special number to cancel your subscription.

Mr. President, the term "buyer beware" does not even apply to TCI's customers! TCI has figured out a clever way to make money that does not even depend upon its customers deciding to buy its new services. Well, in my view, this is not clever, it is downright deceitful and it must end. Since we obviously cannot rely on TCI and perhaps other cable companies treating their customers fairly, then sadly, we are going to have to rely on Government making it clear that this tactic will not be tolerated.

I understand that several State attorneys general, most particularly including the attorney general of the State of Florida, already have temporary restraining orders against this practice. My successor as attorney general of the State of Washington is in court in that State today seeking such a temporary restraining order.

In addition, however, I am introducing legislation today, which I will offer as an amendment to S. 12, when it comes to the floor for debate in the near future, which will prohibit the negative option and will protect consumers from this type of abusive practice.

TECHNICAL AMENDMENTS TO VARIOUS INDIAN LAWS

INOUYE AMENDMENT NO. 282

Mr. HOLLINGS (for Mr. INOUYE) proposed an amendment to the bill (S. 1193) to make technical amendments to various Indian laws, as follows:

On page 3, strike lines 8 through 21.

On page 3, line 22, delete "4" and insert "3".

On page 4, line 15, delete "5" and insert "4".

On page 4, line 6, delete the word "shall" and insert in lieu thereof the word "may".

On page 2, strike lines 18 through 24 and insert in lieu thereof the following:

"(F) If, during the one-year period described in subparagraph (B) there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such "judicial decision."

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will hold a hearing on dairy supply management options on Wednesday, June 19, 1991 from 9:30 to noon and 1:30 to 3 p.m. in SR-332.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, June 20, 1991, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measures currently pending before the subcommittee:

S. 477, a bill to afford congressional recognition of the National Atomic Museum at Kirtland Air Force Base, Albuquerque, NM, as the official atomic museum of the U.S. Government under the aegis of the Department of Energy, and to provide a statutory basis for its betterment, operation, maintenance, and preservation;

S. 628, a bill to direct the Secretary of the Interior to conduct a study of certain historic military forts in the State of New Mexico;

S. 772, a bill to amend title V of Public Law 96-550, designating the Chaco Culture Archaeological Protection Sites, and for other purposes;

S. 855, a bill to amend the act entitled "An act to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor members of the Armed Forces of the United States who served in the Korean war";

S. 867, a bill to establish a commission in the Department of the Interior to provide compensation to individuals who lost their land or mining claims to the U.S. Government for the establishment of the White Sands Missile Range; and

S. 1117, a bill to establish the Bureau of Land Management Foundation.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 364 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact David Brooks of the subcommittee staff at (202) 224-9863.

Mr. BUMPERS. Mr. President, I would like to announce for the public that two field hearings have been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The first hearing will take place in Honolulu, HI, on July 1, 1991, beginning at 10 a.m. The purpose of the hearing is to consider a proposal to designate the Ka Iwi shoreline on the Island of Oahu as a unit of the National Park System.

The second hearing will take place in Honolulu on July 2, 1991, beginning at 10 a.m. The purpose of the hearing is to examine the operation and status of the U.S.S. *Arizona* Memorial on the 50th anniversary of the attack on Pearl Harbor.

Both hearings will be held in the State Capitol building auditorium in Honolulu.

Because of the limited time available for the hearings, witnesses may testify by invitation only. It will be necessary to place witnesses in panels and place time limits on the oral testimony. Witnesses testifying at the hearings are requested to bring 40 copies of their testimony with them on the day of the hearing. Please do not submit testimony in advance.

Written statements may be submitted for the hearing record. It is necessary only to provide one copy of any material to be submitted for the record. If you would like to submit a statement for the record, you may send it to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, Room 364 of the Dirksen Senate Office Building, Washington, DC 20510, or Senator AKAKA'S district office at P.O. Box 50144, Honolulu, HI 96850.

For further information regarding the hearings, please contact Gladys Karr in Senator AKAKA's Honolulu office at (808) 541-2534 or David Brooks of the subcommittee staff at (202) 224-9863.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, June 4, 1991, at 3 p.m. and to hold a closed hearing on intelligence matters.

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

COMMITTEE ON SMALL BUSINESS

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Tuesday, June 4, 1991, at 9:30 a.m. The committee will hold a full committee hearing on GAO's study of the Small Business Administration's 7(a) guaranteed loan program collateral.

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

COMMITTEE ON ARMED SERVICES

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, June 4, 1991, at 2 p.m., to receive testimony on the operational use of stealth technology and the use of other classified systems during the Persian Gulf conflict.

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

ADDITIONAL STATEMENTS

BERNARD AND HELEN SADOWSKI WED 50 YEARS

• Mr. SIMON. Mr. President, on June 16, 1941, some very good friends of mine, Bernard and Helen Sadowski, were married at Five Holy Martyrs Church in Chicago. Fifty years later, they are celebrating their golden anniversary. Today I would like to honor Bernard and Helen for their love and devotion to each other and their family.

Bernard served the city of Chicago as a firefighter from 1943 until 1981 when he retired with the rank of deputy district commander. From 1972 until 1976, Bernard honorably served Illinois as the State fire marshal. Furthermore, Bernard has diligently contributed to my staff as a liaison to the Polish community in Illinois. His work has been invaluable.

Helen and Bernard have been blessed with a large family. Their daughter, Linda Hansen, lives in Hoffman Estates, and their son, Ronald Sadowski, and daughter-in-law, Dr. Vickyann Sadowski, live in Wheaton. They have five grandchildren: Daniel, Lisa, Laura, and Lindsey Hansen, and Ann Victoria Sadowski. The Sadowski family is fortunate to have outstanding role models in Bernard and Helen.

Bernard and Helen serve as an example of dedication and faithfulness to each other, their family, and their country. May God bless Helen and Bernard and give them many more years of happiness.•

OPIC'S FIRST ECOTOURISM AWARD

• Mr. JOHNSTON. Mr. President, today I am pleased to bring to the attention of the Senate a creative, forward-looking incentive program which the Overseas Private Investment Corporation [OPIC] established this year to promote projects in developing countries which are compatible with the countries' natural and cultural environments.

Under the leadership of my good friend and OPIC's current president and chief executive officer, Fred Zeder, OPIC has provided financial guarantees to establish a privately owned and managed environmental investment fund. This fund will invest in private business enterprises which demonstrate positive interaction between profitable economic development and protection of the environment. Each investment made will be subject to OPIC's prior approval and monitoring of environmental impacts. In addition, those foreign enterprises in which the fund invests will be required to have a business connection with at least one U.S. corporation.

This fund will provide a showcase of projects which demonstrate the financial viability of investing in environmentally beneficial, sound projects in the developing world. Projects will be concentrated in five areas: sustainable agriculture, forest management, ecotourism, renewable and alternative energy, and pollution prevention and abatement technologies. These are all critically important areas for these nations, and the fund will demonstrate to other private investors that environmental care can improve the viability of projects in the Third World.

One of the most creative examples of what the fund hopes to support in the future is a pioneering project undertaken by two very creative U.S. investors on the island of Pohnpei, one of the four states which comprise the Federated States of Micronesia. This project, the Village Hotel, was the brainchild of Bob and Patti Arthur, who are the first recipients of OPIC's Ecotourism Award. I had the pleasure of meeting the Arthurs and staying at the village several years ago. I can tell you that this project is one of the more sensitively designed, well run, and forward-looking projects that I have seen. The thatched IHMW's—or living units—in which the guests lucky enough to get a reservation stay were planted between trees to take advantge of the natural ventilation and one is lulled to sleep at night in between the sounds of coconuts dropping to the ground. Much of the grounds have been left in their natural jungle-like state, affording guests privacy and the experience this gives with the astounding beauty of this high volcanic island. The driveway into the hotel is not paved, but was given only a coral surface. And the long house, or building which contains the dining facilities, bar, and check-in, was situated overlooking the fabulous lagoon with the lagoon side left open so the guests can have an undisturbed view of the amazing sunrises and sunsets. Bob says the hotel was designed "as a kind of living sculpture" and he is right.

But as important, Bob and Patti have made every effort to preserve the local culture—sponsoring cultural shows in which everyone participates, exhibiting local handicrafts, organizing small and informative boat trips to the incredible Nan Madol ruins, and encouraging their Micronesian employees to talk with the guests so that visitors have a chance to interact with them and get to know something about Pohnpei and the wholehearted hospitality of the Pohnpeian culture.

They have also made every attempt to provide spinoff affects into the local economy—encouraging farmers to make the village a regular stop for selling locally grown produce and fruits, purchasing mangrove crabs and other local catches from fishermen and incorporating these into their five-star menu.

Bob and Patti have shown how sensitively designed projects can have a positive impact on the cultural and economic environment while still making a profit. No one could be more deserving of this award than the Arthurs and I hope their work and contributions will stand as a goal for others in other places around the world.•

BUDGET SCOREKEEPING REPORT

• Mr. SASSER. Mr. President, I hereby submit to the Senate the most recent budget scorekeeping report for fiscal year 1991, prepared by the Congressional Budget Office under section 308(b) of the Congressional Budget Act of 1974, as amended. This report serves as the scorekeeping report for the purposes of section 605(b) of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $0.4 billion in budget authority, and under the budget resolution by $0.4 billion in outlays. Current level is $1 million below the revenue target in 1991 and $6 million below the revenue target over the 5 years, 1991–95.

The current estimate of the deficit for purposes of calculating the maximum deficit amount is $326.6 billion, $0.4 billion below the maximum deficit amount for 1991 of $327.0 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 3, 1991.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1991 and is current through May 24, 1991. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Budget Enforcement Act of 1990 (Title XIII of Public Law 101-508). This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the budget.

Since my last report, dated May 20, 1991, there has been no action that affects the current level of spending and revenues.

Sincerely,

ROBERT D. REISCHAUER.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONGRESS, 1ST SESS., AS OF MAY 24, 1991

[In billions of dollars]

	Revised on-budget aggregates[1]	Current level[2]	Current level +/− aggregates
ON-BUDGET			
Budget authority	1,189.2	1,188.8	−0.4
Outlays	1,132.4	1,132.0	−0.4
Revenues:			
1991	805.4	805.4	(3)
1991–95	4,690.3	4,690.3	(3)
Maximum deficit amount	327.0	326.6	−0.4
Direct loan obligation	20.9	20.6	−0.3
Guaranteed loan commitments	107.2	106.9	−0.3
Debt subject to limit	4,145.0	3,397.1	−747.9
OFF-BUDGET			
Social Security outlays:			
1991	234.2	234.2	
1991–95	1,284.4	1,284.4	
Social Security revenues:			
1991	303.1	303.1	
1991–95	1,736.3	1,736.3	

[1] The revised budget aggregates were made by the Senate Budget Committee staff in accordance with section 13112(f) of the Budget Enforcement Act of 1990 (Title XIII of Public Law 101–508).

[2] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. In accordance with section 606(d)(2) of the Budget Enforcement Act of 1990 (title XIII of Public Law 101–508) and in consultation with the Budget Committee, current level excludes $45.3 billion in budget authority and $34.6 billion in outlays for designated emergencies including Operation Desert Shield/Desert Storm; $0.1 billion in budget authority and $0.2 billion in outlays for debt forgiveness for Egypt and Poland; and $0.2 billion in budget authority and outlays for Internal Revenue Service funding above the June 1990 baseline level. Current level outlays include a $1.1 billion savings for the Bank Insurance Fund that the Committee attributes to the Omnibus Budget Reconciliation Act (Public Law 101–508), and revenues include the Office of Management and Budget's estimate of $3.0 billion for the Internal Revenue Service provision in the Treasury-Postal Service Appropriations Bill (Public Law 101–509). The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[3] Less than $50 million.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONGRESS, 1ST SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSING OF BUSINESS MAY 24, 1991

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			834,910
Permanent appropriations	725,105	633,016	
Other legislation	664,057	676,371	
Offsetting receipts	−210,616	−210,616	
Total enacted in previous sessions	1,178,546	1,098,770	834,910

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONGRESS, 1ST SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSING OF BUSINESS MAY 24, 1991—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
II. Enacted this session:			
Extending IRS Deadline for Desert Storm Troops (H.R. 4, Public Law 102–2)			−1
Veterans' Education, Employment and Training Amendments (H.R. 180, Public Law 102–16)	2	2	
Dire Emergency Supplemental Appropriations for 1991 (H.R. 1281, Public Law 102–27)	3,823	1,401	
Higher Education Technical Amendments (H.R. 1285, Public Law 102–26)	3	3	
OMB Domestic Discretionary Sequester	−2	−1	
Total enacted this session	3,826	1,405	−1
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in revised on-budget aggregates	−8,572	539	
VI. Economic and technical assumption used by Committee for budget enforcement act estimates	15,000	31,300	−29,500
On-budget current level	1,188,799	1,132,014	805,409
Revised on-budget aggregates	1,189,215	1,132,396	805,410
Amount remaining:			
Over budget resolution			
Under budget resolution	416	382	1

Note.—Numbers may not add due to rounding.•

TRIBUTE TO HOWARD AND ENID CUTLER

• Mr. MURKOWSKI. Mr. President, I rise today to pay tribute to Howard and Enid Cutler. The Cutlers have spent 20 years in the State of Alaska and have made major contributions to the University of Alaska Fairbanks and the community of Fairbanks.

Howard Cutler first came to Alaska to serve as academic vice president of the University of Alaska system in 1962. After 4 years, he left the State but returned again in 1975 when he was named the first chancellor of the University of Alaska Fairbanks. During Dr. Cutler's years of service as its first chancellor, UAF experienced dramatic growth and expanded its horizons developing ties and exchanges with other Pacific rim universities. As the first chancellor, Howard Cutler had to organize the chancellor function and implement the new UAF organizational structure. Early in his term, he insisted on increased faculty leadership in academic affairs. The board of regents named Howard Cutler to the first regents professorship, and he served as regents professor of economics from 1981 to 1983 when he retired from the university.

Particularly sensitive to the social responsibilities of Dr. Cutler's office, Enid and Howard spent a great deal of time developing positive community relations, gaining the respect, and support of the community for the Fairbanks campus and its programs. The Cutlers personally promoted the goodwill of the university through their very active participation in community affairs. They have remained active in the community, regularly attending, and participating in events throughout the year. Enid Cutler is also a well-known portrait artist.

When Dr. Cutler retired from the university, the Cutlers could have chosen to live anywhere but they decided to retire in Fairbanks, AK. The Cutlers are people of integrity, grace, and charm. Their decision to retire in Fairbanks has been Alaska's gain.

Mr. President, I trust you and this body will join me in commending this outstanding Fairbanks couple who have always put forward a positive attitude about Fairbanks, the University of Alaska Fairbanks, and the great State of Alaska.•

MELANIE LESLIE, WINNER OF THE NATIONAL OUTSTANDING SECONDARY VOCATIONAL EDUCATION STUDENT AWARD

• Mr. SIMON. Mr. President, I would like to commend Melanie Leslie, of Beckemeyer, IL, for receiving the 1991 National Outstanding Secondary Vocational Student Award.

Melanie is a student in the Health Occupations Program at Central High School. While enrolled in this vocational program, she gained enough skill to obtain a nurse assistant position in a local nursing home. According to her teacher, Jan Rittenhouse,

> She tends to think of the nursing home residents as her responsibility and not as her job. Since her hiring she has grown to know and love each of "her" residents. * * * She is assertive and caring. Her success is evident as she has been accepted at Illinois State University for the fall of 1991. This student has definite goals for herself and has the ability to pursue her ambitions.

Last year, Melanie and 31 of her fellow health occupation students each raised $4,000 for a trip to the Soviet Union. During her 28-day visit, she visited hospitals, clinics, and cultural sights in Moscow, Leningrad, and Sochi.

Our country needs more students like Melanie Leslie, and I congratulate her on achieving this outstanding honor.•

JOSEPH P. CONNORS JOINS THE EAGLE COURT OF HONOR

• Mr. CHAFEE. Mr. President, during the summer of 1985, a very special 16-year-old young man from East Providence, RI, came to Washington, at my request, and served as a senatorial page. The page program is very challenging to the young people who are selected for it. Usually, it is their first

time away from home. Often the schedule is grueling. The pages quickly learn to recognize the faces of 100 Senators, previously unknown to them, and to make their way with ease through the maze of hallways and tunnels that connect the office buildings and the Capitol. It is no easy job.

All of the young people who serve as senatorial pages are special, but Joe Connors stood out from the rest. He broke new ground in the Senate and stood as an example of what could be accomplished by those who are physically and mentally challenged. Joe was the first individual with a serious disability to serve in the page program, and he served with distinction.

While Joe was in Washington, he became something of a celebrity, giving newspaper interviews and even appearing on the NBC morning news program "The Today Show." But this was not the first time he was recognized for his achievements. Joe was also the recipient of the Special Olympics Gold Medal in the area of the butterfly stroke.

I continue to be impressed by Joe. On June 10 he will join the Eagle Court of Honor. This is an honor bestowed on the Boy Scout who has earned 21 merit badges and is the highest tribute offered by the Scouts. It is no surprise to me that Joe has earned this special recognition.

The Boy Scouts stands as a symbol of patriotism, courage, and self-reliance. Joseph P. Connors epitomizes those ideals. I join Joe's friends and family in applauding his tremendous accomplishments.

I ask that a news article pertaining to this matter appear in the RECORD.

The article follows:

SENATE PAGE WHO SETS AN UNUSUAL EXAMPLE

Together a United States senator and a 16-year-old boy from East Providence have made an eloquent statement.

Sen. John H. Chafee appointed Joseph Connors a senatorial page for three weeks this summer. "I just felt in Joe's case," the senator said, "that it would illustrate to the world the capabilities of people with certain disabilities."

Joseph was born with Down's Syndrome or mongolism, a genetic defect manifested in mental retardation and physical disabilities. Last month he won a gold medal in the Special Olympics at the University of Rhode Island.

When he joined Senator Chafee's staff he gained a new distinction. He became the first person with such disabilities to be appointed a Senate page. He is doing things he's never done before and bearing responsibilities of which some might think him incapable. But he's making it and by his example is telling all of us that handicapped people have potential to live normal lives in the community and make a significant contribution.

When Joe and the senator appeared on NBC's "Today" show Wednesday morning, that message got network coverage. Stories in the print media have spread Joe's story far and wide, bolstering the hope that some day the stigma some still attach to being handicapped will be eliminated. When that day comes, Senator Chafee and Joe Connors will be ushered to the front ranks of those who broke down the barriers and helped to promote understanding and compassion for people who struggle daily to overcome mental or physical handicaps.•

TIANANMEN SQUARE: 2 YEARS LATER

• Mr. SIMON. Mr. President, it has been 2 years since the bloody June 4 incident at Tiananmen Square. The world was horrified by those events and inspired by the valor of the Chinese students. We have not forgotten, and we must not forget.

Our national goal today must be to seek to demonstrate to China the wisdom of change—far-reaching reform. If China is to truly join the world community of nations, it must reform itself in the same way as the formerly Communist nations of Eastern Europe and Mongolia. The blood of Tiananmen Square can never be blotted out or covered over. But a commitment by the Beijing regime to introduce democratic reforms and to cease its persecution of the leaders of the Tiananmen Democracy Movement would start the process of healing and begin the reconciliation between China's leaders and its citizens thirsting for freedom.

By contrast, the Chinese leadership's current path of prosecuting the leaders of the Tiananmen massacre is utterly defenseless. The martyred of Tiananmen Square were not criminals; they should and will be hailed as heroes.

We are now considering one way to express our abhorrence of China's human rights abuses—revoking China's most-favored-nation [MFN] trading status. This action would have a significant economic impact. It would send a clear signal to the Chinese leadership that their reprehensible human rights policies swayed by threats from Beijing that cutting off MFN would wreck United States-China relations; after all, MFN is not a right but a privilege. And there are more than dollars at stake here. I recall asking a black South African worker if he had been hurt by United States sanctions. The man said to me, "Senator, I've been hurting for 47 years. I've got three daughters. I can hurt some more if something is done which will help their lives."

There are a number of proposals currently being debated that would place conditions on the renewal of MFN status. The best solution may be a compromise in which the Chinese are told in clear terms that MFN will be revoked if the Government in Beijing does not improve its behavior in certain areas, including human rights.

Another concern of many of us is the status of Chinese students in the United States. In light of the continued repressive policies of the government in Beijing, it is understandable that many of them would not wish to return at the present time.

As a member of the Judiciary Committee Subcommittee on Immigration and Refugee Affairs, I worked with the leaders of both parties to add significant protections to the legal immigration bill to keep the students involved in the democracy movement who were in the United States supporting their colleagues at Tiananmen Square from being forced to return to certain repression.

In the House of Representatives, Congresswoman NANCY PELOSI stepped forward for the Chinese students. Ultimately, it was her legislation that gained overwhelming support in the House and in the Senate and among freedom loving people everywhere. Although it was vetoed by the President, much of the Pelosi legislation was incorporated into the President's Executive order.

Much work still needs to be done. While the new Immigration Act of 1990 expanded the Hong Kong quota and permitted Hong Kong residents to use their visas at any time through the year 2001, it did not contain long term protections for Chinese students. The Executive order provisions effectively expire on January 1, 1994. Students from the People's Republic of China who do not have permanent status by that time may once again be jeopardized.

That is why I will shortly be joining my friend and colleague Senator SLADE GORTON on legislation to require that the President specifically certify that it is safe for these students to return to China. If no certification is forthcoming, then the students will be able to stay here, first as temporary residents and then as permanent residents.

China's sons and daughters must not be forgotten. We hope that they will be able to return and help shape the political and other institutions of their homeland and carry it forward. But if that is not possible, and indications are that China remains out of step, then we must not let the protocols of diplomacy stand in the way of swift action for humanitarian and freedom's sake. This is an imperative for the cause of freedom and democracy throughout the world.•

ORDERS FOR TOMORROW

Mr. HOLLINGS. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m., Wednesday, June 5; that following the prayer, the Journal of the proceedings be deemed approved to date; that following the time reserved for the two leaders, there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

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

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. HOLLINGS. Mr. President, if there be no further business to come before the Senate today—and I see no Senator seeking recognition—I now ask unanimous consent that the Senate stand in recess under the previous order until 9:30 a.m., Wednesday, June 5.

There being no objection, the Senate, at 6:37 p.m., recessed until Wednesday, June 5, 1991, at 9:30 a.m.

HOUSE OF REPRESENTATIVES—*Tuesday, June 4, 1991*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We admit, O God, that we do not always act in concert with the good words we speak and though we call for righteousness and deeds of good will, our actions can fall short of our promises. May the words we say with our lips, O God, rise from the beliefs of our hearts and may all that we believe and say find relevance in our daily responsibilities and opportunities. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from California [Mr. CAMPBELL] please come forward and lead the House in the Pledge of Allegiance.

Mr. CAMPBELL of California led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

PRESIDENT "DOTH PROTEST TOO MUCH" AGAINST CIVIL RIGHTS

(Mr. VISCLOSKY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, President Bush's recent posturing on the civil rights bill suggests that he "doth protest too much" in arguing against equal opportunities for all Americans on the platform of being opposed to quotas.

The compromise bill we will be voting on today—with wide bipartisan support—specifically outlaws employers from using all quotas.

Last week, in a speech to graduates of the FBI Academy, the President demagoged that despite specific antiquota language that has been added to the civil rights bill, the legislation would force employers to use quotas to avoid being sued. Last weekend, he told West Point graduates that the antidiscrimination bill backed by the overwhelming majority in the House of Representatives is a "quota bill, regardless of how its authors dress it up."

It is unfortunate that the leader of our land, who should be uniting us against divisions in our society, is using divisive rhetoric on the issue of providing a just society.

Regrettably, the President seems more concerned with being politically right than correct on civil rights.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will announce that there will be five 1-minute requests received from each side of the aisle.

McCARTHY TACTICS ON CIVIL RIGHTS BILL

(Mr. GUNDERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Speaker, as we begin the civil rights debate of 1991 later today, I regret to inform the Members of an op-ed in the New York Times this morning under the title, "More Racism From the GOP."

I think it is indeed tragic that in the pursuit of their cause certain Members of this Congress will resort to such McCarthy tactics in 1991. This begins a personally offensive process we have prevented in this House of Representatives, which is questioning the motives of another Member of Congress.

In addition, I find it tragic that this particular op-ed not once, not twice, not three times, but four times has absolute blatant inaccuracies in advance of its particular position.

Mr. Speaker, I find it tragic that a party would use civil rights to pursue its own agenda of special interests.

Today, unfortunately, we are not going to debate civil rights. We are going to debate lawyers' rights. If you do not believe that, take a look at the contributions from the Trial Lawyers' Association to the Democrats on the House Education and Labor Committee, where in the last campaign they received $106,000 from the trial lawyers, while the Republicans received only $900.

Mr. Speaker, let us today debate the issues on their merits, and Mr. Speaker, I ask you to lead the effort to reject this kind of McCarthyism in 1991.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT ON DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1992

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on a bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes.

Mr. McDADE reserved all points of order on the bill.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

BAD TRACK RECORD OF SUPREME COURT ON CIVIL RIGHTS

(Mr. SMITH of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Florida. Mr. Speaker, today as the civil rights bill begins, we have heard and seen much more rhetoric, both the heat kind and the light kind. But let us put that aside. Let us look at the issue for what it really is.

We would not be here today having to deal with this if we had a Supreme Court that dealt truly with the issues as they were fashioned by the Constitution.

The President said that he has a good record on civil rights. The problem is that the people appointed by the Reagan-Bush administration, and now the Bush administration, have eroded the rights of people. We are here today not to deal with the issue of civil rights or quotas or affirmative action or reverse discrimination. This House did not want to do that again; we thought we had spoken. We are here because the track record of the Supreme Court is so bad on these issues, and this President appointed some of those people and his predecessor, with whom he served as Vice President, appointed some of those people.

We are here to try to undo the damage that has been done to the civil rights of all Americans by virtue of the appointments to the Supreme Court. The responsibility lies with the people who put them there. Make no mistake about that, people ought to understand that.

We are righting wrongs today, wrongs to women, to minorities, to white Americans, and to middle-class

Americans. That is what we are doing here today, no matter what anybody says about any of the other issues.

IN SUPPORT OF MICHEL SUBSTITUTE FOR H.R. 1

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, today we will be asked to cast our vote for one of three civil rights proposals. Two of these proposals—the Brooks substitute and the Towns substitute to H.R. 1—force us to choose between workers who believe that they have been discriminated against and small businessowners and their employees who may lose their livelihoods to costly litigation or huge damage awards from a civil rights suit.

My colleagues, you do not have to be forced into that impossible choice on the House floor. There is another option.

You can protect the civil rights of our Nation's workers and protect the economic viability of our Nation's smaller firms. How? By voting for the Michel substitute to H.R. 1.

Before you cast your vote for the Brooks substitute to H.R. 1, think about how you are going to explain that vote to the 20 million small businessowners around the country as they go broke.

It is easy to say you are for small business. It is how you vote that really counts.

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CIVIL RIGHTS: THE TIME HAS COME TO DO WHAT IS RIGHT

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, the fundamental principle that this Nation was founded upon is that all are created equal. But the fundamental reality in this Nation, however, is that we do not always do what we say. It is for that reason that laws, not words alone, are established guaranteeing equality.

The purpose of the civil rights bill that is before the House today is to fulfill the same promise for the civil rights of the 1960's, 1970's, and 1980's and indeed the 1990's when we passed the Americans With Disabilities Act to assure equal justice for all under the law.

I served as Director for the Office of Civil Rights in the 1970's, and I swore then an oath to enforce those laws. But even then the highest law enforcement official in the land, John Mitchell, who was Attorney General, established a tragic double standard when he said, "Watch not what we say but what we do."

The spirit of John Mitchell lives on in the words and actions of this administration, which says it is for civil rights but fails to exert the leadership to make them real.

Civil rights have advanced in this Nation not because they were popular but because they were right.

Mr. President, my colleagues, the time has come to do what is right.

CIVIL RIGHTS ACT: WHAT IT IS AND IS NOT

(Mr. HEFLEY asked and was given permission to address the House for 1 minute.)

Mr. HEFLEY. Mr. Speaker, there has been much debate already, and there will be a lot of debate today, over the so-called civil rights bill and what it is and what it is not.

It troubles me deeply to see us so eager to vote on a bill of such enormous importance while the bill still sends so many contradictory messages to the American people.

It says this is not a quota bill, but we would not be in this debate if it was not obviously a quota bill. Even worse than just a quota bill, if you hire by quota in this bill you face a lawsuit, if you do not hire by quota you still face a lawsuit.

It says it will not force employers to hire by the numbers, but it is clear that numbers, not people, are what this bill is all about. It says it outlaws race-norming practices, while it is plain to see that the quotas in this bill would encourage race norming. It says it is necessary to restore lost civil rights, but it departs from all the principles of the original 1964 Civil Rights Act.

I say if this bill is truly worthy of being passed into law, it should be absolutely clear in our minds what exactly this bill will do for America or what this bill will do to America.

DON'T WALK AWAY FROM SPACE STATION FREEDOM

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, Congress has made the development of our space station into a political football—kicking it around, mandating its redesign, calling for additions and subtractions. And as a result, Congress has become a partner in its development whether we like it or not. Now some of my colleagues want to walk away from their responsibility and cancel the project. They want to kill space station Freedom.

By canceling the space station, we would be walking away from our manned space program. Space station Freedom is the cornerstone for manned exploration of space.

We would be walking away from global leadership. Space station Freedom represents a symbol of our determination to retain technological leadership in an increasingly competitive world.

We would be walking away from jobs. Space station Freedom currently provides good high-technology jobs for almost 100,000 Americans.

We would be walking away from our responsibilities to our children. Space station Freedom is the bridge between us and the next generation of Americans. It is a torch that will inspire our children and stimulate their interest in math, science, and engineering.

Mr. Speaker, if we canceled space station Freedom, this country in effect would be walking away from all of this and more. I urge my colleagues not to walk away from the frontier of space. Do not cancel our most important space project. Let us keep space station Freedom alive.

SALUTING SECRETARY OF STATE FOR HIS EFFORTS TO BRING PEACE TO THE MIDDLE EAST

(Mr. COUGHLIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COUGHLIN. Mr. Speaker, all Americans owe a debt of gratitude to our outstanding Secretary of State, James A. Baker III, for his courageous, tenacious, tireless pursuit of a just peace in the Middle East. Ever loyal to President Bush, Jim Baker is also one of the heroes of the Persian Gulf.

The nations of that strife-torn part of the world should heed Secretary Baker's message. Among the lessons of Operation Desert Storm is that this is indeed a shrinking world, and one in which nations and peoples must talk to each other and learn to live in peace. The alternative is more human misery.

Secretary Baker's punishing schedule is only one indication of his deep understanding of the facts and players in world diplomacy and his belief in the cause of peace.

In my 23 years in Congress. I have never known a better, more dedicated, more patient, or more articulate Secretary of State.

The Nation is fortunate for the service of Jim Baker at this critical time, and I join many, I know, in sending him our heartfelt and prayerful thanks.

THE JAPANESE ARE NOT CONCERNED ABOUT AMERICA, THEY ARE CONCERNED ABOUT JAPAN

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Japan spends $100 million a year to lobby our Congress. In addition, Japan invests at an average of $400 million a year to buy our landmarks and to gain access to our business and industry.

But Japan says that is not enough. In an effort to influence American public opinion in their favor, Japan is embarking on a new program; their companies will in fact donate $500 million to American charities.

Now, that is $1 billion a year. Now listen to what the Japanese spokesman said; "We need that to quiet the Japan-bashers in America."

Mr. Speaker, I say this: What the Japanese could not do with the bombs at Pearl Harbor, they are doing to America with dollars and yen. That is not Japan-bashing, that is the truth.

Any Member of Congress, to any foreign nation that will invest $1 billion a year in America, they are not concerned about America, they are concerned about Japan, and Congress had better take a good look at that.

CIVIL RIGHTS: UNINTENTIONAL DISCRIMINATION

(Mr. FAWELL asked and was given permission to address the House for 1 minute.)

Mr. FAWELL. Mr. Speaker, there is a lot of emotionalism with regard to the Civil Rights Act. But I wanted to point out one aspect of it which may be overlooked.

When an employer attempts to defend itself against a charge of disparate impact, which is unintentional discrimination, which involves nonselection employment practices, that is something other than hiring practices, believe it or not he has no defense under this bill, under the substitute.

For instance, let us take a wage plan; that is, of course, an employment practice. It is subject to disparate impact analysis or unintentional discrimination.

A wage plan always produces some disparate impact, any wage plan, and since wage rates relate to market forces and to collective bargaining agreements, for instance, then a defense as is offered in the substitute, which only relates to "effective job performance", means as a practical matter the employer has no defense whatsoever. All that the employer can do if he does not want to be violating the act and have an unlawful employment practice, of course, is to eliminate all the unintentional discrimination from basically solid and reasonable business practices, which may be based upon race, religion, sex, or national origin. And that, of course, means quotas. And that is what the bill is about. In many, many cases, I know it is hard for people to accept that, but it is too bad that not all of us have had the opportunity to go over these bills. There are quotas there. You have a wage plan, there is no defense for the employer to its disparate impact, so the employer would simply have to plead guilty to the charge of unintentional discrimination.

Mr. Speaker, I think that is unfortunate.

CIVIL RIGHTS: THERE SHOULD BE NO NECESSITY FOR A BILL

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, in 1 minute I cannot express all the gratitude I have to people for making it possible for me to have a record today. Forty years ago I missed the last vote I failed to cast on a legislative issue. So, for 40 years I have not missed a legislative vote. I am very proud of that, but I am very grateful to the people in the Congress and also to my family who made it possible for me to make it to the floor for things of that nature. I am also very grateful that our beloved colleague DANTE FASCELL has made this information public.

Before I close my remarks. I would like to say I had an experience earlier this year when I was seeking new tips for my cane. I was out in the sleet and cold of early February, and I could not get across the street. A little black lady that I had never met in my life said, "You are trying to get across the street, aren't you?" And I said, "Yes, I am." She said, "I will take care of that." So she went with her umbrella, waved it in the traffic, and we got across.

That is what we ought to be thinking about, really, when you think about human beings today, that each of us are brother and sister and we ought not really have to have a law to make us behave that way.

But I am grateful that that lady was so kind to me, and I am grateful to the Congress for allowing me to set this voting record which I have set today.

AMERICANS OPPOSE UNLIMITED DAMAGES

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, the polls have not changed. H.R. 1 has not changed. It is still the Lawyer's Full Employment Act of 1991. Let me repeat the poll results that you heard on the floor before.

H.R. 1 provides, for the first time, for jury trials, unlimited punitive and compensatory damages in employment law cases. In this Penn & Schoen survey, 70 percent of respondents say that remedies should be based on lost wages and benefits, as in current law, and not be allowed to collect unlimited damages.

The Brooks-Fish compromise, which caps punitive damages at $150,000 but still allows unlimited compensatory awards, is unaffordable for Main Street business. This is merely a cosmetic change.

In addition, 54 percent oppose court trials for these cases; rather, they believe existing administrative processes should be used to resolve the case.

The Brooks-Fish substitute goes too far beyond current law. I urge my colleagues to heed the results of this poll and reject H.R. 1 and the Brooks-Fish substitute.

PROVIDING FOR CONSIDERATION OF H.R. 1, CIVIL RIGHTS AND WOMEN'S EQUITY IN EMPLOYMENT ACT OF 1991

Mr. WHEAT. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 162 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 162

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and said substitute shall be considered as having been read. No amendment to the bill or to said substitute shall be in order except those amendments printed in the report of the Committee on Rules accompanying this resolution, and all points of order against the amendment printed in the report are hereby waived. Said amendments shall be considered in the order and manner specified in the report, shall be considered as having been read, and shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a Member opposed thereto. Said amendments shall not be subject to amendment. If more than one amendment is adopted, only the last amendment which is adopted shall be considered as finally adopted. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendment as may have been adopted, and any Member may demand a separate vote in the House on the last amendment in the nature of a substitute made in order as original text by this resolu-

tion. The previous question shall be considered as ordered on the bill and amendment thereto to final passage without intervening motion except one motion to recommit.

POINT OF ORDER

Mr. SOLOMON. Mr. Speaker, I make a point of order against the consideration of this resolution, and I would ask to be heard on my point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. SOLOMON. Mr. Speaker, this resolution violates House rule XI, clause 4(b), which states that "the Committee on Rules shall not report any rule or order * * * which would prevent the motion to recommit from being made as provided in clause 4 of rule XVI."

And the relevant portion of clause 4 of rule XVI states that, "after the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution."

Mr. Speaker, on January 3 of this year, I wrote to you, the majority leader, and the chairman and members of the Rules Committee. With that letter I transmitted a 48-page report prepared by the Rules Committee minority staff entitled, "The Motion to Recommit in the U.S. House of Representatives: The Rape of a Minority Right."

That paper carefully traced the legislative history and intent behind what is now clause 4(b) of rule XI and clause 4 of rule XVI. In essence that report demonstrated beyond any doubt that the whole purpose of the two rules was to give the minority a final vote on its legislative position.

The House already had another provision in rule XVII dating back to 1880 which provided for one motion to recommit, with or without instructions, pending the adoption of the previous question or after it is ordered. But the new rule, which applies only to bills and joint resolutions after the previous question is ordered, was specifically set apart from that to clearly reserve to the opponents the right to offer the motion and get a vote on a final amendment in the form of instructions if the opponents so desired.

As the author of the new rule, Representative John Fitzgerald, a Democrat from New York, put it on offering the language back on March 15, 1909, and I quote:

> Under our present practice, if a Member desires to move to recommit with instructions, the Speaker, instead of recognizing the Member desiring to submit a specific proposition by instructions, recognizes the gentleman in charge of the bill and he moves to recommit * * *

and Representative Fitzgerald concluded:

> Under our practice the motion to recommit might better be eliminated from the rules altogether.

Mr. Speaker, the author left no doubt that he was specifically offering this new House rule to give the opponents a final vote on a proposition in the form of instructions.

I will not quote at length today all the Speakers who have subsequently reiterated this purpose of the new rule. Let me just give you one. Quoting from Cannon's Precedents, volume 8, section 2727, Speaker Gillett, on October 7, 1919, said the following in ruling on a point of order:

> The fact is that a motion to recommit is intended to give the minority one chance to fully express their view so long as they are germane. * * * The whole purpose of this motion to recommit is to have a record vote on the program of the minority. That is the main purpose of the motion to recommit.

Mr. Speaker, the Chair has previously relied on a 1934 precedent to uphold the right of the Rules Committee to restrict the minority's right to recommit.

In that 1934 instance, a rule prohibited amendments to a particular title of a bill "during its consideration," meaning in the House and the Committee of the Whole. And the Chair upheld a point of order against a motion to recommit with instructions that attempted to amend that title.

Mr. Speaker, as the research paper I submitted to you last January made clear, that 1934 point of order was wrongly decided since, if the Rules Committee could prohibit some amendments from being offered in a motion to recommit, by logical extension it could prohibit all. And that would clearly nullify the whole intent of the rule which was to guarantee to the minority the right to offer an amendment in the motion to recommit with instructions if it wished.

The central issue, therefore, is not whether the Rules Committee has preserved the right of a straight motion to recommit, but rather if it has preserved the minority's right to a motion to recommit, in the words of the rule, "as provided in clause 4 of rule XVI." And what that rule's author "provided" for was the right to offer amendatory instructions. About that there should be no question after reading the history and precedents surrounding that rule.

Mr. Speaker, the rule before us does not protect the right to offer a motion to recommit with amendatory instructions because it makes in order a committee amendment in the nature of a substitute as the base bill for amendment purposes. And the adoption of that substitute by the House would preclude any further amendments in a motion to recommit unless the rule had included the words, "with or without instructions." That has been the traditional language included by the Rules Committee dating back to 1909 for the specific purpose of protecting the minority's prerogatives whenever a committee substitute is made base text.

I pointed this out during the Rules Committee's markup of this rule and offered the appropriate corrective language. My motion was rejected on a party line vote after it was made quite clear that the majority was intentionally denying this minority right because it did not want the minority to offer a further amendment. As the chairman put it, we were already given a substitute we could offer during consideration in the Committee of the Whole.

It is clear from the record and this rule that the majority has purposely denied this historic minority right which dates back to 1909.

I therefore urge, Mr. Speaker, that you uphold my point of order and the important principle involved here of preserving and protecting the right of the minority to have a final vote on its program in the motion to recommit. To do otherwise would be to render this rule meaningless and turn the clock back a century on this fundamental minority right on a civil rights bill pending before this House.

□ 1230

I beg you, Mr. Speaker, to rule in our favor.

The SPEAKER. Does the gentleman from Missouri [Mr. WHEAT] wish to be heard on the point of order?

Mr. WHEAT. Yes, Mr. Speaker, I do wish to be heard on the point of order.

Mr. Speaker, the gentleman from New York [Mr. SOLOMON] makes a point of order that the rule inhibits the motion to recommit and, therefore, according to the minority, violates clause 4(b) of rule XI.

Mr. Speaker, I respectfully disagree. Even if the rule prohibited the minority from offering the motion to recommit with instructions, the rule would not violate clause 4(b) of rule XI as long as a simple motion to recommit might be offered. The Rules Committee is not precluded from limiting instructions on a motion to recommit, and this is a well-established parliamentary point.

As the minority pointed out, Speaker Rainey did in fact rule in January 11, 1934, and was sustained on appeal. He said then:

> The Chair will state that the Committee on Rules may, without violating this clause, recommend a special order which limits but does not totally prohibit a motion to recommit pending passage of a bill or joint resolution such as precluding a motion containing instructions relative to certain amendments.

But, Mr. Speaker, as recently as October 16, 1990, the parliamentary point was reaffirmed. The Rules Committee reported a resolution making in order one motion to recommit which may not include instructions. The Speaker pro tempore on this occasion ruled: "Clause 4 of rule XVI does not guaran-

tee that a motion to recommit a bill must always include instructions."

Mr. Speaker, the precedents are clear and unequivocal. If the rule does not deprive the minority of the right to offer a simple motion to recommit the bill or a joint resolution, then the rule does not violate the spirit or the letter of clause 4(b) of rule XI.

Mr. Speaker, I urge that the point of order be overruled.

The SPEAKER. Does the gentleman from New York [Mr. SOLOMON] wish to be heard further on the point of order?

Mr. SOLOMON. Mr. Speaker, if I may, I wish to be heard just briefly in further opposition to the point of order.

Mr. Speaker, it might be argued that this rule does not prohibit all instructions and that the minority is therefore not prevented from getting a final vote on its program by offering general instructions.

Mr. Speaker, that argument just won't wash since the whole purpose of securing this right for the minority back in 1909 was to give it a chance to offer a final amendment in its instructions and to get a record vote by the House on that amendment.

Mr. Speaker, a motion to actually send a bill back to committee with general instructions, even if they contain an amendment, will not necessarily give the House a direct vote on that amendment since the committee is under no compulsion to report the bill back to the House. The measure could just as easily die in committee and the minority would thereby be deprived of the right to ever get a vote on its final amendment. As such, general instructions do not serve the original intent of the rule which was to permit instructions to report back forthwith and thereby give the House a chance to immediately vote on the minority amendment.

In conclusion, Mr. Speaker, according to Procedure in the House, 97th Congress, chapter 5, section 1.2, "The Speaker's role is an impartial one, and his rulings serve to protect the right of the minority to be heard." Mr. Speaker, I urge you to exercise your traditional role in protecting this longstanding right of the minority to be heard through the motion to recommit. Let us be fair in this House.

The SPEAKER. Does the gentleman from Missouri [Mr. WHEAT] desire to be heard further on the point of order?

Mr. WHEAT. Yes, I do, Mr. Speaker.

Mr. Speaker, it is clearly established according to the precedents of the House that while a motion to recommit is guaranteed to the minority, that motion to recommit need not necessarily contain instructions and may be precluded from instructions relative to certain amendments.

Mr. Speaker, I would ask that the Chair overrule the point of order of the minority.

The SPEAKER. The Chair is ready to rule.

Under clause 4(b) of rule XI, the authority of the Committee on Rules to propose special orders of business is not absolute. Clause 4(b) of rule XI contains the following limitation on that authority:

> The Committee on Rules shall not report any rule or order which provides that business under clause 7 of rule XXIV shall be set aside by a vote of less than two-thirds of the members present; now shall it report any rule or order which would prevent the motion to recommit from being made as provided in clause 4 of rule XVI.

Pertinent to the latter restriction, clause 4 of rule XVI addresses the motion to recommit in the following terms:

> After the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution.

Under precedent dating to 1934—Speaker Rainey, January 11, 1934, sustained on appeal—and followed as recently as 1990—October 16, 1990, sustained by tabling of appeal—the Committee on Rules may, without violating clause 4(b) of rule XI, recommend a special order that limits but does not wholly preclude a motion to recommit after the previous question is ordered on passage of a bill or joint resolution.

A special order that does not preclude a simple motion to recommit does not "prevent the motion to recommit from being made as provided in clause 4 of rule XVI." Clause 4 of rule XVI does not guarantee that a motion to recommit after the previous question is ordered on passage of a bill or joint resolution may always include instructions.

Under the terms of the pending special order, only a motion to recommit with instructions to report an amendment forthwith might be disallowed—if the bill were entirely rewritten by the adoption of a substitute in the House. In no event would the pending rule disallow a simple motion to recommit or even a motion to recommit with general instructions.

Accordingly, the Chair, in support of the precedent established by Speaker Rainey and reestablished last year, overrules the point of order.

Mr. SOLOMON. Mr. Speaker, out of respect for you, I will not appeal the ruling of the Chair, but I would hope that perhaps our Republican leader and you could sit down and discuss the long-range plans that deal with this particular subject. We feel very strongly about it, but I do understand the Chair's ruling.

The SPEAKER. The Chair thanks the gentleman for his consideration.

The gentleman from Missouri [Mr. WHEAT] is recognized for 1 hour.

Mr. WHEAT. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from New York [Mr. SOLOMON] pending which I yield myself such time as I may consume. During consideration of this resolution, Mr. Speaker, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 162 is a modified open rule providing for 3 hours consideration of H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991, to be equally divided between the chairman and ranking minority member of the Committee on the Judiciary. The bill would amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment.

The resolution makes in order the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill. Said substitute is to be considered as having been read.

The rule further makes in order the following three amendments printed in the report accompanying this resolution, to be considered in the following order: First, the Towns-Schroeder substitute, second, the Michel substitute, and third, the Brooks-Fish substitute. One hour of debate to be equally divided between proponents and opponents is provided for each substitute. The rule further provides that the amendments are not subject to amendment.

If more than one amendment is adopted, only the last amendment which is adopted shall be considered as finally adopted. All points of order against all the amendments are hereby waived. At the conclusion of the consideration of the bill for amendment, the rule provides for one motion in recommit.

The issues in H.R. 1 are not new; they have been discussed extensively last year and this year. The committees have allocated countless hours in hearings and meetings to the consideration of civil rights legislation. Both the Committee on the Judiciary and the Committee on Education and Labor are to be commended for the excellent work they have done with regard to this bill.

Last year this Chamber debated civil rights legislation for more than 10 hours altogether. The rule before the House today provides 6 hours for debate and four alternatives from which to choose.

Mr. Speaker, the need for enactment of this civil rights legislation should be widely recognized. More than 25 years after the landmark Civil Rights Act of 1964, discrimination in the workplace continues—as a study recently completed by the Urban Institute documents.

The study sent matched pairs of white and black men to compete for the same jobs—men with the same qualifications and similar abilities. The study found that white applicants

were three times as likely to receive a job offer and almost three times as likely to advance in the hiring process. Fifteen percent of the white applicants received job offers, compared to 5 percent of the blacks. In addition, white men advanced in the hiring process 20 percent of the time, compared to only 7 percent for black men.

Other findings of the study showed that black applicants were treated rudely or unfavorably in 50 percent of their employment efforts, while white men received unfavorable treatment in 27 percent of their job searches.

The results refute popular arguments that current hiring decisions are colorblind or that blacks receive preferential workplace treatment. Affirmative action programs do not foster reverse discrimination by establishing job quotas for minorities or deny employment opportunities to more qualified white applicants.

Despite this evidence to the contrary, public perception persists that minorities now have unfair advantages over whites in hiring. Several national opinion polls indicate that many people believe that to be true. We can do better than fanning the flames of racial disharmony. We must demand of ourselves higher standards than that of political posturing and pandering to prejudice.

Mr. Speaker, it is time for this Chamber to act—for this Congress to act, for the President to act—affirmatively. Discrimination in employment, on account of race, gender, ethnicity, or physical handicap, has no place in America. We are capable of overcoming divisiveness and transforming destructive discrimination into productive diversity. Let us get on with the task before us.

Mr. Speaker, I reserve the balance of my time.

□ 1240

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding, and yield myself such time as I may consume.

Mr. Speaker, I think it is appropriate as we approach the 215th anniversary of our Declaration of Independence and the inalienable rights it espouses, that we should be debating a civil rights bill.

However, I think it is highly inappropriate that we should be considering this civil rights bill under a gag rule that virtually denies most Members of this body their right to fully represent their constituents.

Mr. Speaker, what kind of signal are we sending to the world about this great democracy when we must bring a civil rights bill, yes, a civil rights bill, to the floor of the people's House under a procedure which denies the people the full representation they expect and deserve?

To my friends and colleagues on the other side of the aisle, self-professed Democrats all, I say, "for shame, for shame, for shame; you dishonor your own name." What has democracy come to if it has come to this?

Is there some great tradition or precedent which says that a civil rights bill should not be exposed to more than three amendments? Of course not.

Quite to the contrary, on 9 of the 15 major civil rights bills this House has considered since 1957, there has been a completely open amendment process, including the landmark Civil Rights Acts of 1957, 1964, and 1968.

On three occasions the bills were so noncontroversial that they were considered under suspension of the rules. On only three occasions, once in 1988, and twice last year, have civil rights bills been considered under a restrictive rule like this.

So the great tradition in this House is to consider civil rights legislation under an open amendment process—a process under which all 435 House Members might have an opportunity to fully debate and offer amendments—a process under which a House majority can fully and freely work its will as the Founders of this Government intended.

Yet, Mr. Speaker, when I offered that traditional, open rule for this civil rights bill in the Rules Committee last week, it was shot down on a straight party-line vote, with every Democrat voting against allowing their colleagues a chance to exercise their full rights as Representatives.

We then attempted to make in order the 10 Republican amendments that were requested before the Rules Committee—most of which had already been offered in the Judiciary or Education and Labor Committee markups. Those 10 amendments were also denied on a straight party-line vote.

These were not flaky amendments, they were not frivolous, and they were not dilatory. Each Member had a legitimate viewpoint that should have been allowed debate and a vote on this House floor today. Yet they are being gagged, denied, and shut out by this rule.

Mr. Speaker, let me say that at least this rule is a little fairer than the original one that was being contemplated—a rule that would have permitted a Democrat amendment to the Republican substitute but no Republican amendments to the Democrat substitute. Instead, we now have three free-standing substitutes with each being given a clean up or down vote.

For this small favor, I want to express my gratitude to Chairman MOAKLEY, the Rules Committee majority, and the majority leadership. It makes things a little less unfair, though not fair enough to justify support for this rule.

Mr. Speaker, if all three substitutes fail, we will then have a chance to vote on a fourth substitute—the one reported by the Education and Labor Committee that is made the base text for amendment purposes under this rule.

Should that fail as well, we fall back to H.R. 1 as introduced by Mr. BROOKS. So what we are talking about under this rule is giving the majority party up to four bites of the apple and the minority party just one. How's that for fair?

But that is not all. To add insult to injury, this rule does not give the minority its traditional right since 1909 to offer a motion to recommit, "with or without instructions."

I know there are Members on both sides of this aisle who think we should have the opportunity to offer individual amendments to this bill, like Representatives SCHROEDER, MINK, and KOPETSKI all on your side of the aisle; and for that reason I am urging defeat of the previous question so that we can offer an open rule. I ask you to join us.

Here is that chance for those of you who claim to be liberals to stand up for equal rights for all House Members and the American people that you represent.

A vote against the previous question will be a vote for true democracy and the equality of opportunity for all Members to be coequal participants in shaping this legislation.

In closing, let me leave you with these words form Jefferson's first inaugural:

> Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression.

My colleagues, strike a blow against oppression and for minority rights by opening this process up to all the people's Representatives. Let us be both rightful and reasonable by letting the majority work its will.

You have a 2 to 1-plus majority. What are you afraid of, I say to Members, support the defeat of the previous question, and we will bring back an open rule, that will allow every Democrat amendment and every Republican amendment to be offered on this floor. What could be more fair on a civil rights bill that we debate here today?

Mr. Speaker, I reserve the balance of my time.

AN AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SOLOMON

Strike all after the resolving clause and insert in lieu thereof the following:

"That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed two hours, one hour to be

equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and said substitute shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions.".

REPUBLICAN AMENDMENTS FOR CIVIL RIGHTS RULE REJECTED ON A PARTY LINE VOTE

1. Rep. Solomon: Offer open rule substitute;
2. Rep. Hyde: Restore pre-Wards Cove law;
3. Rep. Moorhead: Eliminate retroactive application;
4. Rep. McCollum: Provide a new remedy for on-the-job harassment with a $150,000 damage cap;
5. Rep. Hyde: Prohibit race-norming in test scores;
6. Rep. Fawell: Provides that an employer's use of measures of academic achievement are presumed to meet the job relatedness requirements;
7. Rep. Fawell: The definition of business necessity shall not be construed to exclude the use of subjective evidence;
8. Rep. Campbell (CA): Strikes provisions overturning Martin v. Wilks;
9. Rep. Young (AK): Assures that requirements of bill do not apply retroactively to the Wards Cove case situation;
10. Rep. Grandy: Limits to $150,000 the total amount of punitive and compensatory damages that could be recovered in intentional discrimination cases, excluding any lost back pay;
11. Rep. Gunderson: Deletes provisions assuring attorneys fees in specified cases; and
12. Rep. Solomon: Offer language to permit motion to recommit, "with or without instructions."

PROCEDURES FOR CONSIDERATION OF MAJOR CIVIL RIGHTS BILLS

Bill Name, Number Procedure, Date, and Disposition:

Civil Rights Act of 1957 (H.R. 6127): Open rule (H. Res. 259), 4-days general debate; adopted 291–117, June 5, 1957.

Equal Pay Act of 1963 (H.R. 6060): Open rule (H. Res. 362), 2-hours general debate; adopted 362–9, May 23, 1963.

Civil Rights Act of 1964 (H.R. 7152): Open rule (H. Res. 616), 10-hours general debate; adopted voice vote, Jan. 31, 1964.

Voting Rights Act of 1965 (S. 1564): Open rule (H. Res. 440), 10-hours of general debate; adopted 308–58, July 6, 1965.

Age Discrimination in Employment Act of 1967 (H.R. 13054): Suspension of the rules; passed 344–13, Dec. 4, 1967.

Fair Housing Act of 1968 (H.R. 2516): Open rule (H. Res. 856), 3-hours general debate; adopted 330–77, Aug. 15, 1967.

Education Amendments of 1972, Title IX, (H.R. 7248): Open rule (H. Res. 661), 4-hours general debate; adopted 371–7, Oct. 27, 1971.

Rehabilitation Act of 1973 (H.R. 8070): Passed under suspension of the rules, 384–13, June 5, 1973.

The Equal Credit Opportunity Act of 1974 (H.R. 11221): Suspension of rules; passed 377–19, April 8, 1975.

Age Discrimination Act of 1975 (H.R. 3922): Open rule (H. Res. 794), 1-hour general debate; adopted 397–0, Feb. 5, 1974.

Voting Rights Act Amendments of 1981 (H.R. 3112): Open rule (H. Res. 222), 2-hours general debate; adopted by voice vote, Sept. 28, 1981.

Civil Rights Restoration Act of 1988 (S. 577): Modified closed rule (H. Res. 391), 1-hour general debate, only one substitute amendment allowed; previous question adopted, 252–158; rule adopted, voice vote, March 1, 1988.

Fair Housing Act Amendments of 1988 (H.R. 1158): Open rule (H. Res. 477), 1-hour general debate; adopted 394–1, June 22, 1988.

Americans with Disabilities Act of 1990 (H. R. 2273): Modified closed rule (H. Res. 394), 1½ hours general debate, only 5 amendments made in order; adopted 237–172, May 22, 1990.

Civil Rights Act of 1990 (H.R. 4000): Modified closed rule (H. Res. 449), 3-hours general debate, only 3 amendments in order; previous question adopted, 247–171; rule adopted, 246–175, Aug. 1, 1990.

SUMMARY

Of the 15 major civil rights bills identified here spanning the years 1957 to 1990, nine were considered under an open amendment procedure, including the landmark 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act.

Of the six civil rights bills considered under a restrictive amendment process, three were considered under suspension of the rules (the 1967 Age Discrimination in Employment Act and the 1973 Rehabilitation Act, and the 1975 Age Discrimination Act), with less than 20 Members opposing each bill.

Aside from these three suspension bills, the restrictive amendment process as applied to civil rights legislation is a very recent development, dating back only to 1988. Put another way, of the 12 major civil rights bills considered under order of business resolutions or "rules", only three have limited the amendment process.

(Prepared by Don Wolfensberger, Minority Chief of Staff, House Rules Committee.)

HOUSE OF REPRESENTATIVES,
Washington, DC, January 3, 1991.

Hon. TOM FOLEY,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I am enclosing for your information and consideration a research paper prepared by the Rules Committee minority staff entitled, "The Motion to Recommit in the House: The Rape of a Minority Right."

The paper carefully traces the legislative history and intent behind the 1909 rules guaranteeing to the opponents of a bill the right to offer a recommital motion *with instructions* and barring the Rules Committee from denying the right "*as provided by*" that provision.

The paper documents that the rule was originally adopted *specifically* for the purpose of allowing a political minority the right to offer *its position* for a final vote of the House through instructions in the motion to recommit. And it goes on to conclude that a 1934 ruling upholding an order of business resolution (or rule) barring certain amendments during consideration of a bill, including as part of recommital instructions, was erroneously decided. Consequently, last year's ruling of the Chair, based on the 1934 precedent, upholding a rule denying any instructions in a motion to recommit was also contrary to the legislative intent behind the rule.

It is my hope that in light of this evidence the majority leadership and the Rules Committee will reconsider their past restrictions and denials of this minority right in the 102nd Congress, and thereby avoid future confrontations and points of order over such a fundamental guarantee.

Sincerely yours,

GERALD B. SOLOMON,
Member of Congress.

Enclosures.

THE MOTION TO RECOMMIT IN THE HOUSE: THE RAPE OF A MINORITY RIGHT

(By Don Wolfensberger)

EXECUTIVE SUMMARY

The motion to commit a matter to a committee has existed in the rules of the U.S. House of Representatives since the first Congress in 1789. The terms "refer," "commit," and "recommit," are nearly interchangeable but their correct usage depends on the parliamentary situation.

In 1880 the House amended its rules to permit the motion to recommit a matter to a standing or select committee, with or without instructions, after the previous question was ordered on bringing the matter to a final vote. Previously it could only be offered prior to the ordering of the previous question. But, for the next fifty years in the House it was the practice that the majority manager of a bill was given priority recognition to offer the motion to recommit a bill just prior to the vote on final passage, either to cure a defect in the bill or simply to block the minority from offering the motion.

In 1909, in a revolt against Republican Speaker Joe Cannon, a new rule was adopted to "give preference in recognition to a Member who is opposed to the bill or joint resolution." As the author of the new rule explained it, the purpose of the new rule was to permit the minority "the right to have a vote on its position on great public questions."

Under the subsequent precedents, priority in recognition was given to the most senior minority party member on the committee of jurisdiction who was opposed to the measure. Moreover, under the new rule, the Rules Committee could not deny this minority right.

The Member offering the motion to recommit had complete discretion to offer the recommital motion in one of three forms: a straight motion to recommit the measure to a committee and thereby kill the bill; a motion to recommit with general instructions, for instance, to require that committee hearings be held on the measure; or a motion to recommit with instructions to report back to the House "forthwith" with a specified amendment—a means whereby the minority could get a final recorded vote on a direct amendment to the bill without actually sending the measure back to committee—the main purpose of the new rule.

The minority party's right to offer a motion to recommit of its choosing has re-

mained nearly inviolate for the better part of the twentieth century. In recent times however, the majority has moved increasingly to restrict this right through order of business resolutions or "rules" providing for the consideration of legislation.

In 1934 the Speaker overruled a point of order that the Rules Committee had abridged the minority's recommital rights by reporting a rule that prohibited amendments to a title of a bill "during its consideration," i.e., in the House as well as in the Committee of the Whole. This effectively barred amendatory recommital instructions since the motion to recommit is offered in the House, just prior to final passage of a bill.

The logical extension of that ruling was that a rule could bar all amendments in the House and thereby preclude any amendatory instructions in a motion to recommit. However, it was not until the 99th Congress (1985–86) that the majority began suppressing the minority's right to this extreme with some regularity. Not only were rules reported barring all but a few amendments "in the House or in the Committee of the Whole," but some were so brazen as to directly state that the motion to recommit "may not contain instructions."

The majority has attempted to justify such radical proscriptions on the minority's recommital right on grounds that the rules involved already provided for a vote in the Committee of the Whole on a minority alternative, and therefore allowing a motion to recommit with amendatory instructions would be given the minority two bites of the apple. The minority's response is that it has an historic right to that final bite, regardless of how many previous bites anyone has taken. Moreover, under rules which already severely restrict the amendment process in the Committee of the Whole, argues the minority, it should be all the more important to preserve this minority right to finally perfect a bill by amendment.

The majority's denial of this minority right has accelerated in the 100th and 101st Congresses, even under what was to be the more benign and bipartisan rule of the new Speaker, Rep. Tom Foley. The complete denial of amendatory instructions was finally tested on a point of order raised by the Republican Leader, late in the 101st Congress. The Chair, relying on the 1934 precedent, upheld this final stripping of the minority.

The purpose of this paper is to trace the evolution of the motion to recommit and the final assault on this minority right by the majority—an assault that culminated in what can fairly be termed "the rape of a minority right." It is the conclusion of this paper that the 1934 precedent on which the 1990 ruling was based was wrongly decided and should be reversed.

[NOTE: The author is minority counsel for the Subcommittee on the Legislative Process of the House Rules Committee.]

THE RECOMMITTAL RULE REVOLT

The motions to refer, commit or recommit are permitted in four different situations under House Rules today: (1) under clause 4, Rule XVI, the motion to refer is listed as the sixth of seven motions in the priority of motions permitted when a matter is under debate; (2) under the second sentence of that same clause, a motion to recommit is permitted by a Member opposed to the measure after the previous question has been ordered on final passage; (3) under Rule XVII, clause 1, a motion to commit, with or without instructions, is permitted pending the motion for or after ordering the previous question; and (4) under Rule XXIII, clause 7, the motion to refer, with or without instructions, is permitted in the House pending a vote on the motion to strike the enacting clause.

The motion to "refer" in Rule XVI was originally called the motion to "commit" and was listed as the second of four in the priority of motions listed in the Rules adopted by the first Congress in 1789. Since early rulings by Speakers held against a referral motion after adoption of the previous question, in 1880 the House adopted Rule XVII, clause 1, permitting a motion to commit with or without instructions either before or after the previous question is ordered. According to the precedents, this rule was authorized so as to afford "the amplest opportunity to test the sense of the House as to whether or not the bill is in the exact form it desires."[1]

However, for the first 30-years under the rule, it was the practice of the Chair to recognize a Member friendly to the motion to recommit. As Speaker Joe Cannon (R–IL) recounted the practice:[2]

"The object of this provision was, as the Chair has always understood, that the motion should be made by one friendly to the bill, for the purpose of giving one more chance to perfect it, as perchance there might be some error that the House desired to correct."

Speaker Champ Clark (D–MO) later reflected a bit differently on the earlier object of this practice:[3]

"The chairman, or whoever had charge of the bill, simply moved to recommit * * * and the Chair would recognize the gentleman in control of the bill, and he would make the pro forma motion to recommit and thereby cut the minority out of making a motion to recommit that had some substance in it."

Consequently, the practice was substantially changed in 1909 in the first in a series of "rules revolts" against Speaker Cannon. A group of insurgent Republicans of his own party joined with the Democrats on March 15, 1909, in defeating the previous question on the majority Republicans' House rules package and substituting a set of Rules proposed by then Minority Leader Champ Clark.

Clark immediately moved the previous question on his substitute set of rules, but he was opposed by a junior member of his party, Rep. John Fitzgerald (D–NY) who protested being gagged and urged defeat of the previous question so that he might offer further amendments to the rules. Surprisingly, Fitzgerald prevailed in defeating the previous question, 180–203, and he was recognized to offer his substitute amendment to the rules resolution. Among other things, a new clause 4 was added to Rule XVI giving priority recognition for the motion to recommit to a Member opposed to the measure, and Rule XI was amended to prohibit the Rules Committee from operating any rule denying an opponent the right to recommit as provided by the new rule.

Specifically, the new clause 4, Rule XVI provided that, "after the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition to a Member who is opposed to the bill or joint resolution.[4]

In explaining this portion of his rules substitute, Rep. Fitzgerald said the following:[5]

"I believe the greatest legislative outrages that have been perpetrated in this country have been by means of special rules by which the majority has denied the minority the right to have a vote on its position upon great public questions.

"One of the amendments I submit provides that after the previous question shall have been ordered upon any bill or joint resolution, one motion to recommit shall be in order, and the Speaker shall give priority recognition to some one who is opposed to the bill."

And Fitzgerald went on to observe:[6]

"Under our present practice, if a Member desires to move to recommit with instructions, the Speaker instead of recognizing the Member desiring to submit a specific proposition by instructions, recognizes the gentleman in charge of the bill, and he moves to recommit, and upon that motion demands the previous question. When the previous question is ordered, the motion to recommit is voted down. Under our practice, the motion to recommit might better be eliminated from the rules altogether.

"In addition, there is a provision that the Committee on Rules shall not report any rule or order which will prevent the offering of a motion to recommit as just stated so that the practice that has been followed * * * can not hereafter prevail. The Rules Committee can not bring a rule which would provide that after so many hours of general debate the previous question shall be considered as ordered and that the House without intervening motion shall vote upon the passage of the bill."

EARLY PRECEDENTS ON THE MODERN RULE

In discussing the form and history of this rule, *Cannon's Precedents* observes from the debate on the rule that the change was occasioned by the practice of the Speaker recognizing the member in charge of the bill to offer the motion to recommit, "in effect nullifying the purpose of the motion. This amendment is intended to insure recognition of a Member actually opposed to the measure and afford the House a last opportunity to express its preference on the final form of the bill."[7]

Obviously this has reference to the right to offer a motion to recommit containing amendatory instructions since the House could already express its position on the bill as reported from the Committee of the Whole in the final passage vote.

This view is further bolstered by a ruling of Speaker Champ Clark on May 14, 1912, on a point of order against a rule from the Rules Committee which provided for discharging a House bill from committee, together with Senate amendments, disagreeing to the Senate amendments, and appointing conferees, without intervening motion. After quoting from *Jefferson's Manual* to the effect that rules are instituted as a check and control on the actions of the majority and a shelter and protection to the minority, the Speaker said the following:[8]

"Rules are made primarily to fix an order of business and maintain decorum. But they are also fixed in order that the minority in the lump and the individual member shall have all rights that are permissible in a legislative body."

And he went on to say:

"It is not necessary to go into the history of how this particular rule came to be adopted, but that it was intended that the right to make the motion to recommit should be preserved inviolate the Chair has no doubt whatever."

Another instructive discussion of this rule occurred on October 7, 1919, when a point of order was raised against a motion to recommit a tariff bill with instructions to report

[1] Footnotes at end of article.

back a substitute. The point of order was that the substitute had the effect of altering an amendment already adopted by the House.[9]

Speaking against the point of order, former Speaker Crisp (D-GA) said the following:[10]

"The object of the motion to recommit is clearly to give the minority of the House—the legislative minority and not the political minority—a chance affirmatively to go on record as to what they think this legislation should be, and if a motion to recommit does not permit that, then the motion is futile. * * * It is to give the minority the right affirmatively to go on record as to their views. If the motion to recommit does not mean that, it is absolutely a useless motion."

And Rep. Garret (D-TN) echoed these sentiments when he said:[11]

"The motion to recommit is regarded as so sacred that it is one of the few things protected against the Committee on Rules by the general rules of the House. It is expressly provided that the Committee on Rules may not bring in a resolution which will prevent one motion to recommit. Of course, the reason for that is to protect the minority of the House—that is, the legislative and not the political minority—in its right to present a concrete, comprehensive proposition of legislation. * * * If the Speaker should sustain this point of order, the practical effect would be to do by a parliamentary decision that which the Committee on Rules and the House itself can not do under the general rules of the House. It will practically destroy the efficacy of the motion to recommit with instructions."

Speaker Gillett (R-MA), in overruling the point of order, confirmed the above expressions on the purpose of the motion to recommit:[12]

"* * * the fact is that a motion to recommit is intended to give the minority one chance to fully express their views so long as they are germane. * * * The whole purpose of this motion to recommit is to have a record vote upon the program of the minority. That is the main purpose of the motion to recommit."

THE 1934 PRECEDENT

The first indication of an erosion in the minority's right to offer a recommital motion of its choosing appears in a 1934 precedent cited in *Deschler's Precedents*:[13]

"The Committee on Rules may not report any order or rule which shall operate to prevent the offering of a motion to recommit as provided in Rule XVI, clause 4, but such restriction does not apply to a special rule which may prevent a motion to recommit with instructions to incorporate an amendment in a title to which a special rule precludes the offering of amendments."

In that 1934 instance, a rule was called up from the Committee on Rules providing for the consideration of an appropriations bill for the Executive Office and various independent agencies, waiving certain points of order and prohibiting amendments to Title II of the bill "during the consideration" of the bill, meaning in the House as well as Committee of the Whole.

Rep. Snell (R-NY) raised a point of order against the rule on grounds that it violated Rule XI which prohibits the Rules Committee from denying the motion to recommit. In a colloquy prior to the point of order it was made clear by the majority that the intent of the rule was to confine the minority to offering a straight motion to recommit and prevent it from offering instructions.

In defense of his point of order, Rep. Snell said:[14]

"It has been the precedent for a great many years that under no circumstances will the minority be prohibited from making a motion to recommit and I have yet never heard anyone express a different opinion on policy or philosophy of the rules of the House. In this way the minority is allowed to place its position before the Congress, and, if enough Members approve of it, they are entitled to a roll-call vote."

Representative Bankhead (D-AL) responded: "There is nothing in this rule that would prevent any Member from offering a motion to recommit on any other phase of the bill except that covered by Title II.

Representative Snell replied: "I know that the interpretation they are putting on this rule is contrary to the spirit of the rules of this House and to every precedent of the House in the last 20 years."[15]

Nevertheless, Speaker Rainey (D-IL) overruled the point of order, saying:[16]

"The special rule, House Resolution 217, now before the House, does not mention the motion to recommit. Therefore, any motion to recommit would be made under the general rules of the House. The contention of the gentleman from New York that this special rule deprives the minority of the right to make a motion to recommit is, therefore, obviously not well taken."

But the Speaker went on to hold:

"It has been held on numerous occasions that a motion to recommit with instructions may not propose as instructions anything that might not be proposed directly as an amendment. Of course, inasmuch as the special rule prohibits amendments to title II of the bill H.R. 6663 it would not be in order after adoption of the special rule to move to recommit the bill with instructions to incorporate an amendment in title II of the bill."

And he concluded:

"The Chair, therefore, holds that the motion to recommit as provided in clause 4, Rule XVI, has been reserved to the minority and that insofar as such rule is concerned the special rule before the House does not deprive the minority of its right to make a simple motion to recommit. The Chair thinks, however, that a motion to recommit with instructions to incorporate a provision which would be in violation of the special rule, House Resolution 217, would not be in order."

The 1934 precedent is cited in the previous volume of *Deschler's*, "Authority of Committee on Rules; Seeking Special Rules." The heading to the precedent reiterates that the Rules Committee may not deny a motion to recommit, but adds that this does not prevent it from prohibiting amendments to a title of a bill and thereby barring such amendments in the motion to recommit as well. The precedent notes that the Speaker's ruling was appealed and upheld by a vote of 260-112.[17]

A "Parliamentarian's Note" at the end of the precedent contains the following observation:[18]

"Normally, such resolutions only prohibit certain amendments during consideration in the Committee of the Whole, allowing a motion to recommit with instructions in the House to add such amendments. This is apparently the only ruling by the Speaker on the authority of the Committee on Rules to limit, but not to prohibit the motion to recommit."

THE ASSAULT WEAPON

To understand the modern-day assault by the majority on the minority's right to recommit, it is useful to better understand the assault weapon being used—the order of business resolution or "rule." There are a variety of bullets that the majority can use in this weapon for the purposes of either seriously disabling or completely incapacitating the minority in its ability to offer a recommital motion of its choosing.

The customary "open rule" does four things: (1) it gives privileged status for the consideration of a specific bill in the Committee of the Whole House on the State of the Union; (2) it prescribes and allocates the general debate time on the bill, dividing it between the majority and minority parties on the committees reporting the bill; (3) it provides for the consideration of amendments under the five-minute rule; and (4) it provides that when the amended bill is reported back to the House from the Committee of the Whole, the previous question is ordered on final passage without intervening motion except one motion to recommit.

A common variation on this occurs when a committee reports an amendment in the nature of a substitute or a consensus substitute is developed by two or more committees after they have reported varying versions of the same bill. In such cases, the Rules Committee makes the amendment in the nature of a substitute in order as an original bill for the purpose of amendment in the Committee of the Whole. This is done in order to preserve the normal amendment process which allows for second degree amendments, that is, amendments offered to amendments to the base text of the bill. Without this language in the rule making the substitute original text for amendment purposes, only one amendment to the substitute could be offered at a time and it could not be perfected because that would constitute a third-degree amendment.

To further preserve the normal legislative process, the rules on such bills specify that when the committee amendment as amended is reported back to the House, a separate vote may be demanded not only on the substitute, but on any amendment adopted thereto the Committee of the Whole. Without this latter clause, the only separate vote that could be demanded would be on the substitute as amended.

And finally, such rules ordinarily provide for one motion to recommit, "with or without instructions," to preserve the right of the minority to offer amendatory instructions. Whereas it is impled in an open rule that instructions may be offered under the term, "one motion to recommit," that is not the case with a committee amendment in the nature of a substitute since an amendment already agreed to by the House may not be further amended.

Put another way, by including the term "with * * * instructions" in the rule, it is understood that, notwithstanding the rule prohibiting amendments to amendments finally adopted by the House, a further amendment to the amendment in the nature of a substitute is authorized in the motion to recommit.

A further complexity in modern-day rules is the practice of restricting the number of amendments that may be offered. While under an "open rule" any Member of the House may offer a germane amendment during consideration of the bill under the five-minute rule, under restrictive order of business resolutions the rule may specify that only certain amendments may be offered or even that no amendments are allowed. When a rule states that "no amendments to the bill or the committee amendment in the na-

ture of a substitute shall be in order except for those specified in the committee report to accompany this resolution," it is understood that this applies only to the consideration of the bill in the Committee of the Whole. It would still be in order to offer a germane amendment in the recommital motion, even though the amendment was not authorized for consideration in the Committee of the Whole by the special rule.

In recent years, though, the Rules Committee has been using new devices in order of business resolutions which limit or deny amendatory recommital instructions. There are two methods used for both limiting and denying such instructions: the indirect and this direct approach.

The indirect way a rule may limit amendments in a recommital motion is by use of langauge which prohibits all but specified amendments "in the House or in the Committee of the Whole." So, even though the rule may go on to allow for "one motion to recommit, with or without instructions," it is clear that those instructions may not include any amendment other than those specifically authorized by the rule.

If, for instance, the rule allowed for only one amendment, a minority substitute, and no other amendment was permitted in the House or the Committee of the Whole, the only amendatory instructions the minority could offer would be its original substitute offered in the Committee of the Whole. It could not even offer the most politically palatable portion of that substitute in its motion to recommit.

The direct ways a rule may limit the minority's right in a motion to recommit are either to specify in the rule what amendment may be offered in the recommital motion or to provide in the rule that no amendment may be offered in the motion to recommit that amends a particular title or section of the bill or that deals with a particular subject matter.

The indirect ways a rule may deny amendatory instructions in a motion to recommit are either by prohibiting any amendment to the bill "in the House or the Committee of the Whole," or by failing to specify that the motion to recommit may be "with or without instructions" when a committee amendment in the nature of a substitute has been made in order. Since such substitutes are invariably reported back to the House with amendments and adopted, the minority is barred in such instances from further amending in its recommital motion.

Finally, the direct way a rule may deny amendatory instruction in a recommittal motion is for it to indicate that the motion to recommit "may not include instructions."

RECENT PRECEDENTS

The most recently published precedents in the House, *Procedure in the U.S. House of Representatives* (97th Congress) contain instances in which the Rules Committee has proscribed the motion to recommit. An instance is cited on Dec. 4, 1975, in which a special rule for the consideration of a tax reform bill prohibited, with certain exceptions, amendments to the bill either in the House or the Committee of the Whole. And yet a motion to recommit was offered with instructions that the Ways and Means Committee not report the bill back to the House until an amendment was included providing that any revenues raised by the bill could not be used to finance government expenditures above a certain level. The precedent concludes, "No point of order was made against the motion," the implication being that one could have been raised.[19]

The same volume of precedents cites several other precedents to the effect that motions to recommit bills could not alter amendments already adopted by the House except by special rules allowing for motions to recommit "with or without instructions."[20]

But the volume also contains the first modern instances cited in which special rules have directly placed limits on motions to recommit. The first instance mandated the precise form any amendatory instructions must take to the pending campaign reform bill.[21] And the second rule involved language permitting one motion to recommit "which may include instructions if the House has not previously agreed to an amendment in the nature of a substitute."[22]

The Parliamentarian's note to this latter precedent explains the "unique language" in the most positive and charitable terms: [23]

"The unique language describing the permissable scope of the motion to recommit on this bill was added by an amendment in the Rules Committee and was intended to allow a motion to recommit with instructions to amend a portion of the bill which had already been amended, except where an amendment in the nature of a substitute had been adopted. The rule thus permitted instructions to eliminate or amend certain amendments already agreed to."

RECENT TRENDS

The limitations on the minority's right to freely offer motions to recommit with instructions, such as those cited in the above precedents, were apparently very rare occurrences. Yet they helped to lay the groundwork for a more sustained, deliberate and far-reaching assault on that right in recent times.

This paper focuses on recommital motions in rules in the 95th through 101st Congresses. This 14-year span begins in 1977—the first year of Rep. "Tip" O'Neill's (D-MA) 10-year rule as House Speaker and of Jimmy Carter's four-year span as President, and the first and only Congress in which Rep. Jim Delaney (D-NY) was to serve as chairman of the Rules Committee.

The Congress has subsequently been presided over by two other Speakers: Rep. Jim Wright (D-TX), Jan., 1987-June 6, 1989, and Rep. Tom Foley (D-WA) June 6, 1989 to the present. The Rules Committee has been chaired by Rep. Richard Bolling (D-MO), from 1979-82, Rep. Claude Pepper (D-FL), from 1983-1989; and Rep. Joe Moakley (D-MA), from 1989 to the present. And the country has witnessed the Republican presidencies of Ronald Reagan (1981-88), and George Bush (1989-present).

Despite the Republican occupancy of the White House for 18 of the last 22 years, House Republicans have retained their minority status for the last 34 consecutive years. In the 95th Congress (1977-78), Republicans in the House numbered 143 or 33% of the total membership. They peaked at 192 Members (44%) in the 97th Congress. And today, they comprise 176 or 40% of the 435 House Members.

Despite (or perhaps because of) a 23% increase in their numbers from the 95th Congress, House Republicans today perceive and regularly protest a marked increase in procedural abuses being heaped upon them by the majority party. The recent increase in the limits on and even denials of the minority's right to offer amendatory instructions in motions to recommit is but a small piece of this picture—little noticed or noted, yet symbolic of growing majority abuses and minority frustrations.

As can readily be seen from Table 1. (next page), the trend in the erosion of the minority's right to recommit is unmistakable. A rule-by-rule examination over the past seven congresses reveals that in the first four of those congresses, from 1977 through 1984, proscriptions on the minority's right were relatively few (15 in all), and were almost totally confined to limitations on rather than denials of amendatory instructions (14 of the 15).

And yet, in the most recent three congresses, 1985 through October 27, 1990, the end of the 101st Congress, the proscriptions on the minority's right to recommit have more than tripled to 59, including 21 limitations on amendatory instructions, and 38 outright denials.

It is instructive to more closely examine the rules granted in those first four congresses, however, for at a certain point they begin to foreshadow the acceleration in the trend that occurred in the most recent three congresses. A listing of all rules limiting or denying amendatory recommital instructions is contained in chronological order in Appendix A. of this paper, together with the bill number and subject matter, and the disposition of the rule.

SINGLE PURPOSE LIMITATIONS

The first seven rules listed, three in the 95th Congress and four in the 96th Congress, only proscribed recommital instructions in a very limited sense by prohibiting one or two amendments per bill, in the House and in the Committee of the Whole. All seven bills involved were appropriations bills, and the prohibited amendments dealt with one of three issues: abortion, Federal pay, and the FTC. Six of these seven rules were adopted by voice votes, while the other rule was overwhelmingly adopted on a rollcall vote of 317-82.

TABLE 1.—SPECIAL RULES IN THE HOUSE LIMITING OR DENYING AMENDATORY RECOMMITAL INSTRUCTIONS: 95TH-101ST CONGRESSES

Congress years	Type of Rule [1]		Total rules limiting or denying ARI
	Limiting ARI [2]	Denying ARI [3]	
95th Congress (1977-78)	3	0	3
96th Congress (1979-80)	8	0	8
97th Congress (1981-82)	2	1	3
98th Congress (1983-84)	1	0	1
99th Congress (1985-86)	7	7	14
100th Congress (1987-88)	9	15	24
101st Congress (1989-90)	5	16	21
Totals	35	39	74

[1] This is based only on rules providing for the initial consideration of bills and joint resolutions, and does not include rules for simple and concurrent resolutions, conference reports, or for the disposition of Senate amendments.

[2] ARI stands for "Amendatory Recommital Instructions." Rules may limit amendatory recommital instructions either by restricting amendments in the House as well as Committee of the Whole, or by directly placing restrictive language in the recommital clause of the rule.

[3] Rules may deny amendatory recommital instructions by barring all amendments in the House or Committee of the Whole; by not including the proviso "with or without instructions" in the recommital clause when an amendment in the nature of a substitute is made in order as original text; or by directly barring instructions in the recommital clause of the rule.

Sources: Legislative Calendars, 95th-101st Congresses; Bound copies of Rules Granted, Committee on Rules, 95th-100th Congresses; "Notices of Action Taken," Committee on Rules, 101st Congress, sine die adjournment, Oct. 27, 1990.

THE TURNING POINT

The turning point came with the final four rules granted in the 96th Congress—three in October of 1979 and one in August of 1980. Two of the three October rules were granted on October 9, 1979, and made in order two differing continuing appropriations resolutions. Moreover, both rules were adopted in the House by voice vote on the same day reported. Both rules provided for consideration of the continuing resolution in the House as

in the Committee of the Whole and both limited the amendment process to one subject or one specific amendment. The first rule only permitted amendments germane to the issue of Federal pay, and the second rule only permitted one specified abortion amendment.

In short, since consideration was in the House for both bills and no other amendments were allowed in the House, the motion to recommit was also confined to those specified amendments. Nevertheless, given the urgency of keeping the government running, no issue was made of these restrictive rules and both were adopted by voice vote.

Nine days later, on October 19, 1979, a rule was granted on a Federal Trade Commission authorization bill which allowed for only three specified amendments in the House and the Committee of the Whole in addition to a committee amendment in the nature of a substitute. Thus, any amendatory instructions in a motion to recommit would also be confined to one or more of those same amendments. In this instance the rule was adopted on October 26, 1979, by a rollcall vote of 273–61.

THE RECONCILIATION RULES

While the three rules cited above marked a turning point in the degree to which rules restricted amendatory recommital instructions, it was not until the final limiting rule of the 96th Congress was brought to the floor that the threat to the minority's right actually became a contested issue in debate.

That instance involved the reconciliation bill for fiscal year 1981, H.R. 7765, the first time the reconciliation process had been tried since enactment of the 1974 Budget Act. Under that process, specified committees are directed in the budget resolution to report legislation to achieve necessary savings, either through entitlement changes or revenue increases. The various committee bills are then combined into a single bill by the Budget Committee, without change, and sent to the Rules Committee for a special rule.

The Rules Committee reported a modified closed rule on the bill permitting only three amendments in the House and in the Committee of the Whole: one to strike a superfund subtitle, one to add trade adjustment assistance provisions, and one to eliminate certain cost-of-living adjustment reforms.

On September 4, 1980, Rules Committee Chairman Bolling called up the rule and in his opening statement described the rule as "relatively straightforward and simple," and added, "I would have preferred a completely closed rule."[24]

Rep. Del Latta (R–OH), the manager of the rule for the minority, agreed with Bolling on the importance of the reconciliation process, but took issue with the rule:[25]

"By adopting this rule we are limiting ourselves as to the amendments that can be offered. We have a closed rule being offered to the House on one of the most important pieces of legislation that we will be considering during this session of the Congress."

Latta went on to observe that eight House committees had been given instructions to come up with $6.4 billion in savings. Five of the committees "followed the instructions given them by this House and recommended legitimate, straight-forward spending reductions." But three committees not only recommended the reductions required of them, "but took advantage of the situation and proposed spending increases which will cost the taxpayers of this country $3.1 billion over the next five years." And he added, "Certainly this is a violation of the reconciliation section of the Budget Act, and sets a dangerous precedent for the future."[26]

Finally, Latta urged his colleagues to vote down the previous question on the rule so that he could offer a substitute rule "making in order the amendment . . . that eliminates $3.1 billion in new spending that is provided for in this reconciliation bill . . . [and] make the motion to recommit with instructions. The way the motion is now, it is without instructions."[27]

Chairman Bolling responded to Latta's criticism of the spending increases in the bill saying, "I disagree with him fundamentally." And he went on to explain:[28]

"It is inevitable that in the reconciliation process there will be some trade-offs that increase funding * * * But, there are very substantial offsets which save a great deal of money. I think it would be a mistake if we tied reconciliation up so it could not deal with tradeoffs in that fashion."

And, commenting on the provision in Latta's proposed substitute rule to permit a motion to recommit, with or without instructions, Bolling said the following:[29]

"This is a very tight rule that we initially offer. A recommitment with instructions enables the managers on that side to deal with all the political plums in town. Talk about politics, they could set up a Christmas tree alternative in either direction, either to save or to spend or a combination of the two that would be absolutely incredible."

The previous question on the rule was subsequently adopted, 230–157, and the rule was then adopted on a vote of 206–182.

The 1980 reconciliation fight was precursor of the gigantic reconciliation battle of 1981 which was to yield different results. With a Republican president back in the White House, Republican control of the Senate, Republican ranks in the House swollen from 158 in the previous Congress to 192 in the 97th Congress, and with the help of Southern conservative Democrats, known as "Boll Weevils," the Reagan economic program juggernaut was unleashed.

On the first budget resolution, the Republican substitute containing the President's program was adopted by a vote of 253–176. Instead of the $15.8 billion in reconciliation savings called for by the House Democrats' budget, the Gramm-Latta budget instructed committees to produce $36.6 billion in fiscal 1982 reconciliation savings.[30]

Fourteen of the 15 instructed House committees reported their reconciliation bills as required. The other committee, Energy and Commerce, could not muster a majority vote for its plan so the chairman recommended to the Budget Committee by letter that the Democrats' plan be including in the omnibus bill.

Notwithstanding the Budget Act's prohibition on any Budget Committee changes to the bills reported by various committees, the Budget Committee on a party line vote recommended a substitute containing three changes from the bills reported by the other committees. The only substantive change was inclusion of the unreported Energy and Commerce Democrats' proposal. The Budget Committee estimated that its substitute could result in $37.76 billion in fiscal 1982 savings.[31]

Despite these savings, House Republicans and the White House concluded that the plan did not go far enough in producing entitlement savings. Whereas the reconciliation instructions in the budget resolution called for $8 billion in entitlement cuts, the Democratic plan only produced $3 billion. The resulting Republican-conservative Democrat alternative, known as Gramm-Latta II, would save an additional $5.1 billion in fiscal 1982, but also restore money for some programs such as educational impact aid.[32]

The emergence of this alternative set the stage for a major procedural confrontation in the Rules Committee and on the House floor over procedure—one in which the motion to recommit would play a prominent role.

On June 24, 1981, the Rules Committee, by a party-line vote of 11–5, reported a rule on the reconciliation bill providing for the consideration of a Democratic amendment in the nature of a substitute and six specified amendments consisting of only the spending reduction portions of Gramm-Latta II. The rule intentionally omitted the "sweeteners" from the Republican substitute—the spending increases on such items as impact aid and Export-Import Bank, and it ignored the Republicans' request for a single vote on its entire package.

Moreover, the rule provided for two motions to recommit—one of which "may not contain any instructions," and one of which may include instructions "containing only the following amendments contained in the committee print:", and there again followed a selected portion of the Gramm-Latta II package dealing with social services and educational block grants. Again, this was not a motion to recommit that the Republicans had requested; the majority was attempting to dictate what parts of their package Republicans could offer.

The next day, June 25, 1981, before the controversial rule was called-up, eight Democrats took to the well to deliver one-minute speeches in favor of the rule and separate votes on the spending cuts in the Republican package. They were followed by a barrage of 31 Republican one-minute speeches blasting the rule. The leadoff speaker for the minority was Republican Whip Trent Lott (R-Miss.). Lott, also a member of the Rules Committee, referred to the Rules Committee's action as "one of the most dastardly deeds in the history of the House" and "the most unfair abuse of the rules that I have seen in the 13-years I have been here."[33]

When Chairman Bolling was finally able to call-up the rule some two hours later, he defended his committee's actions in part as follows:[34]

"We tried very hard to be fair in dividing up the minority's consolidated amendment approach. We did exactly the same thing that Gramm-Latta did to the committees of Congress. We made in order only cuts * * *"

But he went on to concede that the cuts the Rules Committee made in order were substantially larger than the consolidated package, "because the consolidated package, unlike what the committees did, was loaded with sweeteners—sweeteners to the tune of about roughly one-half of all the cuts"[35]

Rep. Latta, the rule manager for the Republicans as well as ranking minority member on the Budget Committee, responded:[36]

"We knew that the rule had already been decided by the Democratic leadership and that it would be a packaged vote on the committee bill. But on the Republican package it was a different set of rules they had prepared for us. We were only asking for the same consideration for our package as the Democrats were being given for theirs."

The ranking minority member on the Rules Committee, Rep. Jimmy Quillen (R-TN), used the following colorful metaphor:[37]

"There should be fairness. But what has the Rules Committee done and what has the Democratic Party done? They say, 'Let us

have a duel. We are going to use live ammunition but you on this side of the aisle, you Republicans, we are going to make you use blanks.'"

And Republican Leader Bob Michel minced no words in addressing himself to the Speaker and Rules Committee chairman:[38]

"I might have grudgingly conceded to this approach had you given us a clean-cut vote on the 6 to 7 individual parts of our package of amendments. But no, you would not even give us that opportunity. You had to get greedy. I could not believe you would take our individual parts and slice them up into still smaller pieces taking what you want and, of course, discarding what we want.

And, Michel continued:

"What right have you in this so-called great deliberative body to dictate not only the form and substance of our amendments, but the verbiage as well? . . . Mr. Speaker, Mr. Wrights, my friend Mr. Bolling: These are no longer our amendments that are made in order. They are bastards of the worst order for which we disclaim any parental responsibility."

The House proceeded to vote down the previous question on the rule, 210–217, and adopt a substitute rule offered by Rep. Latta. 216–212. That substitute provided for the en bloc consideration of amendments to be offered by Rep. Latta, not subject to amendment or a division of the question and waived all points of order against the package. Moreover, unlike the Democratic rule, the substitute rule provided for one motion to recommit, "with or without instructions."

Despite the subsequent adoption of the Latta en bloc amendments by a vote of 217–211, under the precedents a minority member opposed to the bill on final passage was still entitled to the motion to recommit. Rep. Claudine Schneider (R–R.I.) took advantage of this opportunity and offered a motion to recommit with instructions to restore twice annual cost-of-living adjustments for Federal employees which has been deleted in the Latta package.

Budget Committee Chairman Jim Jones (D–OK) attempted to wrest the motion to recommit away from Rep. Schneider by defeating the previous question so that he could be recognized to offer an alternative motion to recommit with instructions to make changes in the Social Security, student loan and block grant provisions of the Latta substitute. But the House adopted the previous question on the Schneider motion by a vote of 215–212. The House then rejected the Schneider motion on a voice vote.[39]

An ironic postscript to this historic episode occurred on July 31, 1981, when the House considered a rule (H. Res. 203) that made in order both the final conference report on the reconciliation bill (H.R. 3982) and separate bill (H.R. 4331) to restore the Social Security minimum benefits that were reduced in the reconciliation bill. The irony occurred in the portion of that rule dealing with the minimum benefit bill.

The rule provided for the consideration of the unreported bill in the House if called up by Rep. Bolling, and after one hour of general debate, ordered the previous question "to final passage without intervening motion except one motion to recommit, which may not contain instructions." This was the first instance in which a rule had flat-out denied the minority instruction in a motion to recommit, and yet the minority overwhelmingly resisted an effort by Rep. Bruce Vento (D–MN) and others to defeat the previous question on the rule in order to get at the minimum benefit issue in the conference report itself. The previous question was adopted, 271–151, with 166 Republicans voting for it and 21 against, while only 105 Democrats voted for it and 130 voted against.

Because the minority leadership was solidly behind the rule in order to move the reconciliation conference report to the President, no mention was made in debate of the historic precedent being set in denying the minority a motion to recommit with instructions on the minimum benefit bill.

However, due to the turmoil and hard feeling generated by the wrenching 1981 reconciliation experience, the Democrats proceeded with four separate committee reconciliation bills in 1982 rather than taking them through the Budget Committee and combining them into an omnibus bill from the outset, as required by the Budget Act. Three of the four were considered under modified closed rules but preserved the minority's right to offer a motion to recommit of its choosing. The fourth, a noncontroversial veterans bill, was considered under suspension of the rules and passed overwhelmingly, 400–0.

It wasn't until after all four had passed individually that the Democrats combined them into an omnibus bill that was passed by a voice vote on August 10, 1982. The final conference report on that bill passed the House by a vote of 243–176 on August 18, 1982. All told the omnibus bill produced $13.3 billion in savings over three years, a modest accomplishment compared to the massive 1981 effort of $130.6 billion in savings over three years.

Despite this temporary pullback from procedural proscriptions on the minority's motion to recommit on reconciliation bills, the practice of limiting the motion was resumed in the 99th Congress and has continued through the present Congress (see Appendix A).

THE FINAL ASSAULT

In the 98th Congress, the Congress in which Rep. Claude Pepper (D–FL) took over as Rules Committee chairman after the resignation of Rep. Bolling, only one rule was granted which limited the motion to recommit, and that was on the bipartisan Social Security bailout bill. The rule permitted only three specified amendments in the House and in the Committee of the Whole. And even though none was a Republican amendment, the rule passed by voice vote.

The majority was continuing to assert procedural pressures on another front, however, and that was on the related matter of restrictive rules which limited the amendment process in the Committee of the Whole. As can be seen from Table 2 whereas only 15% of the rules were restrictive in Tip O'Neill's first Congress as Speaker, the 95th Congress, by the 98th Congress they had grown to 32% of total rules granted. And this trend accelerated dramatically in the 99th through the 101st Congress, as restrictive rules jumped to 43%. 46% and 55% of the total, respectively.

Perhaps not surprisingly, as Table 3 reveals, rules limiting recommittal motions also began to rise again with the 99th Congress when they totalled 14 or 12% of the rules granted. And the number rose to 24 in the 100th Congress or 20% of the rules, and totalled 21 at the end of 101st Congress, or 20% of all rules granted.

But even more disturbing is the fact that complete denials of amendatory recommittal instructions climbed from 0 in the 98th Congress, to seven in the 99th, 15 in the 100th and 16 by the end of the 101st (see Table 1).

TABLE 2.—OPEN VERSUS RESTRICTIVE RULES, 95TH–101ST CONGRESSES

Congress (years)	Total rules granted [1]	Open rules [2] No.	Percent	Restrictive rules [3] No.	Percent
95th (1977–78)	211	179	85	32	15
96th (1979–80)	214	161	75	53	25
97th (1981–82)	120	90	75	30	25
98th (1983–84)	155	105	68	50	32
99th (1985–86)	115	65	57	50	43
100th (1987–88)	123	66	54	57	46
101st (1989–90)	104	47	45	57	55
Totals	1,042	713	68	329	32

[1] Total rules counted are all order of business resolutions reported from the Rules Committee which provide for the initial consideration of legislation, except rules on appropriations bills which only waive points of order. Original jurisdiction measures reported as privileged are also not counted.

[2] Open rules are those which permit any Member to offer any germane amendment to a measure so long as it is otherwise in compliance with the rules of the House. The parenthetical percentages are open rules as a percent of total rules granted.

[3] Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules, as well as completely closed rules, and rules providing for consideration in the House as opposed to the Committee of the Whole. The parenthetical percentages are restrictive rules as a percent of total rules granted.

Sources: Rules Committee Calendars & Surveys of Activities, 95th–100th Congresses; "Notices of Action Taken," Committee on Rules, 101st Congress, as of sine die adjournment, Oct. 27, 1990.

TABLE 3.—RULES RESTRICTING AMENDMENTS AND RECOMMITTAL MOTIONS: 95TH–101ST CONGRESSES

Congress (years)	Total rules granted [1]	Rules which restrict amendments [2]	Percent	Rules which limit/deny recommittal motions [3]	Percent
95th (1977–78)	211	32	15	3	1.4
96th (1979–80)	214	53	25	8	3.7
97th (1981–82)	120	30	25	3	2.5
98th (1983–84)	155	50	32	1	0.6
99th (1985–86)	115	50	43	14	12.2
100th (1987–88)	123	57	46	24	19.5
101st (1989–90)	104	57	55	21	20
Totals	1,042	329	32	74	7

[1] Total rules counted are all order of business resolutions reported from the Rules Committee which provide for the initial consideration of legislation, except rules on appropriations bills which only waive points of order. Original jurisdiction measures reported as privileged are also not counted.

[2] Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules, as well as completely closed rules, and rules providing for consideration in the House as opposed to the Committee of the Whole. The percentage is parentheses is the restrictive rules as a percent of total rules granted.

[3] This includes all rules which limit or deny amendatory recommital instructions on the initial consideration of bills and joint resolutions. The percent figure is years in parentheses is the rules limiting or denying amendatory recommital instructions as a percentage of the total rules granted.

Sources: Rules Committee Calendars & Surveys of Activities, 95th–100th Congresses; "Notices of Action Taken," Committee on Rules, 101st Congress, as of sine die adjournment, Oct. 27, 1990.

As can be seen from Appendix A, all seven rules denying amendatory instructions in the 99th Congress were granted in the second session. In all seven instances, the rules specifically stated that the motion to recommit "may not contain instructions." Two of the seven rules, on the trade and sequestration bills were adopted by voice vote; and one, on the drug bill, by an overwhelming margin. The other four rules, on Central America, reconciliation and two on the immigration bill, were contested by a substantial number or, defeated (the first immigration rule).

In the 100th Congress, Jim Wright's first Congress as Speaker, of the 15 rules denying amendatory instructions, three were defeated, seven were adopted with substantial opposition, two were adopted by voice vote (one of which made in order two bills), and two were tabled. The Wright Speakership was to become a lightning rod for minority protests of procedural abuses by the majority. But the denials of the minority's recommittal right were but a small part of a larger pattern of procedural manipulation by the Speaker.[40]

Republican Whip Trent Lott, in a special order entitled, "Changing the Rules," inserted in the *Congressional Record* at the end of the 100th Congress, quoted Thomas Jefferson from his Manual of *Parliamentary Procedure* as follows:[41]

"It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in doing business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency and regularity be preserved in a dignified public body."

Reflecting on those words, Lott offered the following observation:[42]

"As a Member of the Rules Committee since 1975, I have reviewed with concern the increasing departures from our standing rules and the way they have contributed to a breakdown in orderly procedure and Members' rights, just as Jefferson warned."

Lott proceeded to demonstrate his point by inserting comparative data on the increase in restrictive rules, self-executing rules, rules waiving the Budget Act, and rules prohibiting recommittal instructions.

Lott briefly recounted the history of the rule guaranteeing the minority the motion to recommit, concluding that:[43]

"The legislative history behind the current motion to recommit makes clear that the intent was to permit the minority one final opportunity to get a vote on its position. . . . And yet, despite this clear legislative history and intent . . . the Rules Committee has dictated on 18 occasions in this Congress alone that the motion be rendered futile by prohibiting instructions."

Notwithstanding Republican protests over Wright's rule in the 100th Congress, the 101st Congress proved to be more of the same until Wright resigned under an ethics cloud on June 6, 1989. Of the 14 rules granted prior to Wright's resignation, seven or 50% were restrictive in terms of the amendment process in the Committee of the Whole (See Appendix B), and three (21%) contained denials of amendatory recommittal instructions (see Appendix A.).

One of those three rules, on the drug wars for star wars bill, was defeated; one, on the minimum wage bill, was adopted by voice vote; and one, on the Eastern Airlines emergency strike board bill, was adopted, 254–159.

While the mood of the House improved significantly with the advent of Tom Foley as Speaker and Rep. Joe Moakley (D–MA) as the new Rules Committee chairman (Chairman Pepper died on May 30, 1989), the honeymoon was barely to last the remainder of the first session before the majority resumed its squeeze on the amendment process and on the minority's right to recommit.

Whereas only 12 rules, or 38%, of the 32 rules granted in the first session after Foley became Speaker were restrictive, 37 rules or 64% of the 58 rules granted in the second session were restrictive (see Appendix B). All told, restrictive rules totalled 55% of all rules granted in the 101st Congress, up considerably from Wright's record of 46% restrictive rules in the 100th Congress.

But even more startling is the rise in rules denying the minority's motion to recommit with instructions under Foley. While only one rule, or 3%, of the 32 rules granted during the first session honeymoon denied amendatory instructions, 12 such rules, or 20%, of the 58 rules granted in the second session have denied the minority's right. And as can be seen from Appendix A, four of those 12 denial rules were adopted by voice vote. Six of the others had substantial opposition in rollcall votes, including the defeat of the first crime rule. Eight of the 12 rules denied amendatory instructions by failing to include the phrase "with or without instructions" when a committee amendment in the nature of a substitute has been made in order as original text for amendment purposes. Two of the rules, on the CR and reconciliation specifically forbade instructions. And two others, on most favored nation status on China and Czechoslovakia prohibited any motion to recommit by terms of the trade law's expedited procedures.

Republican cries of protest against rules restricting the amendment process and denying the minority's recommital rights have been mounting in the second session of the 101st Congress. For example, in reviewing the debate on the twelve rules which denied amendatory instructions in the second session, the following extracts are not atypical of the growing mood of Republican frustration and discontent:

On the rule providing for consideration of the child care bill on March 29, 1990, Ranking Rules Republican Jimmy Quillen said:[44]

"This rule is not fair. It absolutely cuts off Republicans. It is one of the worst rules ever reported in this session of Congress. . . . And then, as if to rub salt in the wound, the minority is being denied its one traditional last chance to have its position considered. There will be no motion to recommit with instructions under this rule."

Rep. Jerry Solomon (R–NY), the second-ranking Republican on the Rules Committee, said of the same rule:[45]

"This is the worst rule that has ever come before this House in the 12 years I have been a Member of this body. It is an abuse which is almost unbelievable. You know, democracy is breaking out all over the world; it is spreading all over the world; everywhere except in this House of Representatives."

During debate on the rule for the equity and excellence in education bill, Rep. Lynn Martin (R–IL), the minority manager of the rule noted that this was probably the first time a restrictive rule had been granted on an education bill, and she went on:[46]

"We are slowly but surely strangling deliberative democracy in this House in the name of efficiency and political pragmatism. We are choking off Members who wish to be coequal partners in the legislative process; and we are denying their constituents the full representation they deserve."

And on the denial of recommital instructions, she had this to say:[47]

"To add insult to injury, this rule also denies the minority its traditional right to offer instructions in a motion to recommit. This was denied on grounds that the minority can already offer a substitute under the rule. But why should the majority presume that's what we would offer in the motion to recommit?"

On August 2, 1990, during House consideration of the rule on the Civil Rights Act of 1990, the minority rule manager, Rep. Solomon, offered the following observation:[48]

"Here we are, being asked to consider a civil rights bill under the terms of a closed rule, and how ironic that is. . . . As of today, the House of Representatives will chalk up more restrictive rules than open rules during this 101st Congress, and . . . this is a shame."

And, Solomon went on:[49]

"What many of us, particularly on this side of the aisle, resent is the denial in this rule of the minority's right to offer a motion to recommit with instructions. . . . It has only been in the last few years that the majority has begun to assert that the offering of a minority substitute is our only bite at the apple; but Mr. Speaker, when the House is considering a bill under an open rule, the minority has that right and has always had that right to offer a substitute as well as the right to offer a motion to recommit with instructions."

And, on August 3, 1990, during debate on the campaign reform rule which permitted only one Republican substitute and no recommital instructions, Rep. Bill Frenzel (R–MN) said the following:[50]

"To say that we have to work in the dark to pass election reform is the worst kind of hypocrisy in our democracy. I think the people who vote for this rule can truly be ashamed of themselves. It is absolutely ridiculous to give Members one shot and a few minutes of debate on something that all Members admit is complex."

On September 25, 1990, the House took up the rule on the Omnibus Crime Control Act, a rule which allowed for the consideration of some 45 amendments of over 100 amendments that had been submitted in advance in compliance with a Rules Committee pre-filing requirement. Notwithstanding the large number of amendments made in order, Republicans were incensed that the Committee had not made in order an amendment by Rep. Henry Hyde (R–IL) relating to habeas corpus reform. Instead, the Committee made in order a habeas corpus reform compromise by Rep. Butler Derrick (D–S.C.), even though the amendment had not been filed prior to the deadline.

Rep. Quillen, managing the rule for the minority, observed that his attempt to make the Hyde amendment made in order was rejected his motion on a party-line vote. He went on to observe that the rule even denied the minority its traditional right to recommit with instructions:[51]

"This rule is also unfair because it denies the opportunity for a motion to recommit with instructions to amend the bill. When I asked about this in the Rules Committee I was told that a motion to recommit with instructions could not be allowed because it might be used to to give the House a chance to consider the Hyde amendment."

And he went on:[52]

Listen to that. How do you gang up on somebody like a respected Member of this House, the gentleman from Illinois (Mr. Hyde)?"

Rep. Solomon echoed these sentiments:[53]

"The majority can try to dress it up any way they want to, but a rule which denies the minority its right to offer a motion to recommit with or without instructions is closed by any definition, and it is wrong, wrong, wrong."

A Republican attempt to amend the rule and make in order the Hyde amendment by defeating the previous question was rejected by a vote of 214–209 to adopt the previous question. But the rule itself was subsequently rejected, 166–258.

The Rules Committee reconvened on October 2nd and granted a rule that not only made in order the Hyde amendment but three additional amendments. However, the rule retained the language from the previous one prohibiting any instructions in a motion to recommit. Nevertheless, the House adopted this second crime rule on October 3rd by voice vote.

The issue of denying the minority instructions on motions to recommit instructions came to a dramatic head on October 16, 1990, when the House took up the rule on the Omnibus Budget Reconciliation Act which con-

tained a Democratic modification of the five-year budget summit agreement. The rule provided for three hours of general debate, the automatic adoption of a budget process enforcement title upon adoption of the rule, a Democratic tax alternative package of amendments by Ways and Means Chairman Rostenkowski, and a package of amendments by Budget Committee Chairman Panetta.

Not allowed under the rule was a Republican substitute developed by Reps. John Kasich (R-OH) and Carl Pursell (R-MI). It was presumably denied consideration on grounds it did not meet the five-year deficit reduction goal of $500-billion, falling some $90-billion short. Moreover, the rule denied any instructions in the motion to recommit.

THE POINT OF ORDER

After the rule was called up by Majority Manager Butler Derrick and read by the reading clerk, Republican Leader Bob Michel rose to make a point of order against the rule on grounds that it denied the minority the right to offer instructions in the motion to recommit (see Appendix C for full text of the Michel point of order, the discussion of it, and the Chair's ruling).

Michel recounted the history of the modern-day recommital rule and cited varous Speakers on how the motion was revised in 1909 to permit the minority a right to offer its final alternative to a bill. Michel went on to argue that the key to the meaning of the rule was its prohibition on the Rules Committee's denying a motion to recommit "as provided" by Rule XVI, which was adopted solely to give the minority the option of offering final amendatory instructions:[54]

"It should therefore be obvious that if the Rules Committee is prohibited from denying the minority the right to offer a motion to recommit "as provided" by that second sentence in that 1909 rule, it may not bring in a rule such as this which denies instructions. To do so is to render the rule, which protects our right, null and void. It is not only a violation of the spirit of the rule, but of the literal content of the rule."

The Speaker pro tempore, Rep. Murtha (D-PA), overruled the point of order citing the 1934 precedent:[55]

"In the only precedent directly relating to the question at issue, Speaker Rainey on January 11, 1934, ruled and was sustained on appeal. The Committee on Rules is not precluded under clause 4b, rule XI, from specifically limiting motions to recommit bills or joint resolutions pending the question on final passage to specific type of instructions."

After quoting from Speaker Rainey's ruling, the Chair drew the following conclusion from it:[56]

"Thus, the Committee on Rules has the authority to recommend special rules to the House which may limit, but not totally prohibit, the type of motion to recommit which may be offered, not merely with respect to the general rules of the House, but with respect to germane amendments which might otherwise be in order. Clause (sic) of Rule XVI does not guarantee that a motion to recommit a bill may always include instructions. The Chair, therefore, overrules the point of order."

Rep. Bob Walker (R-PA) immediately rose to his feet and appealed the ruling of the Chair, to which Rep. Derrick responded with a motion to table the appeal. The motion to table was adopted on nearly a straight party-line vote, 251-171 (Rep. Charles Bennett (D-FL) was the only Democrat to vote against the motion to table the appeal.).

Two things should be noted in passing regarding this particular denial of instructions on the motion to recommit. First, the Democrats could not use the argument in this instance that instructions were being denied because the minority was already being allowed a substute during the regular amendment process; they weren't. And secondly, while they instead used the argument that the Republican substitute was not allowed because it did not fully meet the deficit reduction targets of the budget summit agreement, their own package, as amended by the Rostenkowski tax alternative, fell anywhere from $8- to $25-billion short of the $500-billion target, depending on what estimates and economic assumptions are being used.

DISCUSSION

It is clear from both the debate on the adoption of the modern rule governing motions to recommit and the early precedents surrounding it, that its main purpose was to give the minority an opportunity to obtain a vote on a policy alternative at the end of the process. The corresponding rule barring the Rules Committee from denying a motion to recommit in its order of business resolutions was a further safeguard against majority attempts to circumvent or undermine this minority guarantee.

It is also clear from the early procedures that the minority's right to offer a motion to recommit of its choosing was only to be proscribed by the limits imposed by the standing House Rules applicable to the amendment process. All of the procedents found in *Hinds'*, *Cannon's*, and *Deschler's*, relating to impermisible motions to recommit come down to one underlying principle and that is that "it is not in order to do indirectly in a motion to recommit with instructions what may not be done directly by way of amendment." In other words, the motion's instructions must be germane, cannot include appropriations in an authorization (or vice versa), and cannot amend an amendment already agreed to by the House.

Even this latter rule, prohibiting amendments to amendments already finally agreed to, is set aside by longstanding practice of the Rules Committee in instances in which a rule provides for the consideration of a committee amendment in the nature of a substitute as original text for amendment purposes.

As discussed earlier, the inclusion of the phrase "with or without instructions" has, until most recently, been traditionally inserted in such rules to protect the minority's right to offer instructions notwithstanding the adoption of such substitutes.

The 1934 precedent is the sole basis for the Speaker's October, 1990, ruling, and on which the Rules Committee in recent times has justified order of business resolutions or special "rules" which restrict or even deny the minority's right to offer amendatory instructions in a motion to recommit. For if the Rules Committee may block amendments to a portion of a bill both in the House and in a Committee of the Whole, then it may also do so for the entire bill, thereby effectively precluding any amendments in the motion to recommit.

While no one quarrels with the principle that a motion to recommit may not do indirectly that which cannot be done directly by way of amendment, the common interpretation of this precedent prior to 1934 was that this meant that the amendment must be in order under the standing rules of the House. To extend this principle to special rules nullifies the clear intent of the 1909 rule and violates the prohibition on the Rules Committee.

Speaker Clark expressed this in his 1912 ruling[57] when he said the following:[58]

"You can report any rule which you see fit to put upon the books, but as long as that section stands there the Committee on Rules is precluded from bringing in such a resolution as this one. If you bring in a resolution amending the rules, that is a proposition which, of course, the Chair would entertain; but you are not bringing in a resolution to amend the rules, you are bringing in a resolution which violates a rule of the House."

And Speaker Gillett, in his ruling of Oct. 7, 1919[59] also addressed himself to ways in which the minority might be indirectly prevented from offering a motion to recommit with instructions of its choosing:[60]

". . . a committee wishing to avoid allowing the minority to get a record vote could always ingeniously bring in a bill and perfect it by amendments, and then have those amendments adopted in the House, yet it seems to the Chair that thereby they would nullify the main purpose of the motion to recommit."

Indeed, this "main purpose of the motion to recommit" was reaffirmed in a ruling by Speaker Bankhead five-years after the 1934 precedent was established. In holding in favor of a motion to recommit an appropriations bill with instructions to report back forthwith with an amendment cutting $50-million, even though it would indirectly affect amendments already agreed to which increased spending, the Speaker observed that, "the purpose of the motion to recommit . . . is to give those Members opposed to the bill an opportunity to have an expression of opinion by the House upon their proposition."[61]

Notwithstanding this longstanding interpretation that the purpose of the motion to recommit is to permit the minority a vote on its proposition, the same volume of *Deschler's* uses the 1934 precedent as its exclusive authority for drawing the following logical conclusion:[62]

"The Committee on Rules is precluded under clause 4(b) of Rule XI from reporting a special rule which would prevent the motion to recommit from being made as provided in clause 4, Rule XVI (the second sentence), although it may report a special rule limiting to a straight motion, or precluding certain instructions in, the motion to recommit which may be offered on a bill or joint resolution pending final passage."

In other words, even though the 1934 rule only blocked amendments to a single title, it paved the way for future rules barring all amendments in the House and Committee of the Whole, thereby leaving the minority with only a straight motion to recommit. This was confirmed in the October, 1990 ruling.

Ironically, that same section of *Deschler's*, at an earlier point, in describing the four motions to refer under House rules, describes the motion under discussion here as, "the motion to recommit *with* or without *instructions* after the previous question has been ordered on a bill or joint resolution to final passage, provided in the second sentence of clause 4, Rule XVI;".[63] [Emphasis added]

In other words, even though the term "with or without instructions" is not specifically used in that rule, the precedent makes clear that the right to offer instructions is implied. This is at direct odds with the later note (quoted above) which asserts that the Rules Committee may limit the motion to recommit to a "straight motion." For if in-

structions are clearly implied under clause 4 of Rule XVI, and if the Rules Committee, under clause 4(b) of Rule XI may not "report any rule or order which would prevent the motion to recommit from being made as provided in clause 4 of Rule XVI," then clearly the Rules Committee may not report a rule denying instructions.

The strongest argument the majority has for denying motions to recommit with instructions is that recorded votes have been permitted on amendments in the Committee of the Whole since 1971 and therefore the minority no longer has a need to get a recorded vote in the House on its policy alternative in the motion to recommit.

So long as the minority is given an opportunity to offer a substitute during the normal amendment process and get a vote on it, they argue, the motion to recommit with instructions is a superfluous anachronism and the proverbial second bite at the apple.

While there may be some logic to this argument, it ignores the clear intent of the rule which is being violated each time a rule is granted restricting or denying the minority's right. Moreover, the majority has a tendency to deny the right most often when the rule is already restrictive in terms of what amendments may be offered in the Committee of the Whole.

If the purpose of rules of procedure is not only to permit the majority to work its will, but to protect minority rights and to ensure a truly orderly and deliberative process that will produce the best possible legislative results, then such rules fail on two of three counts. They neither protect the rights of individual Members to offer amendments of their choosing, nor do they contribute to improving legislation through the amendment process.

If anything, the majority should be all the more rather than less protective of the right of the minority to finally amend a bill in the motion to recommit when only a few amendments have been allowed in the Committee of the Whole, both for the sake of sound legislation and Member choice.

If legislating in a deliberative, representative democracy is being reduced to just two votes on major issues—one vote on the majority bill and one on a minority substitute—then all four underscored terms above deserve an entry in *Orwell's Newspeak Dictionary*.

CONCLUSION

Over the last decade, the House of Representatives has undergone a dramatic constriction of individual and minority party rights when it comes to being full participants in the legislative process. The most obvious evidence of this is in the increasingly restrictive special rules limiting the amendment process on the House floor, from 15 percent restrictive rules in the 95th Congress to 53 percent today. This directly affects Members of both parties in fully representing their constituents to the best of their ability.

A lesser noticed but equally disturbing trend is the systematic denial in recent years of the minority's right to offer amendatory instructions in a motion to recommit prior to the vote on final passage of a bill. Such outright denials which were practically nonexistent in the 95th through 98th Congresses, today appear in nearly 20 percent of the rules being granted.

This paper has described this alarming trend as a majority assault on a minority right. But given the frequency and degree to which this denial is being practiced today, it can more accurately be described as the "rape of the minority rights," since one definition of that term is "any outrageous assault or flagrant violation."[64]

When a rule has been adopted for the sole purpose of protecting the right of the minority to offer a final amendment, and yet special rules are being routinely adopted which completely deny that right, then an outrageous assault and flagrant violation has been perpetrated by the majority on the minority.

Such a violation transcends partisan considerations because it goes to the very heart of what a deliberative democracy should be all about. As Jefferson put it in his *Manual*, rules of proceeding are adopted and[65] "become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, which the wantonness of power is but too often apt to suggest to large and successful majorities."

The 1934 precedent upholding the right of the majority to restrict instructions in a motion to recommit, and the 1990 ruling carrying that precedent to its logical extreme of denying such instructions altogether, are clear examples of the majority circumventing the law of the House through irregular and abusive special rules that repress a minority right for the purpose of perpetuating the wantonness of the majority's powers.

Speaker Champ Clark, on April 7, 1913, overruled a point of order against a minority motion to commit the resolution adopting House Rules for the new Congress to a select committee with instructions. Clark quoted an English precedent from *Jefferson's Manual* to the effect that rules of proceeding were instituted by our ancestors "as a check and control on the actions of the majority and . . . a shelter and protection to the minority against attempts of power."[66]

Clark went on to observe:[67]

"Jefferson goes on to endorse that. The Chair would not feel that he is slavishly bound to follow the decisions of any Speaker, or even of all Speakers, if he were certain that he was right; but some things come to be a settled practice in this country."

In that instance, Speaker Clark indicated a willingness to reverse all former rulings by Speakers on a matter if they did not square with his view of what the correct ruling should be. Fortunately, he was able to cite more recent precedents which upheld the right to offer a motion to recommit after the previous question was ordered on a matter, and even before House Rules had been adopted; and the right of the minority to be recognized to offer the recommital motion with instructions.

The 1934 precedent upholding limits on recommital instructions, and the 1990 ruling upholding a denial of any instructions, were both wrongly decided given the intent and of the 1909 rule. The 1990 ruling relied solely on a bad precedent in order to completely nullify the purpose of the motion to recommit which was to permit the minority a final vote on its policy.

The majority leadership should give more serious consideration to heeding the advice of Democratic Speaker Clark both on not hesitating to reverse bad precedent, and on adhering to rules of proceeding which check the power of the majority and protect the rights of the minority. For majority rule without minority rights soon gives way to tyranny by the majority—a dangerous enemy of the people.

FOOTNOTES

[1] Asher C. Hinds, *Hinds' Precedents of the House of Representatives*, vol. 5, sec. 5443. Washington: Government Printing Office, 1907.
[2] Clarence Cannon, *Cannon's Precedents*, vol. 8, sec. 2762. Washington: Government Printing Office, 1936.
[3] Cannon, vol. 8, sec. 2264. (an April 24, 1916 ruling).
[4] *Congressional Record*, March 15, 1909, p. 22.
[5] *Ibid*.
[6] *Ibid*, p. 23.
[7] Cannon, vol. 8, sec. 2757.
[8] *Congressional Record*, May 14, 1912, p. 6410.
[9] Cannon, vol. 8, sec. 2727.
[11] *Ibid*.
[11] *Ibid*.
[12] *Ibid*.
[13] Lewis Deschler, *Deschler's Precedents*, vol. 7, ch. 23, sec. 25.9 Washington: Government Printing Office, 1976.
[14] *Congressional Record*, Jan. 11, 1934, p. 480.
[15] *Ibid*, p. 481.
[16] *Ibid*, pp. 482–83.
[17] Deschler, vol. 6, ch. 21, sec. 16.9.
[18] *Ibid*.
[19] Lewis Deschler and William Holmes Brown, *Procedure in the U.S. House of Representatives* (97th Congress), ch. 23, sec. 14.13. Washington: Government Printing Office, 1982.
[20] *Ibid*. ch. 23, sec. 15.3.
[21] *Ibid*, ch. 23, sec. 15.8.
[22] *Ibid*, ch. 23, sec. 15.9.
[23] *Ibid*. ch. 23, sec. 15.9.
[24] *Congressional Record*, Sept. 4, 1980, p. 24184.
[25] *Ibid*, p. 24185.
[26] *Ibid*.
[27] *Ibid*, p. 24191.
[28] Ibid, p. 24192.
[29] *Ibid*.
[30] *Congressional Quarterly Almanac*, 97th Congress, First Session, 1981, p. 253. Washington: Congressional Quarterly Inc.
[31] *Ibid*. pp. 258–59.
[32] *Ibid*. pp. 261–62.
[33] *Congressional Record*, June 25, 1981, p. 14053.
[34] *Ibid*. p. 14066.
[35] *Ibid*. p. 14066.
[36] *Ibid*.
[37] *Ibid*. p. 14067.
[38] *Ibid*. p. 14077.
[39] *CQ Almanac*, p. 263.
[40] See, for instance, "An UnRuly House: A Republican View," by Rep. Richard B. Cheney, *Public Opinion*, Jan./Feb., 1989, pp. 41–44.
[41] *Congressional Record*, October 21, 1988, p. E 3655.
[42] *Ibid*.
[43] *Ibid*. p. E 3657.
[44] *Congressional Record*, March 29, 1990, p. H. 1247.
[45] *Ibid*.
[46] *Congressional Record*, July 12, 1990, p. 4545.
[47] *Ibid*.
[48] *Congressional Record*, Aug. 2, 1990, p. 6325.
[49] *Ibid*.
[50] *Congressional Record*, Aug. 3, 1990, p. H 6845.
[51] *Congressional Record*, Sept. 25, 1990, p. H 7999.
[52] *Ibid*.
[53] *Ibid*.
[54] *Congressional Record*, Oct. 16, 1990, p. H 9933.
[55] *Ibid*, p. H 9934.
[56] *Ibid*.
[57] *Cannon*, vol. 8, sec. 2264.
[58] *Congressional Record*, May 14, 1912, p. 6408.
[59] Cannon, vol. 8, sec. 2727.
[60] *Congressional Record*, October 7, 1919, p. 6531.
[61] Deschler, *Precedents*, vol. 7, ch. 23, sec. 26.1.
[62] *Ibid*. sec. 25.
[63] *Ibid*.
[64] *Webster's New World Dictionary*, 2nd College Edition, New York: The World Publishing Company, 1970.
[65] Thomas Jefferson, *Jefferson's Manual of Parliamentary Practice*, sec. 1, as printed in *House Rules and Manual*, 101st Congress. Washington: Government Printing Office, 1989.
[66] *Congressional Record*, April 17, 1913, p. 77.
[67] *Ibid*.

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APPENDIX A.—SPECIAL RULES IN THE HOUSE LIMITING OR DENYING AMENDATORY RECOMMITTAL INSTRUCTIONS: 95TH–101ST CONGRESSES

Rule No. H. Res	Date granted	Rule type: Limit (L) or Deny (D) ARI	Bill number and subject matter and disposition of rule
95TH CONGRESS			
664	June 28, 1977	L	H.R. 7932: Legislative Branch Appropriations. Rule adopted by 279–139, June 29, 1977.
1220	June 7, 1978	L	H.R. 12929: Labor, HEW Appropriations. Rule adopted by voice vote, June 7, 1978.
1236	June 14, 1978	L	H.R. 12928: Public Works Appropriations. Rule adopted. 317–82, June 15, 1978.
96TH CONGRESS			
312	June 12, 1979	L	H.R. 4390: Legislative Branch Appropriations. Previous question defeated, 126–292. Substitute rule adopted by voice vote, June 13, 1979.
335	June 26, 1979	L	H.R. 4389: Labor, HEW Appropriations. Rule adopted by voice vote, June 27, 1979.
408	June 18, 1979	L	H.J. Res. 399: Continuing Appropriations. Rule adopted by voice vote, June 19, 1979.
419	September 20, 1979	L	H.J. Res. 404: Continuing Appropriations. Rule adopted by voice vote, Sept. 21, 1979.
441	October 9, 1979	L	H.J. Res. 412: Continuing Appropriations. Rule adopted by voice vote, Oct. 9, 1979.
442	October 9, 1979	L	H.J. Res. 413: Continuing Appropriations. Rule adopted by voice vote, Oct. 9, 1979.
456	October 18, 1979	L	H.R. 2313: FTC Authorization Rule adopted, 273–61, Oct. 26, 1979.
776	August 28, 1980	L	H.R. 7765: Reconciliation Previous question on rule adopted, 230–157; rule adopted, 206–182, Sept. 4, 1980.
97TH CONGRESS			
169	June 24, 1981	L	H.R. 3982: Reconciliation Previous question on rule defeated, 210–217; substitute rule adopted, 219–208, June 25, 1981.
203	July 30, 1981	D	H.R. 4331: Social Security Previous question on rule adopted, 251–151; rule adopted, 370–52, July 31, 1981.
604	September 30, 1982	L	H.J. Res. 604: Balanced Budget Constitutional Amendment. Rule adopted by voice vote, Oct. 1, 1982.
98TH CONGRESS			
126	March 8, 1983	L	H.R. 1900: Social Security Rule adopted by voice vote, March 9, 1983.
99TH CONGRESS			
296	October 17, 1985	L	H.R. 3500: Reconciliation Rule adopted, 230–190, Oct. 23, 1985.
301	October 29, 1985	L	H.R. 3128: Deficit Reduction Previous question adopted on rule, 219–205; Rule adopted by voice vote, Oct. 31, 1985.
336	December 10, 1985	L	H.R. 3838: Tax Reform. Rule defeated, 202–223, Dec. 11, 1985.
343	December 16, 1985	L	H.R. 3938: Tax Reform. Rule adopted, 258–168, Dec. 17, 1985.
344	December 16, 1985	L	H.J. Res. 491: Continuing Appropriations. Rule adopted by voice vote, Dec. 17, 1985.
415	April 10, 1986	D	S.J. Res. 283: Central America Previous question on rule adopted, 221–208, April 8, 1986.
456	May 15, 1986	D	H.R. 4800: Trade Reform Rule adopted by voice vote.
481	June 24, 1986	L	H.R. 5052: Military Construction Appropriations. Rule adopted 279–148, June 25, 1986.
495	July 16, 1986	D	H.J. Res. 672: Sequestration Extender. Rule adopted by voice vote, July 16, 1986.
541	September 9, 1986	D	H.R. 5484: Omnibus Drug Bill. Rule adopted, 382–19, Sept. 10, 1986.
545	September 10, 1986	L	H.R. 4759: Intelligence Authorization. Rule adopted by voice vote, Sept. 16, 1986.
558	September 23, 1986	D	H.R. 5300: Reconciliation. Previous question on rule adopted, 216–196; rule adopted, 255–157, Sept. 24, 1986.
559	September 25, 1986	D	H.R. 3810: Immigration. Previous question adopted, 196–189; rule defeated, 180–202, Sept. 26, 1986.
580	October 8, 1986	D	H.R. 3810: Immigration. Previous question adopted, 299–103; rule adopted, 278–129, Oct. 9, 1986.
100TH CONGRESS			
38	January 8, 1987	L	H.R. 2: Surface Transportation. Previous question on rule adopted, 331–88; rule adopted by voice vote, Jan. 21, 1987.
116	March 10, 1987	D	H.J. Res. 175: Contra Aid Moratorium. Rule adopted, 227–198, March 11, 1987.
135	March 31, 1987	L	H.R. 1320: Conservation Fund. Rule adopted, 303–110, April 1, 1987.
148	April 22, 1987	L	H.R. 1827: Supplementary Appropriations. Rule adopted, 222–191, April 23, 1987.
151	April 27, 1987	D	H.R. 3: Competitiveness Enhancement. Rule adopted, 326–83, April 28, 1987.
219	July 1, 1987	L	H.R. 2342: Coast Guard Authorization. Rule adopted, 305–96, July 8, 1987.
227	July 21, 1987	D	H.R. 2470: Catastrophic Health. Rule adopted, 248–174, July 22, 1987.
233	July 28, 1987	D	H.R. 3022: Debt Limit. Rule adopted, 243–169, July 29, 1987.
238	August 3, 1987	D	H.J. Res. 132: Armenian Genocide. Rule defeated, 189–201, Aug. 7, 1987.
256	September 9, 1987	L	H.R. 1154: Textile Imports. Rule adopted, 305–111, Sept. 16, 1987.
270	September 22, 1987	L	H.J. Res. 362: Continuing Appropriations. Rule adopted by voice vote, Sept. 23, 1987.
296	October 28, 1987	D	H.R. 3545: Reconciliation. Rule defeated, 203–217, Oct. 29, 1987.
298	October 29, 1989	D	H.R. 3545: Reconciliation. Rule adopted, 238–182, Oct. 29, 1987.
302	November 4, 1987	D	H.J. Res. 394: Continuing Appropriations. Rule adopted by voice vote, Nov. 5, 1987.
310	November 17, 1987	D	H.R. 1720: Welfare Reform. Rule tabled, Dec. 15, 1987.
316	November 19, 1987	D	H.R. ——: Sequester Extender. Rule tabled, Sept. 28, 1988.
331	December 9, 1987	D	H.R. 1720: Welfare Reform. Rule adopted, 213–206, Dec. 15, 1987.
390	March 1, 1988	D	H.J. Res. 484: Contra Aid. Previous question on rule adopted, 225–187; rule adopted, 231–183, March 3, 1988.
441	May 10, 1988	L	H.R. 4471: International Broadcasting. Rule adopted by voice vote, May 12, 1988.
466	June 2, 1988	D	H.R. 3436: Older Americans. Rule defeated, 169–243, June 8, 1988.
478	June 21, 1988	L	H.R. 4800: HUD Appropriations. Rule adopted, 209–206, June 22, 1988.
482	June 22, 1988	L	H.R. 4794: DOT Appropriations. Rule adopted, 266–143, June 28, 1988.
491	July 12, 1988	D	S. 2527: Plant Closing
		D	H.R. 4848: Trade. Rule adopted by voice vote, July 13, 1988.
101ST CONGRESS			
108	March 14, 1989	D	H.R. 1231: Emergency Strike Board, Rule adopted, 254–159, March 15, 1989.
111	March 21, 1989	D	H.R. 2: Minimum Wage. Rule adopted by voice vote, March 22, 1989.
160	May 23, 1989	D	H.R. 2442: Drug Wars for Star Wars. Rule defeated, 205–213, May 24, 1989.
179	June 20, 1989	L	H.R. 2655: Foreign Aid Authorization. Rule adopted, 273–146, June 21, 1989.
249	September 26, 1989	L	H.R. 3299: Reconciliation. Rule adopted, 371–49, Sept. 27, 1989.
256	October 18, 1989	L	H.R. 3385: Nicaragua Assistance. Rule adopted by voice vote, Oct. 4, 1989.
266	October 18, 1989	L	H.R. 3402: Hungary-Poland Develop. Rule adopted by voice vote, Oct. 19, 1989.
273	October 24, 1989	D	H.R. 45: Displaced Salvadorans & Nicaraguans. Rule adopted 263–146, Oct. 25, 1989.
364	March 22, 1990	D	H.R. 3847: Dept. of Environment. Rule adopted by voice vote, March 27, 1990.
368	March 28, 1990	D	H.R. 3: Child Care. Previous question on rule is adopted, 251–171; rule is adopted, 246–176, March 29, 1990.
430	July 11, 1990	D	H.R. 5115: Equity in Education. Rule is adopted, 267–151, July 12, 1990.
434	July 13, 1990	D	H.J. Res. 268: Balanced Budget Constitutional Amendment. Rule is adopted, 348–59, July 17, 1990.
439	July 20, 1990	L	H.R. 3950: Agricultural Resources. Rule is adopted, 283–80, July 23, 1990.
449	August 1, 1990	D	H.R. 4000: Civil Rights. Previous question on rule is adopted 247–171; rule is adopted, 246–175, Aug. 2, 1990.
453	August 2, 1990	D	H.R. 5400: Campaign Reform. Rule is adopted, 232–185, Aug. 3, 1990.
473	September 24, 1990	D	H.R. 5269: Crime Control; Rule is defeated, 166–258, Sept. 25, 1990.
485	October 2, 1990	D	H.J. Res. 647: Disapprove MFN Status for China. Rule adopted by voice vote, Oct. 16, 1990.
486	October 2, 1990	D	H.J. Res. 649: Approve MFN Status for Czechoslovakia. Rule laid on table.
490	October 2, 1990	D	H.R. 5269: Crime Control. Rule adopted by voice vote, Oct. 3, 1990.
498	October 7, 1990	D	H.J. Res. 666: Continuing Appropriations Resolution Rule adopted by voice vote on Oct. 7, 1990.
509	October 15, 1990	D	H.R. 5835: Reconciliation. Rule adopted, 231–195, Oct. 16, 1990.

APPENDIX B.—OPEN VERSUS RESTRICTIVE RULES GRANTED IN THE 101ST CONGRESS

Rule no. H. Res.:	Date granted	Rule type	Bill no. and subject
108	3–14–89	MO	H.R. 1231: Emergency strike board.
111	3–21–89	O	H.R. 1369: Mansfield business center.
112	3–21–89	MC	H.R. 2: Minimum wage.
117	4–4–89	O	H.R. 18: Uniform voting time.
126	4–11–89	MO	H.R. 1487: State Dept. authorization.
127	4–12–89	C	H.R. 1750: Contra aid.
135	4–25–89	O	H.R. 2072: Supplemental appropriations.
138	4–25–89	O	H.R. 1486: Maritime Adm. authorization.
143	5–2–89	O	H.R. 7: Voc. Ed. Act extension.
145	5–2–89	MC	H.Con. Res. 106: Budget resolution.
155	5–16–89	O	H.R. 643: Oil Shale claims.
160	5–23–89	C	H.R. 2442: SDI for drugs transfer.
161	5–23–89	O	H.R. 2392: Oil shale claims.
165	6–1–89	MC	S.J. Res. 113: FSX agreement.
173	6–13–89	MC	H.R. 1278: Financial institutions reform.
179	6–20–89	MO	H.R. 2655: Foreign aid authorization.
195	7–11–89	O	H.R. 2022: Soviet and Indochinese refugees.
196	7–11–89	O	H.R. 989: Tongass Timber Reform Act.
198	7–13–89	O	H.R. 1549: NRC authorization.
199	7–13–89	O	H.R. 1484: Park system review board.
200	7–13–89	O	H.R. 828: BLM authorization.
202	7–17–89	O	H.R. 1056: Federal waste disposal.
211	7–21–89	MO	H.R. 2461: DoD authorization.
224	8–4–89	O	H.R. 1668: NOAA-coastal authorization.
228	8–4–89	C	H.R. 1594: MFN Status for Hungary.
230	8–4–89	O	H.R. 2427: NOAA-satellite authorization.
234	9–7–89	O	H.R. 1759: NASA authorization.
235	9–7–89	O	H.R. 2869: Commodity futures improvements.
236	9–7–89	O	H.R. 1659: Aviation Security Act.
245	9–21–89		H.R. 3299: Budget reconciliation.
249	9–26–89	MC	
246	9–25–89	C	H.J. Res. 407: Continuing appropriations.
254	10–3–89	O	H.R. 2748: Intelligence authorization.
255	10–3–89	O	H.R. 1495: Arms Control authorization.
256	10–3–89	C	H.R. 3385: Nicaragua election assistance.
266	10–17–89	O	H.R. 3402: Polish/Hungarian initiative.
267	10–17–89	O	H.R. 2494: International development.
270	10–19–89	O	H.R. 2459: Coast Guard authorization.
271	10–23–89	MC	H.J. Res. 423: Continuing appropriations.
273	10–24–89	C	H.R. 45: Central American studies.
275	10–26–89	O	H.R. 3443: Airline acquisition review.
277	10–31–89	O	H.R. 1465: Oil spill liability.
278	10–31–89	C	H.R. 2710: Minimum wage.
289	11–13–89	O	S. 974: Nevada wilderness
290	11–15–89	C	H.R. 3660: Ethics Reform Act.
295	11–19–89	MC	H.R. 3743: Foreign assistance Appropriations.
309	1–30–90	MC	H.R. 2190: Voter Registration Act.
338	2–20–90	O	H.R. 2570: Arizona Wilderness Act.
355	3–7–90	MO	H.R. 3581: Rural Economic Development.
360	3–20–90	O	H.R. 644: Wild & Scenic Rivers Amendments.
364	3–22–90	MC	H.R. 3847: Department of Environmental Protection.
366	3–27–90	O	H.R. 1463: Capital metrorail system.
368	3–28–90	MC	H.R. 3: Childhood Education and Development.
372	4–3–90	O	H.R. 2015: Economic Development Act.
373	4–3–90	O	H.R. 1236: Price fixing prevention.
378	4–18–90	O	H.R. 3848: Money laundering amendments.
379	4–18–90	O	H.R. 4380: Super collider authorization.
382	4–25–90	MC	H.Con. Res. 310: Budget resolution.
388	5–9–90	MC	H.R. 770: Family and Medical Leave Act.
392	5–15–90	O	H.R. 4151: Human services authorization.
394	5–16–90	MC	H.R. 2273: Americans with disabilities.
395	5–16–90	MC	H.R. 4636: Supplemental Foreign aid authorizations.
399	5–22–90	MC	H.R. 3030: Clean Air Act amendments.
403	5–24–90	MO	H.R. 4653: Export Administration Act.

APPENDIX B.—OPEN VERSUS RESTRICTIVE RULES GRANTED IN THE 101ST CONGRESS—Continued

Rule no. H. Res.:	Date granted	Rule type	Bill no. and subject
408	6–6–90	MO	H.R. 4785: AIDS authorization.
409	6–7–90	MO	H.R. 2567: Reclamation authorization.
410	6–7–90	O	S. 280: Niobrara scenic river.
417	6–20–90	C	H.J. Res. 350: Flag amendment.
			H.R. 5091: Flag statute.
422	6–26–90	O	H.R. 4329: Technology preeminence.
425	6–26–90	MC	H.R. 5114: Foreign Operations Appropriations.
428	7–10–90	O	H.R. 5170: Aviation Safety Act.
430	7–11–90	MO	H.R. 5115: Education Excellence Act.
433	7–13–90	C	H.R. 5258: Balanced Budget Act.
434	7–13–90	MC	H.J. Res. 268: Balanced budget. Constitutional amendment.
435	7–13–90	O	H.R. 1180: Omnibus Housing Act.
439	7–20–90	MO	H.R. 3950: Agriculture authorization.
443	7–30–90	MC	H.R. 5355: Public debt limit increase.
448	8–1–90	MC	H.R. 5350: Temporary debt increase.
449	8–1–90	MC	H.R. 4000: Civil Rights Act.
453	8–2–90	MC	H.R. 5400: Campaign reform.
457	8–3–90	MO	H.R. 4739: Defense authorization.
463	9–12–90	O	H.R. 4330: National Service Act.
466	9–18–90	O	H.R. 4793: Small business reauthorization.
468	9–19–90	O	H.R. 4450: Coastal Zone Act.
469	9–19–90	O	H.R. 5314: Water resources development.
471	9–24–90	C	H.R. 4225: Restricted Weapons Act.
472	9–24–90	O	H.R. 849: Pocket veto bill.
473	9–24–90	MO	H.R. 5269: Comprehensive crime control.
475	9–25–90	MC	H.J. Res. 655: Continuing appropriations.
478	9–26–90	O	H.R. 2039: Job training partnership.
480	9–27–90	O	H.R. 5649: NASA authorization.
484	10–1–90	MO	H.R. 4300: Immigration Act.
485	10–2–90	C	H.J. Res. 647: Disapprove MFN: China.
486	10–2–90	C	H.J. Res. 649: Approve MFN: Czechoslovakia.
487	10–2–90	O	H.R. 5422: Intelligence authorization.
490	10–2–90	MO	H.R. 5269: Comprehensive crime control.
492	10–3–90	C	H.J. Res. 660: Continuing Appropriations.
494	10–4–90	MO	H.R. 4825: Arts, Humanities, Museums.
495	10–5–90	C	H.J. Res. 660: Continuing Appropriations.
498	10–7–90	MC	H.J. Res. 666: Continuing Appropriations.
503	10–10–90	MC	H.R. 4939: MFN for China.
502	10–11–90	O	H.R. 3960: Central Utah projects.
509	10–15–90	MC	H.R. 5835: Omnibus reconciliation.
511	10–16–90	MC	S. 2924: Fish inspection.

Code: A completely open amendment process is provided by an open rule (O). Restrictive rules are those which provide for less than a completely open amendment process and include: closed rules (C), modified closed rules (MC), and modified open rules (MO).

APPENDIX C

POINT OF ORDER BY REPRESENTATIVE BOB MICHEL AGAINST RECONCILIATION RULE DENYING MOTION TO RECOMMIT WITH INSTRUCTIONS, OCT. 16, 1990

(H. Res. 509, Providing for consideration of H.R. 5835)

[From the Congressional Record, Oct. 16, 1990, pp. 29654–29659]

PARLIAMENTARY INQUIRY

Mr. MICHEL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman will state it.

Mr. MICHEL. Mr. Speaker, because the House has been in somewhat disarray and going through some commotion, did I understand the Clerk to have just read House Resolution 509?

The SPEAKER pro tempore. The gentleman is correct.

POINT OF ORDER

Mr. MICHEL. If so, Mr. Speaker, then I make a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. MICHEL. Mr. Speaker, I make a point of order against House Resolution 509 on grounds that it violates clause 4(b) of House rule XI, and ask to be heard on my point of order.

Mr. Speaker, clause 4(b) of House rule XI provides that, and I quote:

"The Committee on Rules shall not report any rule or order of business which * * * would prevent the motion to recommit from being made as provided in clause 4 of rule XVI."

And clause 4 of rule XVI provides, and again I quote:

"After the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution."

Mr. Speaker, those two clauses were adopted as amendments to House Rules on March 15, 1909, when the then minority party Democrats joined with a group of insurgent Republicans to guarantee greater minority rights. Prior to this rules revision, the motion to recommit was controlled by the majority party. This change was instituted for the specific purpose of giving the minority a final vote on this alternative legislative proposal through a motion to recommit with instructions. House Resolution 509, on the other hand, provides that the motion to recommit, and I quote, "may not contain instructions." It therefore is in direct violation of this rule which was purposely designed to guarantee the minority a vote on its alternative by way of instructions.

Mr. Speaker, in support of this argument I quote first from the author of clause 4(b) and rule XI on the day he offered the amendment—Representative John Fitzgerald, a Democrat from New York. In his words:

"Under our present practice, if a Member desires to move to recommit with instructions, the Speaker instead of recognizing the Member desiring to submit a specific proposition by instructions, recognizes the gentleman in charge of the bill and he moves to recommit, and upon that motion demands the previous question. When the previous question is ordered, the motion to recommit is voted down. Under our practice, the motion to recommit might better be eliminated from the rules altogether."

The subsequent rulings of Speakers confirm that the whole purpose of the new rule was to permit the minority of chance to offer a final amendment in a motion to recommit with instructions.

Speaker Champ Clark ruled on May 14, 1912, and I quote:

"It is not necessary to go into the history of how this particular rule came to be adopted but that it was intended that the right to make the motion to recommit should be preserved inviolate."

That is from a precedent found in volume 8 of Cannon's Precedents in section 2757. From that same volume in section 2757 is found a precedent from October 7, 1919. Former Speaker Crisp is quoted as follows:

"The object of the motion to recommit is clearly to give the minority of the House * * * a chance affirmatively to go on record as to what they think this legislation should be, and if a motion to recommit does not permit that, then the motion is futile."

And Speaker Gillett, in deciding the point of order on that occasion, said, and I quote:

"* * * The fact is that a motion to recommit is intended to give the minority one chance to fully express their views so long as

they are germane. * * * The whole purpose of this motion to recommit is to have a record vote on the program of the minority. That is the main purpose of the motion to recommit."

Speaker Bankhead, in a 1939 ruling found in volume 7 of Deschler's Precedents, chapter 23, section 26.1 said of this rule, and I quote:

"The purpose of the motion to recommit * * * is to give Members opposed to the bill an opportunity to have an expression of opinion by the House upon their proposition."

Mr. Speaker, the whole key to this point of order and the underlying rule at issue is what is meant in clause 4(b) of rule XI when it says the Rules Committee "shall not report any rule or order of business which * * * would prevent the motion to recommit from being made as provided in clause 4 of rule XVI." It is not sufficient for the Rules Committee to simply permit a straight motion to recommit and prohibit instructions, since it may not prevent a motion "as provided" by clause 4 of rule XVI. And the legislative history of that rule and the early rulings make clear that what was being provided was an opportunity for the minority offer a motion to recommit of its choosing, with or without instructions.

Indeed Deschler's Precedents, in volume 7, chapter 23, section 25 makes this abundantly clear, and I quote:

"There are in the rules of the House four motions to refer the ordinary motion provided for in the first sentence of clause 4, Rule XVI when a question is "under debate," the motion to recommit with or without instructions after the previous question has been ordered on a bill or joint resolution to final passage provided in the second sentence of clause 4, Rule XVI * * *."

Mr. Speaker, that second sentence of clause 4 of rule XVI is the 1909 rule that is at issue in this point of order. And while it does not specifically mention instructions, it is clear from the legislative history behind the rule as well as this recent interpretation from Deschler's that the right of the minority to offer instructions in a motion to recommit is not only implied by the rule, but is the whole reason for the adoption of the rule in the first place.

It therefore should be obvious that if the Rules Committee is prohibited from denying the minority the right to offer a motion to recommit "as provided" by that second sentence in that 1909 rule, it may not bring in a rule such as this which denies instructions. To do so is to render rule, which protects our minority right, null and void. It is not only a violation of the spirit of the rule but of the literal content of the rule.

I therefore urge the Chair to sustain this point of order for the sake of upholding the tradition, the spirit and the letter of the rule in question.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield on his point of order?

Mr. MICHEL. I would be happy to yield to the gentleman from New York.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman may not yield on this point of order.

Does anyone wish to be heard against the point of order?

Mr. DERRICK. Mr. Speaker, I respectfully suggest that the point of order as made by the minority leader is not correct, is not valid. Simply, as the minority leader has pointed out, there is a motion to recommit, but the motion does not have instructions. There is ample precedent in the House over a long period of time that says that a motion to recommit is in order, it is necessary that it also include the instructions.

Mr. SOLOMON. Mr. Speaker, I ask to be heard on the point of order.

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLOMON] is recognized.

Mr. SOLOMON. Mr. Speaker and my colleagues, I would point out that at midnight last night, when the Rules Committee was reconvened to meet on this outrageous rule, I brought up the very point that the Republican leader is making, that this was a violation of 81 years of precedent of this House and it was countered at that time with the argument, "Well, you know, in years past we have given you Republicans a substitute to give you a bite of the apple." But I want to point out that in this rule, Mr. Speaker, and everybody here should pay attention, this rule does not even allow a Republican substitute. We made that request by letter of the Republican leader, which is in the record of the Rules Committee proceedings last night.

Never before has a Republican leader been denied his right and at the same time been denied a right of recommittal with instructions. That, Mr. Speaker, is outrageous. You should not stand for it. You have the power to prevent these things from happening and let the American people be heard from all sides of this aisle. And I hope that you sustain his point of order.

Mr. MICHEL. Mr. Speaker, may I further be heard very briefly on the point of order?

The SPEAKER pro tempore. The gentleman from Illinois [Mr. MICHEL] is recognized.

Mr. MICHEL. In response to the distinguished gentleman from South Carolina who makes the point that it is not unique to have straight motions to recommit around here, I would admit to that. But what I am arguing here is the fact that having been denied any kind of an amendment to express our minority point of view in the normal proceeding of things, certainly then we ought to be granted, as I have outlined before, that motion to recommit with instructions, to really be meaningful. Otherwise, there is no vehicle, no opportunity for members of any minority for that matter, to express their feelings, their views on a given piece of legislation.

The SPEAKER pro tempore. Does anyone else wish to be heard on the point of order?

The Chair recognizes the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. May I be heard, Mr. Speaker?

I do not know if it exactly applies to a point of order, but I think it fits in with a statement the gentleman from New York made.

Now, the President of the United States stood in the well of this House—stood here and addressed a joint session of the Congress and stipulated that we wanted $500 billion of budget reductions in the next 5 years. People have labored long hours, weeks and months, to try to get to a $50 billion reduction package the first year and $500 million over 5 years. And it is my understanding——

Mr. WALKER. Regular order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman must confine himself to the point or order.

Mr. HEFNER. I am getting to the point of order, Mr. Speaker, if I may be allowed.

Mr. SOLOMON. Regular order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. DERRICK. Mr. Speaker, we extended the courtesy to the gentleman from New York. He was not addressing the point of order. And I suggest that we ought to extend the same courtesy here.

The SPEAKER pro tempore. Regular order has been demanded.

The gentleman from North Carolina [Mr. HEFNER] must adhere to the regular order and will address the point of order.

Mr. HEFNER. The point that I make is that the minority has not been denied in this rule process. If my information is correct, and someone can correct me if I am wrong, the minority was offered the opportunity to offer a substitute just as they have the past 10 years in this body. The minority opted not to offer a substitute that got to the $500 billion over 5 years. It did not meet the criteria that every other group has been asked to meet before they offered——

Mr. WALKER. Regular order, Mr. Speaker.

Mr. HEFNER. I think I have made my point. Mr. Speaker, I yield the time.

Mr. DERRICK. Mr. Speaker, I reiterate my original statement on the point of order.

The SPEAKER pro tempore (Mr. MURTHA). Does anyone else wish to be heard on the point or order? If not, the Chair will refer to a ruling by Speaker Rainey, January 11, 1934 cited on page 471 of the Manual and in Deschler's volume 6, chapter 21, section 26.11, and in volume 7, chapter 23, section 25:

"The Chair will state that the Committee on Rules may, without violating this clause, recommend a special order which limits, but does not totally prohibit, a motion to recommit pending passage of a bill or joint resolution, such as precluding the motion from containing instructions relative to certain amendments."

In the only precedent directly relating to the question at issue, Speaker Rainey on January 11, 1934, ruled and was sustained on appeal. The Committee on Rules is not precluded under clause 4b, rule XI, from specifically limiting motions to recommit bills or joint resolutions pending the question of final passage to specific type of instructions.

Speaker Rainey stated on that occasion:

"The Chair, therefore, holds the motion to recommit, as provided in clause 4, rule XVI, has been reserved to the minority and that, insofar as such a rule is concerned, the special rule,—"

And the Chair emphasizes to the House,

"does not deprive the minority of the right to make a simple motion to recommit."

This is Speaker Rainey speaking:

"The Chair thinks, however, that a motion to recommit with instructions to incorporate a provision, which would be in violation of the special rule, and would not be in order."

Thus, the Committee on Rules has the authority to recommend special rules to the House which may limit, but not totally prohibit, the type of motion to recommit which may be offered, not merely with respect to the general rules of the House, but with respect to germane amendments which might otherwise be in order. Clause of Rule XVI does not guarantee that a motion to recommit a bill may always include instructions.

The Chair, therefore, overrules the point of order.

Mr. WHEAT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the sentiments of the gentleman from New York [Mr. SOLOMON] on this very important civil rights bill, that we should have as open and candid a debate as possible. That is in fact the goal of the Committee on Rules, to structure a debate that

allows us to openly debate all of the important issues in this civil rights bill, and allows each Member of this body to participate.

Mr. Speaker, I would once again point out to the gentleman from New York [Mr. SOLOMON] that the base bill to be considered is the bill as passed by the Committee on Education and Labor. During committee consideration, the minority had every opportunity to, and it is my understanding did, fully participate.

There are then three complete substitutes that may be allowed to this bill. The first, the Towns-Schroeder amendment, is the bill as passed by the committee last year, again where the minority had every opportunity and actually did participate in the passage of the bill that came out of committee.

The second is the minority substitute, and the minority had no input from the majority members whatsoever as to which amendments ought to go into that minority substitute. Any or all of the 10 amendments that the gentleman referred to could have been included in the minority substitute that can be offered here on the floor today.

The third amendment, of course, is the leadership substitute that will be offered by the gentleman from Texas [Mr. BROOKS] for the majority side. That reflects the compromise bill that has been put together by the great bulk of the majority members on this side.

Mr. Speaker, every philosophical viewpoint does have an opportunity to be debated openly and fully here on the floor of the House of Representatives.

Mr. Speaker, this is a vitally important piece of legislation. Every Member will have an opportunity to speak on this bill, to have their word on this bill, and to have input into this bill. I hope when we are done we will be able to proudly say that we have passed a vitally important piece of legislation, the civil rights bill of 1991.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. WHEAT. I am happy to yield to my friend from New York.

Mr. SOLOMON. Mr. Speaker, I would just say to the gentleman from Missouri [Mr. WHEAT] that the gentlewoman from Colorado [Mrs. SCHROEDER] had a very legitimate amendment. She wanted to remove a cap which would have made women equal with regard to all of the issues out there.

□ 1250

The gentleman from Iowa [Mr. GRANDY] had an amendment which would have put caps on everything, which would have also made women equal, the actual opposite position of the gentlewoman from Colorado [Mrs. SCHROEDER]. Those two issues ought to be debated on this floor today. They are not allowed to under this gag rule. That is my argument.

Mr. WHEAT. Mr. Speaker, I would point out to the gentleman that the gentlewoman from Colorado [Mrs. SCHROEDER] did appear before the Committee on Rules originally requesting what we would describe as a single-shot amendment. She then joined with the gentleman from New York [Mr. TOWNS] in offering a complete substitute to the civil rights bill that does in fact address the issue that the gentleman just referred to, the removal of the caps. So there is that opportunity to debate that issue fully and thoroughly from both sides of the philosophical aisle.

Mr. Speaker, for purposes of debate only, I yield 7 minutes to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Speaker, I thank my colleague, the gentleman from Missouri [Mr. WHEAT] for yielding time to me.

Mr. Speaker, it is easy to engage in a politics that divides us, that plays on our fears. Regrettably, it has been episodically a part of American history. We have overcome that. We are back on it again. That is the strategy of the White House.

That is what they have stooped to, pitting men against women, blacks against whites, just to create a campaign issue. It is much more difficult to bring people together, but that is what the job of leadership is all about, each of us representing a half million people, coming to Washington, trying to hold that coalition that we represent in our district together to work toward a fair and more just America.

That is what we do here today, in passing legislation that will be a major victory for equal opportunity for all Americans.

Mr. Speaker, we have taken our time on this bill. We have been patient. My colleagues on the committee, the gentleman from Texas [Mr. BROOKS], the gentleman from Michigan [Mr. FORD], the gentleman from California [Mr. EDWARDS], the gentleman from New York [Mr. FISH], the Black Caucus, the gentleman from Massachusetts [Mr. MOAKLEY], the gentleman from Missouri [Mr. WHEAT], the women's caucus, the conservative forum, many on the other side of the aisle, we have worked day and night, quietly trying to bring to the fold every reasonable concern that has been expressed on this important piece of legislation.

We have outlawed quotas, but the White House is not satisfied. We have brought in the concerns of the business community on damages, on business necessity, but the White House is not satisfied. There seems to be no bipartisan language that will satisfy this administration. Instead the White House stepped in and sabotaged the efforts of major business leaders just as they were about to reach a compromise on this bill.

We were yea 5 from getting there when they jerked the rug out at the White House. Now the President is running a road show around this country, saying this is a quota bill.

Mr. President, read the bill before you hit the road. This is not a quota bill. It specifically outlaws quotas, and anyone who feels that he or she has been denied a job because of a quota will have the right to sue for damages under this bill.

This bill outlaws discrimination and it outlaws reverse discrimination. It is a fair bill to all.

The White House would rather practice politics of division than to bring us together as a Nation. They would rather practice the politics of fear than promote opportunity in the workplace.

Mr. Speaker, to each generation of Americans falls the responsibility to renew the promise of equal opportunity upon which this Nation was founded. We have had ups and downs, starts and stops in the process. Many people have been tortured, have been beaten, have been abused verbally and physically. A half million men and women died over 100 years ago for that right in this country. It has been a painful and a slow process.

Nearly a generation ago Democrats and Republicans stood together firmly, firmly on this floor, in this House, and passed the historic civil rights bill of 1964. Today we are called upon to show that same unity of spirit, that same determination to move this country forward in guaranteeing opportunity for all.

But we also do something very important in our time today, 1991. We are called upon uniquely to stand together against the politics of cynicism, against the politics that would take the rights that belong to all Americans and sell them short for a cheap political slogan or a cheap 30-second commercial.

Mr. Speaker, this country cries out for leadership. We are in a long and a deep recession. The working people of this country do not need a President who tells them that someone else is to blame for taking their jobs. We need a President who recognizes it is his responsibility to help create jobs for all.

The time has come to put the rhetoric aside, to stand up for opportunity and to guarantee that no one in this country is denied the right to a job. That is what this bill is about. That is what this bill is about. Nothing else, nothing more, nothing less.

Mr. Speaker, this is a good rule. This is a good bill. This is good policy. This moves America forward. This is where we want to go.

I urge my colleagues to stay with our committee and to pass this bill to the Senate.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MCNULTY). Members are reminded to

direct their remarks to the Chair and not to the President.

Mr. SOLOMON. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Illinois, Mr. HENRY HYDE.

Mr. HYDE. Mr. Speaker, I want to welcome all of you to a new television game show—it's called "Find the Bill"! It works like this:

The House of Representatives considers very important civil rights legislation for a year and a half.

Two standing committees hold hearings, hear testimony, and eventually debate the bill. Amendments are offered, voted upon, and the legislation is approved.

Then, both committees file detailed reports providing specific legislative history as to what the language means.

But what happens when the time comes to consider this legislation on the floor of the House? Do we consider the legislation so carefully analyzed and debated in the two committees? Don't be foolish—of course not.

Trying to come to grips with the Democrats shifting positions is like holding mercury in your hands.

This rule asks us to debate and vote on two substitutes that, until late last week, we were not even permitted to see.

These new versions were not written by Members of this House in any committee. They were written by the plaintiff's lawyers and certain lobbyists who have a strong self-interest in making sure that this legislation is not affected by the people who are elected to serve in this body.

Oh, and by the way, no amendments are permitted to these new substitute bills.

The rule governing consideration of this civil rights bill is a travesty—it's a repudiation of the democratic process.

This proposed rule gags virtually every Member of this House and interferes with our ability to fully participate in what deserves to be an important and historic debate.

The irony of a civil rights bill being considered under such restricted circumstances shouldn't be ignored. It is the direct opposite of openness and fairness.

Some say "rules of procedure" are just inside the beltway stuff—not really important.

But the rule determines what issues get addressed and what problems get resolved.

If Members can't offer amendments to deal with the problems in a particular bill, the rights of the citizens across this country who elected us are rendered meaningless.

This is an enormously complicated bill, and this procedure allows no real focused debate on many controversial issues.

Most Americans already know that legitimate concerns have been raised about whether or not this bill could result in quotas for hiring and promotion.

Why are we not allowed to offer specific amendments to those sections of the bill which generate those quota concerns?

Further, the entire American business community—companies both large and small—rightly fear the new, unlimited compensatory damages as well as the punitive damages. Why can't we offer amendments specifically aimed at reforming that damages section?

We all know why amendments won't be permitted—they might pass.

The Democratic leadership and the so-called civil rights lobby also wanted to make sure that we couldn't offer our "race norming" amendment separately. Heaven forbid that the House of Representatives should be allowed to vote against discriminatory test scoring.

Instead, behind closed doors the social engineers have come up with new language that they claim responds to our criticism of this practice.

But what their language really does is allow the professional litigators to challenge the legality of all aptitude tests.

The American public should know that their "fix" has the exact opposite effect of what they claim for it.

The rules protect the minority, just as the Constitution is designed to protect citizens from the arbitrary use of governmental power.

When the rules are manipulated as they are here, the idea of free and open debate in the peoples body is violated, and we are all—citizens and legislators—diminished thereby.

In the past, the majority party had a lot more confidence in itself—the Civil Rights Act of 1964, the Voting Rights Act of 1965 and 1981, the Fair Housing Act of 1988, were all landmark legislation—and debated under an open rule.

Why do they fear an open rule? Are we short of time? Have we pressing and urgent business ahead? No, we all know why we are put in this legislative straitjacket—democracy just might work and we might get a better bill, and that cannot be permitted.

Let us retain a measure of self-respect and vote no on this rule.

□ 1300

Mr. WHEAT. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BROOKS], the distinguished chairman of the Committee on the Judiciary.

Mr. BROOKS. Mr. Speaker, I want to thank the gentleman for yielding me this time and say that I am particularly glad today to see that my old and distinguished friend, the gentleman from Illinois [Mr. HYDE], is back in good form, well and healthy, happy, and debating in his usual style and grace.

Mr. Speaker, last week, I went to the Rules Committee with one basic request: That the rule for debate on this legislation be fair and workable. By that, I meant that, given the major issues raised in the volatile debate that has been going on for over a year, each Member of this body would be able to evaluate the competing approaches to the problem of discrimination in the workplace. My request to the Rules Committee was that the rule "permit the comprehensive consideration of the relative merits of the various proposals."

I believe the Rules Committee, under very difficult circumstances, has crafted a rule that will permit debate to proceed in exactly this fashion. Three different approaches have been made in order for consideration by the Members of this body. For example, Members under the rule are permitted to vote for the Towns-Schroeder substitute should they wish to do so. If they would seek, among other things, to have quotas explicitly banned in the legislation we are considering today, they can vote for the Brooks-Fish substitute. On the other hand, if they care to vote for a substitute that does not address the issues of quotas head-on and does not permit women, religious minorities, and the disabled to receive a measure of compensatory damages, they can vote for the Michel substitute.

Three carefully drawn substitutes are before the House and Members can express their will based on individual choice.

It is time to move forward to the debate. Already, far too much heat and far too little light has been generated in the debate over the legislation thus far. This is the second Congress that this legislation has been with us, and its major points of contention has been crystallized in the three substitutes made in order under the rule. As one Member, I am determined to move forward to consider the substance of those three substitutes, and I hope I will be joined by others in this body who care about substance as well.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. GOODLING], the distinguished ranking Republican on the Committee on Education and Labor.

Mr. GOODLING. Mr. Speaker, the comment that the President just wants to create a campaign issue is so preposterous that I probably should not even comment on it. The President is not trying to create any campaign issue. His civil rights record is impeccable.

Then he is told to read the bill. Well, the bill is a moving target. Does he read the bill Thursday morning, Thursday afternoon, Thursday evening, Friday morning, Monday morning? Which bill are they talking about? Which one should he read?

The President introduced a bill last year. It was the President who introduced the bill last year who got out in front on the whole issue, because it was the President who thought that the Supreme Court did not rule properly at least on three different occasions. It was the President who decided that there were injustices created by those rulings.

But I want to talk about the rule today, because it is a rule on a civil rights bill. One might think now that the minority party would just give up in attempting to receive equitable treatment in the U.S. House of Representatives, but we are not giving up, particularly on a civil rights bill.

Once again, we are confronted with a rule which will preclude all but one Republican amendment, the Michel substitute, and I keep asking myself: What is it that the majority is afraid of? Is a full debate on the issue, a debate which can best be accomplished through the amendment process, such a bad thing? Apparently the majority believes it is.

Oh, yes, I forgot; I believe someone on the Committee on Rules said that this bill was too complicated for nonlawyers and, therefore, we do not want them messing around with the bill out here trying to amend it. Well, we just might do something to it that would take away the right for full employment guaranteed to lawyers if we got involved.

But I have handled several bills on the floor of the House, and I believe those of us who are nonlawyers are just as capable as those who are lawyers dealing with issues such as the issue before us today.

Mr. Speaker, all I can say is I believe the real reason that we do not want to an open debate on the issue is that many people may have a better understanding of what is in the legislation if we had that debate, and apparently the majority does not want them to have a better understanding.

I will leave until later my criticisms of the Brooks-Fish substitute, a substitute which is certainly no compromise, which contains entirely new provisions not even contained in H.R. 4000 of the last Congress or even in H.R. 1.

But I strongly object to the rule before us today, and I urge my colleagues to vote against it.

Mr. WHEAT. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, today's debate is not about quotas. It is about the politics of race and fear in America.

It is time to tell it like it is. It started with the Reagan campaign in 1980, and it elevated to a new art form by the Bush campaign in 1988.

Let there be no mistake, those campaign ads in 1988 that featured Willie Horton had a meaning. Those campaign ads did not feature Richard Speck, Charles Gacy, Son of Sam, all white vicious killers. It was Willie Horton. Mean, black, and scary, was it not?

But the bottom line is that the President's men know what they were doing. They were able to promote a feeling of fear in that campaign, and it worked. You know it, and I know it, even though no one will address it for some reason.

But now the President has gone from Willie Horton to quotas. One recent quote, "They are going to steal your jobs, workers." Another recent quote, "We must protect the rights of that silent majority." "We, they, they, we," the politics of division, the politics of race, the politics of fear.

Ladies and gentlemen, the sad part in the warning that must come to this Congress is the President's policies are taking America from the melting pot down to a full-blown meltdown, and there is only one body that can fix it, one body that can make it right.

□ 1310

But you see, the truth is if the President had his way, we would have capital gains for the rich people, capital punishment for poor people. That is exactly right, Mr. Speaker. Fast track for the haves, dead-end for the have-nots. One against the other, pursuing political agendas.

It is not going to work any longer. Even the American people are beginning to recognize that political rhetoric.

Let me say this to the Members of Congress who are concerned about their vote today, because the majority in this country believes much of that rhetoric you are going to be afraid to go home and look people in the eye when you vote. You are here to do what is right and if you are going to sit in an ivory tower and watch where the mob goes and then come out and lead them, you are not a leader. On the street you are called a Washington punk.

It is time today to make a tough decision, a decision that is right.

Remember that first Constitution, blacks were considered two-fifths human. Women could not vote. American Indians were allowed to be hunted down, shot and killed, and herded into holding pens; but thank God the Constitution afforded Members the right to reverse that.

But let us tell it the way it is. Women can vote today. Indians can own property. Blacks have gone from slaves to sharecroppers, and they say hopefully maybe CEO's, but you and I both know that will never happen unless America stamps out discrimination, and if Congress does not give a helping hand to the minorities of the country, where is their court of appeal? Do you think it is in the courts of this country?

Jefferson said, "Beware of the appointment of Federal judges for life terms, because they can take the Constitution and mold it like clay in their hands." Jefferson gave Congress maybe the greatest historical document that we should follow.

The SPEAKER pro tempore. The time of the gentleman from Ohio has expired.

Mr. WHEAT. Mr. Speaker, I yield 1 additional minute the the gentleman from Ohio.

Mr. TRAFFICANT. Mr. Speaker, I appreciate the additional minute.

There are Members here who will be quoting famous Americans. I do not know if he is all that great or famous an American, but to me I sort of identified with something he said. When the great Vince Lombardi, the great coach of the Green Bay Packers passed away, the news media were very, very crazy about what the members of this team thought of him, because everybody came to the funeral and they were overflowing with love there, you see.

One media man went up to the great defensive end, a black man, Willie Davis, a Hall of Famer now, and he said, "Willie, how did you really feal about Coach Lombardi?"

Willie said, "I loved him. I loved him dearly."

The reporter asked, "Why was that, Willie?"

Willie said, "Because he treated us all alike, like dogs, but all alike."

To the Members of the Congress, our job is to make sure everybody is treated exactly alike here today.

Mr. SOLOMON. Mr. Speaker, I just hope the gentleman supports my motion to defeat the previous question so that every Member is treated equally on this floor today.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DREIER], a distinguished member of the Rules Committee.

Mr. DREIER of California. Mr. Speaker, I rise in strong support of civil rights legislation. It is clear to me that we have a very tragic situation in this country. Race relations are at an extraordinary low, and it is essential that we move ahead with this important legislation.

I think that the most important civil right that can be recognized, as has been said by the gentleman from New York [Mr. SOLOMON] and by the gentleman from Ohio, is the rights of everyone should be protected.

Up in the Rules Committee we moved ahead with several amendments, which I will ask unanimous consent to be incorporated in the RECORD at this point. These are amendments which were offered by Republicans and by a simple party line vote they were rejected. They were amendments which could fashion a reasonable civil rights bill. I want a bill that ensures we do not have a quota system. I want a bill that en-

sures that everyone is innocent until proven guilty beyond the shadow of a doubt, and I want a bill that ensures that it is not retroactive.

Well, these are the kinds of things we wanted to incorporate. The gentleman from Illinois [Mr. FAWELL], the gentleman from California [Mr. CAMPBELL], the gentleman from Florida [Mr. MCCOLLUM], a wide range of Members had very decent amendments and their civil rights were violated as we considered this up in the Rules Committee, and if we do not defeat the previous question and move ahead with an open rule, Mr. Speaker, we are going to jeopardize the rights of the minority and many on the majority side. So I urge my colleagues to support that.

As we look back at the civil rights legislation that we have had since 1957, every single measure up until 1988 was considered under an open rule.

Mr. Speaker, I also ask that we incorporate into the RECORD at this point the history of the rules under which civil rights legislation has been considered.

I urge defeat of the previous question and ultimately defeat what is clearly a closed rule.

The material above referred to is as follows:

REPUBLICAN AMENDMENTS FOR CIVIL RIGHTS RULE REJECTED ON A PARTY LINE VOTE

1. Solomon: Offer open rule substitute;
2. Rep. Hyde: restore pre-Wards Cove law;
3. Rep. Moorhead: Eliminate retroactive application;
4. Rep. McCollum: Provide a new remedy for on-the-job harassment with a $150,000 damage cap;
5. Rep. Hyde: Prohibit race-norming in test scores;
6. Rep. Fawell: Provides that an employer's use of measures of academic achievement are presumed to meet the job relatedness requirements;
7. Rep. Fawell: The definition of business necessity shall not be construed to exclude the use of subjective evidence;
8. Rep. Campbell (CA): Strikes provisions overturning *Martin v. Wilks;*
9. Rep. Young (AK): Assures that requirements of bill do not apply retroactively to the Wards Cove case situation;
10. Rep. Grandy: Limits to $150,000 the total amount of punitive and compensatory damages that could be recovered in intentional discrimination cases, excluding any lost back pay;
11. Rep. Gunderson: Deletes provisions assuring attorney fees in specified cases;
12. Solomon: Offer language to permit motion to recommit, "with or without instructions."

PROCEDURES FOR CONSIDERATION OF MAJOR CIVIL RIGHTS BILLS

BILL NAME AND NUMBER, PROCEDURE, DATE, AND DISPOSITION

Civil Rights Act of 1957 (H.R. 6127)—Open rule (H. Res. 259), 4-days general debate; adopted 291-117, June 5, 1957.

Equal Pay Act of 1963 (H.R. 6060)—Open rule (H. Res. 362), 2-hours general debate; adopted 362-9, May 25, 1963.

Civil Rights Act of 1964 (H.R. 7152)—Open rule (H. Res. 616), 10-hours general debate; adopted voice vote, Jan. 31, 1964.

Voting Rights Act of 1965 (S. 1564)—Open rule (H. Res. 440), 10-hours of general debate; adopted 308-58, July 6, 1965.

Age Discrimination in Employment Act of 1967 (H.R. 13054)—Suspension of the rules; passed 344-13, Dec. 4, 1967.

Fair Housing Act of 1968 (H.R. 2516)—Open rule (H. Res. 856), 3-hours general debate; adopted 330-77, Aug. 15, 1967.

Education Amendments of 1972, Title IX, (H.R. 7248)—Open rule (H. Res. 661), 4-hours general debate; adopted 371-7, Oct. 27, 1971.

Rehabilitation Act of 1973 (H.R. 8070)—Passed under suspension of the rules, 384-13, June 5, 1973.

The Equal Credit Opportunity Act of 1974 (H.R. 11221)—Suspension of rules; passed 377-19, April 8, 1975.

Age Discrimination Act of 1975 (H.R. 3922)—Open rule (H. Res. 794), 1-hour general debate; adopted 397-0, Feb. 5, 1974.

Voting Rights Act Amendments of 1981 (H.R. 3112)—Open rule (H. Res. 222), 2-hours general debate; adopted by voice vote, Sept. 28, 1981.

Civil Rights Restoration Act of 1988 (S. 577)—Modified closed rule (H. Res. 391), 1-hour general debate, only one substitute amendment allowed; previous question adopted, 252-158; rule adopted, voice vote, March 1, 1988.

Fair Housing Act Amemdments of 1988 (H.R. 1158)—Open rule (H. Res. 477), 1-hour general debate; adopted 394-1, June 22, 1988.

Americans with Disabilities Act of 1990 (H.R. 2273)—Modified closed rule (H. Res. 294), 1-½ hours general debate, only 5-amendments made in order: adopted 237-172, May 22, 1990.

Civil Rights Act of 1990 (H.R. 4000)—Modified closed rule (H. Res. 449), 3-hour general debate, only 3-amendments in order; previous question adopted, 247-171; rule adopted, 246-175, Aug. 1, 1990.

SUMMARY

Of the 15 major civil rights bills identified here spanning the years 1957 to 1990, nine were considered under an open amendment procedure, including the landmark 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act.

Of the six civil rights bills considered under a restrictive amendment process, three were considered under suspension of the rules (the 1967 Age Discrimination in Employment Act and the 1973 Rehabilitation Act, and the 1975 Age Discrimination Act), with less than 20 Members opposing each bill.

Aside from these three suspension bills, the restrictive amendment process as applied to civil rights legislation is a very recent development, dating back only to 1988. Put another way, of the 12 major civil rights bills considered under order of business resolutions or "rules", only three have limited the amendment process.

Prepared by Don Wolfensberger, Minority Chief of Staff, House Rules Committee.

Mr. SOLOMON. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Speaker, as we begin debate on what many will call a historic civil rights bill it is more than a little ironic that we must conduct our discussions under a rule that is unfair, unjust, and patently discriminatory to both members of the minority party and to minority members of the majority party.

Yes, Republicans are allowed their substitute. Nobody doubted we would be allotted our usual meager ration of dissent, and for good measure members of the Black Caucus and certain female Members of this body are also permitted to offer an alternative to the Brooks bill. But does anyone in this Chamber believe either one of those substitutes has the slightest chance of passage? The game is rigged, Mr. Speaker, the dice are loaded, the deck is stacked. A king of the Hill procedure could allow the Towns-Shroeder substitute to pass by the margin of 435 to 0 in the committee and never get out of the whole House. The Michel substitute could eke out a narrow bipartisan victory and under the parliamentary minefield that is part of this rule, never get out of the House.

So in other words, to quote the eminent jurist, George Orwell, "All animals are equal, but some are more equal than others."

Now, is this really the way the House of Representatives wants to consider landmark civil rights legislation, especially after everything that has been said about a tradition of open rules for civil rights debate? Is this bill any less deserving than the civil rights bill of 1964? Has civil rights become a game that only lawyers can play?

No matter where any of us come down on this issue most of us have to agree that the debate over civil rights has turned ugly. The national media, hungry for a polarizing issue to use as grist for the next Presidential campaign, has waved the so-called quota issue and both sides have snapped at it. We do not have to continue that brawling here today. We can strike down this repressive rule and freely debate the admittedly complicated issues that comprise this legislation. But if we are limited to but three unamendable choices, none of which fully address the concerns of many Members in this House, then we will have no choice. We will make sound bites but not sense.

Mr. Speaker, let me illustrate what I mean by this. There are many minor technical differences in the substitutes such as waivers of attorneys' fees and retroactivity; but there are two main issues that divide us on employment discrimination. First are the rules of proof, the so-called quota issue. The second major concern is damages, Mr. Speaker. Under every bill we consider today our Nation's employers must brace themselves for new standards, dictating not just how they can be sued but for how much. For some mysterious reason the press has chosen to decide that it is only quotas that are the important question.

I have even had a couple of pundits suggest to me that damages are not a significant part of the debate. Well, Mr. Speaker, to that I say if you are one of the many millions of small businesses who will be affected by H.R. 1

damages are not just a significant part of the debate. Damages are the debate.

The National Restaurant Association estimates that over 70 percent of their membership had less than $500,000 in gross receipts last year. Assuming a damage cap of $150,000 that is an enormous blow to the viability of most of our mom and pop diners. Assuming unlimited damages that is a death knell.

□ 1320

With that in mind, I went before the Committee on Rules and requested an amendment to cap damages at $150,000, which is well above the normal settlement in employment discrimination cases. And, Mr. Speaker, I mean all discrimination cases, I mean section 1981 as well as title VII, because I agree with the proponents of the Towns-Schroeder amendment when they argue that there should not be one standard for racial discrimination in this country and another for sexual or religious bias.

But nowhere in the Constitution does it stipulate that equity and parity under the law entitles one to unlimited punitive and compensatory damages. Now, many of you may not agree with this position. Fine. But surely you agree with the right to offer that into the debate today and not just to debate but to also decide the question by a vote. The rule before us does not permit that decision. The rule before us today allows consideration of unlimited damages for all types of employment discrimination. It allows consideration of limited damages for some types of discrimination but it does not allow consideration of limited damages for all types of discrimination.

When the House considered going to war in the Persian Gulf, we allowed time to consider all the options. Last Monday when the House considered our Nation's defense needs, we allowed time for all of the choices. Surely the future of our citizens' civil rights deserves equal time. Surely we are not too busy in this Congress to painstakingly take this bill apart and put it back together so that it truly serves all of our constituents all of the time.

Mr. Speaker, end the discrimination in this debate before its begins. Defeat this rule.

Mr. WHEAT. Mr. Speaker, may I inquire of the Chair how much time remains on both sides.

The SPEAKER pro tempore (Mr. McNULTY). The gentleman from Missouri [Mr. WHEAT] has 9½ minutes remaining and the gentleman from New York [Mr. SOLOMON] has 8½ minutes remaining.

Mr. WHEAT. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the distinguished gentleman from Missouri for yielding.

Mr. Speaker, I would like to respond to some of the things that I have heard down here in the well today. Yes, indeed, this is a historic civil rights debate. It is historic in that what we are trying to do is return civil rights to where they were before the Reagan court got hold of them.

And I think that is exactly what we are talking about. Now we hear a lot of people saying that when we first launched civil rights we brought it to the House floor under an open rule in 1964. Indeed, we did. And there were 125 amendments to the bill. And it went on for days.

But, this is different in that what we are really talking about is five very targeted Supreme Court decisions that eroded away those rights that were given in 1964.

So the real question is why do you open up everything and start all over again? You either believed in 1964, thought it was going along the right track, until it got sidetracked and therefore you are trying to get it back on track, and that is what we are trying to do today. This basically should be rather a housekeeping amendment.

I do not think anybody is saying that this is historic legislation in a new way.

Mr. GUNDERSON. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. I thank the gentlewoman for yielding.

The gentlewoman is saying this bill simply restores the law to where it was before the Supreme Court cases.

Mrs. SCHROEDER. It is dealing with the five Supreme Court cases. I would not say, if I may reclaim my time, I will add one more thing: It does allow women damages for the first time for sexual harassment. If the gentleman does not like that, I am sorry. I think after 200 years it is time.

The gentleman knows that the President's bill severely limits what women can get, and the President—I am not too surprised he belongs to the Skull & Bones that will not even let women in.

Mr. GUNDERSON. Will the gentlewoman yield again?

Mrs. SCHROEDER. The gentleman keeps wanting to use my time.

Let me say the thing that I thought was interesting on your side is you can see that even the President did not like three of the five bills. Now, if he did not like three of the five bills, so he is basically trying to change three of the five bills in the Republican substitute and we are trying to change five of the five, why would he call our bill a pig? I mean are you not offended he would call it a pig? Is it because women are in it? Why is it that he is upset? I do not know that I would want you to have to answer for the President, and I do not think we are allowed to talk about that here. But I must say I was very offended by that.

Mr. GUNDERSON. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. If the gentleman will let me finish, I will.

Mr. GUNDERSON. OK.

Mrs. SCHROEDER. If the gentleman would let me, I would be happy to yield.

My point is that what we are talking about here is a very specifically limited bill. They want—you want to amend three of the five, we want to do five of the five. We want to add women. I am even upset that we have caps on people. You would like to put caps on everybody. OK, that is a debate. But this bill is not a pig.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. McEWEN], a member of the Committee on Rules.

Mr. McEWEN. Mr. Speaker, I rise in opposition to the rule.

Mr. Speaker, for the second time in 2 years the House will consider major civil rights legislation under a closed rule. A closed rule for civil rights legislation is legislative hypocrisy in Orwellian proportions.

Under this closed rule:

Fairness is discrimination;

Civil rights strips minority rights; and

Equal opportunity demands no opportunity to consider amendments.

The House has not always considered important civil rights legislation in such an uncivil environment. In fact, until recently, the spirit of equal opportunity characterized the consideration of civil rights bill on the House floor.

The House had an open rule for the Civil Rights Act of 1957:

An open rule for the Civil Rights Act of 1964;

An open rule for the Voting Rights Act of 1965;

An open rule for the Education Amendments of 1972;

An open rule for the Age Discrimination Act of 1975;

An open rule for the Voting Rights Act of 1981; and

An open rule for the Fair Housing Act of 1988.

Each of these pieces of landmark legislation became law.

On the other hand, last year the House considered the Civil Rights Act of 1990 under a closed rule. As we all know, the debate was acrimonious, the public was divided, and the bill did not become law.

The fact that the House had a closed rule did not determine the ultimate failure of that bill. The American people oppose the use of quotas and preferences in employment matters, and last year's bill promoted those objectionable practices. America wants equal opportunity for all, a colorblind society, not a quota bill. But, I must note that last year's closed rule promoted confrontation and eliminated any opportunity for the full House to craft a compromise. This certainly contributed to the bill's ultimate failure.

As I said, the irony of this entire rules debate is that the majority supports discrimina-

tory procedure for civil rights legislation. Civil rights is about fairness, equal opportunity, and openness. It is about guaranteeing legal rights to all Americans. These very principles are ignored by this rule. Therefore, every Member who supports fairness, free speech, and equal opportunity should oppose this rule.

Most Americans have a mistaken notion of how the House considers important matters like civil rights bills. Maybe it's a vestige of the noble tradition of open rules for important legislation like the past civil rights bills, but most people think their Representatives in Congress have an opportunity to vote on the many controversial and important issues that make up a bill like H.R. 1.

They need to know that is just not the case. Free speech is strangled in this House by rules like this one. Sure, in the short run the Democratic leadership will probably get their bill passed in the exact form they want. They will avoid debate and votes on the numerous important issues that make up this bill. Instead of allowing the Members to take a stand on a number of distinct issues, the Democratic leadership has fashioned a debate that concludes with one or two politically correct votes—votes that can try to portray as either procivil rights or anti civil rights.

But they will fail in the long run because bad process makes for bad law, and running roughshod over minority rights in the House will eliminate any hope of a meaningful compromise that allows a civil rights bill to become law.

In the case of H.R. 1, this closed rule is technically bad policy because it takes a number of different Supreme Court opinions and squeezes them into votes on single broad substitutes that avoid votes on the particular issues by the cases. The different bills then add issues that go beyond any of the cases.

For example, should we use statistics in the proof of discrimination cases? This is a controversial and complicated issue. It deserves consideration on its own.

The issue of the burden of proof in disparate impact cases opens another range of questions. Should particular discriminatory practices have to be singled out? What will be the standard for hiring or promotion decisions? What will be the standard to show a particular practice or test or qualification is truly important to job performance? All important questions.

The original bill and substitutes will create new remedies for many discrimination cases. Compensatory and punitive damages will be available to an entire new category of discrimination cases. Compensatory damages are different than punitive damages, and both are radically different than the historical use of injunctive relief and backpay. The bills consider them in different mixes, but without an open rule, the House will never get to vote on these issues without the excess baggage of the rest of the bill.

And how about the practice known as within-group norming, or race-norming. This is a practice in which test scores are grouped so that an individual's score is only compared to those of other members of his racial or ethnic group. The score is then converted into a percentile rank within that group—and that rank is substituted for the individuals original score. This can drastically alter an individual's score on the test, either increasing or decreasing it if the group score is higher or lower. This House should have a vote on this issue alone, so that the People's House can delve into testing issues.

This is just a few of the important issues that are encompassed by these bills. A closed rule simply does not suit this type of legislation. We owe it to this institution and we owe it to the American people to have a full and open discussion of all the aspects of this important legislation.

The American people are watching this debate. They want civil rights legislation that helps create a colorblind work environment in America—eliminate discrimination against all Americans—without quotas. And it doesn't matter if the quotas are directly imposed or are the result of an overwhelming threat of damaging lawsuits and losses that just makes quotas the easiest choice.

I only hope that the American people take the time to look at this discriminatory rule—I'm confident they will be as disgusted by it as they are disgusted by racism and sexism.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to my neighbor, the gentleman from Connecticut [Mr. FRANKS].

Mr. FRANKS of Connecticut. Mr. Speaker, I rise today in strong opposition to the rule.

As a freshman, it is interesting to see how important procedural rules are in the House of Representatives. As a candidate for Congress, like most Americans, I assumed that legislation entitled civil rights would be considered in free and open debate. Now, as a Congressman, I could see how the majority in this House restricts this right of free and open debate.

After I did some research, I found that prior to the past few years, this was not the case. Civil rights legislation such as the Civil Rights Act of 1957, the Equal Pay Act of 1963, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 all had an open rule.

Now we come to another historic turning point. And, Mr. Speaker, civil rights is an issue that deserves the best democracy has to offer. That includes open debate and the free exchange of ideas. The fate of civil rights legislation rests largely in the hands of the Democrats.

There are differences between the President's bill, H.R. 1375, and H.R. 1. But these differences could be bridged by amendments made on the floor.

Given the opportunity to work its will and, working together, the House could enact civil rights legislation.

Mr. Speaker, I encourage my colleagues to have faith in the democratic process and adopt on open rule for this upcoming civil rights debate. Give the process a chance. It has worked before, and if allowed to function freely it will work again.

Mr. Speaker, support an open rule.

Mr. WHEAT. Mr. Speaker, I yield 30 seconds to the gentleman from Arkansas [Mr. THORNTON].

Mr. THORNTON. Mr. Speaker, I rise in support of the rule.

Mr. Speaker, our Nation was established upon the principle that each individual has rights and responsibilities, and those rights deserve to be honored and respected.

In today's complex world, with all the racket from powerful and competing forces, it's hard for the individual to be heard. We need this civil rights legislation to restore each citizen's ability to defend his or her rights to fair and equal opportunity under the law. Several recent Supreme Court decisions have taken away that ability, and it is up to Congress to give it back.

Mr. WHEAT. Mr. Speaker, I yield 5 minutes to the distinguished gentleman for California [Mr. DELLUMS].

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Speaker, as we enter the debate on civil rights, I am reminded of a story that I used to tell back in the 1970's, a story about a white sharecroppper and his family ekeing out an existence on several acres of relatively barren land.

One day that sharecropper, working his land in the hot sun, looked up and wiped the sweat from his brow and looked across his land to his tiny, torn, and tattered cabin. He thought about his family, about the children he could not educate; he thought about his family that he could not feed adequately or clothe adequately.

□ 1330

And he said, "Something is wrong. I have to deal with it."

He wiped away the tears, and he decided to put down the plow, and he began to walk a long journey toward the home of the landowner.

He knocked on the door, the door opened, and there was the landowner, white hair, white suit, white shoes, mint julep.

He said, "Mr. Landowner, I'm the sharecropper down the road. I'm eking out an existence on several acres of barren land. I can hardly make it. I can hardly feed and take care of my family. Tell me something. Will there ever be a time when my family and I are able to stand up with dignity and pride, and I can educate my children, and feed my family and clothe them adequately?"

The landowner took a sip from his mint julep and thought for a moment. He said, "You have a serious set of problems, and we're going to take care of them, but right now we've got a problem with them black people. They're trying to achieve rights. They want to be integrated. They want equal opportunity. Creating a problem. So, right now we've got a problem with the black people."

The sharecropper looked at the landowner, and he said, "I'm so happy that I came, Mr. Landowner, because I knew that you would give me the right answer. I knew that you would help me work it out. It's those black people that are the problem, and I'll go back and eke out an existence on my land, and someday it will all get worked out. But I'm worried about the black people, just like you are, Mr. Landowner."

And the last time I saw him, the sharecropper was on his way home with his last few dollars. He bought himself a shotgun, strapped it on his back. The last time I saw him he was eking out an existence on several acres of barren land with a shotgun on his back, looking for blacks.

Mr. Speaker, what am I trying to say? The sharecropper had a real problem. He was white, and he was torn, and he was unemployed, and he owed his soul to the system. When he decided to do something about it, he engaged in a political act. When he went to the landowner, he was confronting the establishment. But the establishment, rather than dealing with the reality of his human misery, the human misery of his wife and his children, he created a scapegoat for him and said, "It's the black people," and sent him off down the road rather than to address this human misery.

Nineteen ninety-one, Mr. Speaker, what is the reality? In 1991, we hear the very same thing. There are white Americans out there leading desperate lives. They are poverty stricken, unemployed, their children are having problems. But rather than the President of the United States, rather than the Congress of the United States standing up and saying, "Let's begin to address the reality of the human condition of this country"—we are not perfect. Why do we not stand up and be honest about it rather than to posing employment, and education, and training and what have you. What do we do? We hide behind the civil rights bill, and we tell that sharecropper that it is those black people's fault. We are doing exactly the same thing. We are engaging in the politics of scapegoating, and what we ought to be doing, Mr. Speaker, is rise to a great height of eloquence, a great height of compassion and understanding and say, "Let's deal with the human misery of whites, and blacks, and browns, and reds, and yellows in this Nation, create employment, rebuild economic infrastructure, and at the same time let's deal with the civil rights bill on its efficacy and its merit."

Mr. Speaker, where is it written where the victims must become defensive about a solution to deal with the victimization? Mr. Speaker, white privilege must end, whether it is in the rhetoric of quotas, or whether it is in the apartheid system in South Africa. A modern world, an evolving world that understands the humanity of all people, has to get beyond white privilege, and I say to my colleagues, "In the course of this debate I will challenge all of you to rise above protecting the powerful, the landowner, the man with the white suit, the white beard, the white hair, the white shoes, and the mint julep, and stand up and defend the poor and the downtrodden, the minorities, in this country, and the women who are leading desperate lives. Racism and sexism is the reality, and scapegoatism is not going to solve the problem. Let's deal with it honestly, and I thank the gentleman for his time."

Mr. SOLOMON. Mr. Speaker, in yielding the balance of our time to our distinguished minority leader, the gentleman from Illinois [Mr. MICHEL], let me just say that we will vote down this previous question and give the gentlewoman from Colorado [Mrs. SCHROEDER], the gentlewoman from the District of Columbia [Ms. NORTON], the gentlewoman from Hawaii [Mrs. MINK], and the gentleman from Oregon [Mr. KOPETSKI], all Democrats, the right to offer their amendments on this floor along with Republicans. Let us be fair.

Mr. Speaker, I yield such time as he may consume to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, I rise in strong opposition to this rule and urge my colleagues to vote it down.

Mr. Speaker, the issues of this debate are rooted in a tragedy of history going back to the beginning of the Republic. We do not treat such issues as if they were some piece of minor legislation. We just should not ram them through with a closed rule. But that is exactly what the majority has done with this rule.

Mr. Speaker, I happen to have been a participant in the great civil rights debates of the 1960's. Members will recall Manny Celler of New York was the chairman of the Judiciary Committee in those days and Bill McCulloch of Ohio was our ranking member on the Committee on the Judiciary. I voted for the landmark legislation of freedom. My senior Senator at that time, the distinguished minority leader, Everett M. Dirksen, was a key player over in the other body on that tremendous piece of legislation, and in those days we knew we were negotiating a new consensus about what it means to be an American, and we were proud of it.

Mr. Speaker, I am sad to say this rule is not in the tradition of those great debates. Only since 1988 has the majority sought to limit a civil rights debate. Take a look at the history.

The Civil Rights Act of 1957 had an open rule with 4 days of general debate. That was the first one in which I was involved. I was here in 1957. The Equal Pay Act of 1963 also had an open rule. The Civil Rights Act of 1964 had an open rule with 10 hours of general debate and any number of amendments considered and voted upon. The Voting Rights Act of 1964 had an open rule.

Did these bills suffer from a deadly dose of democratic debate? No. They prospered, they flourished, and they became law.

Last year's debate, however, stifled by a restrictive rule, produced a partisan piece of legislation. Although it passed the House, it did not become law. It did not become law because it did not meet the concerns of the President or a significant number of our Members, and it did not meet the concerns of those who are the victims of quotas. Are we going to go through that same routine today?

My colleagues, listen to these recent headlines:

From the New York Times: "House Democrats Hone Rights Bill in Effort to Gain a Handful of Votes."

From U.S.A. Today: "Civil Rights Bill Shaped to Lure Fence Sitters."

Again from the New York Times: "Jobs Bill Would Allow Numbers Yet Ban Quotas."

And this from the Washington Times: "House Democrats Add Twist to Bill's Quota Provisions."

Is this what the great civil rights tradition of the majority has come down to? Luring and twisting? No "Quotas," just "numbers"? And all for a handful of votes?

Mr. Speaker, this rule will not give the American people the opportunity to hear an open debate. It will not reflect the great civil rights tradition that, a generation ago, remade the Nation.

I oppose this rule quite obviously. I oppose it because in its essence this rule is profoundly out of step, quite frankly, with the spirit of civil rights. Just as the ranking member on the Committee on Rules has just asked my colleagues, I would urge everyone to vote down the previous question, oppose the rule. Frankly, if we get an open rule, then everyone in this body, both sides of the aisle, of every stripe, or whatever, will have their say and an opportunity to speak their minds, and I do not know that we are all that strapped for time around here. The legislative agenda is not all that much that we could not have devoted, for example, this entire week to the most important of all subjects, a thorough discussion of civil rights legislation, and frankly, for those who for one reason or another argue the numbers games, the quota games, or whatever, the free dialogue that normally can take place in an unfettered extended debate brings out the specifics to a degree that Members can then feel much more confident after hearing all that debate of what their vote ought to be when they cast it.

□ 1340

Mr. Speaker, I urge the Members again to vote down the previous question and open this up for a full discussion. And if not, I urge the Members to vote against the rule.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from New York [Mr. SOLOMON] has 1 minute remaining.

The gentleman from Missouri [Mr. WHEAT] has the right to close debate.

Mr. SOLOMON. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, let me say to my colleagues that I used to be a Democrat. There were a lot of good Democrats in those days. My good friend, the gentleman from Missouri, represents the State Harry Truman came from, one of the best doggone Democrats there ever was. We had a lot of other ones—John F. Kennedy. I was a John F. Kennedy Democrat. I was even a Ronald Reagan Democrat before he and I saw the light.

But the Democratic Party lurched so far to the left there just was not room for me any more, and this debate just proves that point.

Mr. Speaker, all of us on this floor ought to vote down the previous question. We ought to give your Members on your side of the aisle the right to offer their amendments. We have all summer to take up other significant issues but right now there is plenty of floor time available for a free and open debate.

Mr. Speaker, let us vote down the previous question so that we bring back to this floor an open rule. Failing that, I urge all Members to vote against the rule.

Mr. WHEAT. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I thank my friend for reminding us of the eternal verity, as he left our party, that it is sometimes better to give than to receive. I would say that I would be all for open rules if that were a consistent preference on the part of my Republican friends. I have never seen anything switch more, including traffic lights, than the Republican Party's position on whether a rule should be closed or open. They want them closed when they think they have a deal, and they want them open when they feel they have not got the votes.

Mr. Speaker, there is absolutely no consistency of principle in anything they have said here earlier today.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind our guests in the Gallery that we are delighted to have them here, but they are not to respond to statements made on the floor.

Mr. WHEAT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have just heard a most interesting debate on this rule. We have heard words like restrictive and even gag rule thrown around in talking about the structure of this rule today. And that is exactly what this rule is, a structured rule.

I would remind all those in the other party and all those watching across America that what this rule does is provide all Members on both sides of the aisle the opportunity to participate in this debate and the opportunity to participate in the bills that came out of the legislative committee and the opportunity to offer complete substitutes to those bills on the floor of the House of Representatives. It is interesting that the gentleman from Massachusetts [Mr. FRANK] pointed to the fact that there were at times what appears to be some inconsistencies on the part of the other party.

Mr. GRADISON. Mr. Speaker, I rise in opposition to House Resolution 162. It is ironic that on a day when the House will consider H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991, legislation which the proponents argue will provide for equal treatment under the law, the Rules Committee has brought a rule to this floor that effectively limits the rights of Members on both sides of the aisle. The limitations on the rights of Members to offer amendments and the restricted time for debate on the critical issues raised by this bill are a travesty.

Since Congress considered the Civil Rights Act of 1957, there have been 15 major civil rights bill considered on the floor of the House. Among these are the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, and title IX of the Education Amendments of 1972. Nine of those fifteen bills were considered under purely open rules, including the landmark statutes that I just mentioned. It is around these statutes that a new consensus on civil liberties in America was forged.

That consensus was built, in part, on the open nature of the rules governing debate in the House. Without the opportunity for an open, public, and participatory debate, that consensus may have eluded us. No one, as the great advances in civil rights were made, could claim that they, or their views, were excluded from the process.

What of the six instances where restrictive rules governed floor debate? In three cases, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the legislation was so noncontroversial that each was considered under suspension of the rules. The same cannot be said of this legislation.

In the last 3 years, a disturbing trend has become apparent where consideration of civil rights legislation is concerned. The Civil Rights Restoration Act of 1988, the Americans With Disabilities Act of 1990, and the Civil Rights Act of 1990, the failed precursor to H.R. 1, were all controversial and all were granted restrictive rules. I voted for the 1988 act and the ADA, but I opposed the restrictive rules which brought them to the floor.

House Resolution 162 is restrictive. Members of the majority on the Rules Committee have indicated on the floor today that the minority had every opportunity to participate in the Judiciary and Education and Labor Committees to amend and perfect the bill. That is little solace to those Members who do not sit on either of those committees.

This rule is unjust and unfair. It continues a brief and troublesome trend in which the traditions and precedents of the House are not respected by the leadership. I urge my colleagues to reject it knowing full well that the majority has covered its bases on the rule just as it has done on the legislation. Passage of the rule is all but assured. That does not make it right.

Mr. Speaker, I urge my colleagues to defeat the rule.

The SPEAKER pro tempore. The time of the gentleman from Missouri [Mr. WHEAT] has expired.

All time has expired.

Does the gentleman from Missouri [Mr. WHEAT] move the previous question?

Mr. WHEAT. Mr. Speaker, in the short time I have remaining, I do move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 259, nays 165, not voting 7, as follows:

[Roll No. 125]

YEAS—259

Abercrombie	Carr	Engel
Ackerman	Chapman	English
Alexander	Clay	Erdreich
Anderson	Clement	Espy
Andrews (ME)	Coleman (TX)	Evans
Andrews (TX)	Collins (IL)	Fascell
Annunzio	Collins (MI)	Fazio
Anthony	Condit	Feighan
Applegate	Conyers	Flake
Aspin	Cooper	Ford (MI)
Atkins	Costello	Ford (TN)
AuCoin	Cox (IL)	Frank (MA)
Bacchus	Coyne	Frost
Barnard	Cramer	Gaydos
Beilenson	Darden	Gejdenson
Bennett	de la Garza	Gephardt
Berman	DeFazio	Geren
Bevill	DeLauro	Gibbons
Bilbray	Dellums	Glickman
Bonior	Derrick	Gonzalez
Borski	Dicks	Gordon
Boucher	Dingell	Gray
Boxer	Dixon	Guarini
Brewster	Donnelly	Hall (OH)
Brooks	Dooley	Hall (TX)
Browder	Dorgan (ND)	Hamilton
Brown	Downey	Harris
Bruce	Durbin	Hatcher
Bryant	Dwyer	Hayes (IL)
Bustamante	Dymally	Hayes (LA)
Byron	Early	Hefner
Campbell (CO)	Eckart	Hertel
Cardin	Edwards (CA)	Hoagland
Carper	Edwards (TX)	Hochbrueckner

Horn
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jefferson
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moran
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Ray
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Rowland
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Savage
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Washington
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—165

Allard
Archer
Armey
Baker
Ballenger
Barrett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boehner
Broomfield
Bunning
Burton
Callahan
Camp
Campbell (CA)
Chandler
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Crane
Cunningham
Dannemeyer
Davis
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Fish
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Herger
Hobson
Holloway
Hopkins
Horton
Houghton
Hyde
Inhofe
Ireland
Jacobs
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison
Myers
Nichols
Nussle
Oxley
Packard
Paxon
Petri
Porter
Pursell
Quillen
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Santorum
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Slaughter (VA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stump
Sundquist
Taylor (NC)
Thomas (CA)
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Walsh
Weber
Weldon
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Andrews (NJ)
Foglietta
Hunter
Lehman (FL)
Moody
Sisisky
Waters

□ 1403

Messrs. GILMAN, JOHNSON of Texas, SHAYS, and HORTON changed their vote from "yea" to "nay."

Mr. CHAPMAN changed his vote from "nay" to "yea."

So, the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SOLOMON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 175, not voting 9, as follows:

[Roll No. 126]

AYES—247

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bacchus
Barnard
Beilenson
Bennett
Berman
Bevill
Bilirakis
Boehlert
Bonior
Borski
Boucher
Boxer
Brewster
Brooks
Browder
Brown
Bruce
Bryant
Bustamante
Cardin
Carper
Carr
Chapman
Clay
Clement
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Costello
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (TX)
Engel
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray
Green
Guarini
Hall (OH)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horn
Horton
Hoyer
Hubbard
Huckaby
Hutto
Jacobs
Jefferson
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McHugh
McMillen (MD)
McNulty
Mfume
Mineta
Moakley
Mollohan
Montgomery
Moran
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Pallone
Panetta
Patterson
Payne (NJ)
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Rowland
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Savage
Sawyer
Scheuer
Schumer
Serrano
Sharp
Sikorski
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stallings
Stark
Stokes
Studds
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Vento
Visclosky
Volkmer
Washington
Waxman
Weiss
Wheat
Whitten
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NOES—175

Allard
Archer
Armey
Baker
Ballenger
Barrett
Barton
Bateman
Bentley
Bereuter
Bilbray
Bliley
Boehner
Broomfield
Bunning
Burton
Byron
Callahan
Camp
Campbell (CA)
Campbell (CO)
Chandler
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Crane
Cunningham
Dannemeyer
Davis
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gingrich
Goodling
Goss
Gradison
Grandy
Gunderson
Hall (TX)
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Herger
Hobson
Holloway
Hopkins
Houghton
Hughes
Hunter
Hyde
Inhofe
Ireland
James
Johnson (CT)
Johnson (TX)
Kaptur
Kasich
Klug
Kolbe
Kostmayer
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Mink
Molinari
Moorhead
Morella
Morrison
Myers
Nichols
Nussle
Oakar
Orton
Oxley
Packard
Parker
Paxon
Petri
Porter
Pursell
Quillen
Ramstad
Ravenel
Ray
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Santorum
Saxton
Schaefer
Schiff
Schroeder
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Slaughter (VA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence

Stearns	Valentine	Wolf
Stenholm	Vander Jagt	Wylie
Stump	Vucanovich	Young (AK)
Sundquist	Walker	Young (FL)
Taylor (NC)	Walsh	Zeliff
Thomas (CA)	Weber	Zimmer
Thomas (WY)	Weldon	
Upton	Williams	

NOT VOTING—9

Andrews (NJ)	Lehman (FL)	Pelosi
Derrick	Miller (CA)	Sisisky
Foglietta	Moody	Waters

□ 1421

Mr. VOLKMER changed his vote from "no" to "aye."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Speaker, I offer a personal explanation of my absence from today's vote on rollcall No. 126, passage of House Resolution 162, the rule for consideration of H.R. 1, the Civil Rights Act. I was unavoidably delayed due to activities commemorating the second anniversary of the Tiananmen Square massacre. Had I been here to vote, I would have voted "aye."

ANNOUNCEMENT OF PROPOSED REQUEST FOR RULE ON H.R. 2508, INTERNATIONAL COOPERATION ACT OF 1991

Mr. FASCELL. Mr. Speaker, I rise to inform Members that on Thursday, the gentleman from Michigan [Mr. BROOMFIELD] and myself, for the Committee on Foreign Affairs, intend to request the Committee on Rules to grant a modified open rule for consideration of H.R. 2508, the International Cooperation Act of 1991, which will require that only germane amendments printed in the CONGRESSIONAL RECORD by the beginning of consideration of that legislation be in order.

CIVIL RIGHTS AND WOMEN'S EQUITY IN EMPLOYMENT ACT OF 1991

The SPEAKER pro tempore (Mr. MCNULTY). Pursuant to House Resolution 162 and rule XXIII, the Chair declares the House in the Committee on the Whole House on the State of the Union for the consideration of the bill, H.R. 1.

□ 1425

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes, with Mr. MFUME in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas [Mr. BROOKS) will be recognized for 1 hour and 30 minutes and the gentleman from Illinois [Mr. HYDE] will be recognized for 1 hour and 30 minutes.

Mr. HYDE. Mr. Chairman, pursuant to an agreement on our side of the aisle regarding the general debate time, I yield 40 minutes to the gentleman from Pennsylvania [Mr. GOODLING], and I ask unanimous consent that the gentleman from Pennsylvania be permitted to yield such blocks of time as he sees fit.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am proud to bring to the floor the bill H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. It may be one of the most important and demanding votes any of us will be asked to make this Congress. And yet, the exertion required and the difficult choices presented frame—as few other bills do—our responsibility as elected officials.

This bill represents a renewal of our shared commitment to decent and equal treatment for all Americans. What this bill is about is requiring fair, unbiased employment policies. It is about assuring that all Americans are permitted to compete in the work place, on the basis of their individual abilities, free from discrimination because of their gender, religion, color, race, or national origin. What this bill is not about is quotas, racial division, and inflammatory arguments designed to set back civil rights and American politics 40 years.

Mr. Chairman, in the decades since the Civil War we have made painful but steady progress in assuring to all Americans an equal chance in their pursuit of the opportunities this great country offers. There were two landmark legislative events in this process. Immediately following that war, we passed a law that guaranteed all people in this country the same rights in business endeavors as were enjoyed by white citizens. Then, In 1964, we passed the Civil Rights Act to explicitly prohibit discrimination in employment on the basis of race, color, sex, religion, and national origin.

However, a series of Supreme Court decisions in 1989 narrowed the interpretation of these laws and threaten to erode the progress we have made. Passage of H.R. 1 is, therefore, essential to assure fair treatment in the work place for all Americans.

H.R. 1 is well-balanced legislation. It will protect women and other groups from discrimination on the job while at the same time avoiding any undue burden on business enterprises in this country in the conduct of their operations.

Following the consideration of H.R. 1 by the Committees on Education and Labor and the Judiciary, additional changes were made in its language to address legitimate concerns that have been raised by the business community. While the bill that was reported by the Judiciary Committee is a good bill, the substitute is better. The changes that have been included in the substitute make it a clearer and more universally acceptable piece of legislation that still remains true to its original intent.

I believe it would be helpful to this debate to compare the Brooks-Fish substitute to the Administration's substitute which will be offered by Mr. MICHEL. I would like to focus on the areas of damages, the legal standard of "business necessity", the issue of testing, and the question of quotas.

In Brooks-Fish, the damages provision applies only to cases of intentional discrimination. It is important to remember that point in light of the distortions coming from opponents who would have people believe that damages are available for any discriminatory practice, intentional or unintentional. This is just not the case. The Brooks-Fish substitute incorporates the damages provision that was passed by Congress last year, making compensatory and punitive damages available but capping punitive damages at $150,000 or the amount of compensatory, whichever is greater.

To defend against a discrimination charge under the Brooks-Fish substitute, businesses are required to demonstrate that employment practices resulting in unintentional discrimination have a "significant and manifest relationship" to the job in question. The words "significant" and "manifest" are taken directly from the 1971 Griggs case. Time and time again, the White House and the Attorney General have said that the key to this legislation was "restoring Griggs". That's what we have done. By contrast, the Michel substitute picks and chooses what it wants to do with Griggs. It adds an extremely lenient standard which permits businesses to do whatever might serve any employment goal, even if the actions are not based on effective job performance. That is the very concept appearing in the Wards Cove case that undermines Griggs. If any substitute is faithful to the holding in Griggs, it is Brooks-Fish.

Both Brooks-Fish and the Michel substitute outlaw so-called race-norming of test scores. In addition, my

substitute provides that if you can't use a test that validly and fairly predicts the ability of the test taker to perform the job, then you can use other procedures to assist you in the employment selection process.

In conclusion, Mr. Chairman, I want to say a few words about the issue that has drawn the most attention in this bill and that has provided the most controversy and the least worthwhile contribution to the consideration of H.R. 1. For month after month, as people of good will discussed the merits of the Civil Rights Act of 1991 and sought to reach common ground on what it should contain, a claque of voices off to the side attempted to distract this process by yelling, "quota bill." Now, even in the face of language in the substitute that explicitly outlaws quotas and makes them an unlawful employment practice, even as the authors of the substitute pursued the responsible legislative course of defining specifically just what a quota is—a definition drawn from an opinion by Justice Sandra Day O'Connor—those who want to tear this legislation down have kept up their glib demagogic mantra of "quota bill."

Mr. Chairman, it is a demonstration of the opponent's intellectual bankruptcy and their unwillingness to contribute seriously to this legislative process that they nit-pick the substitute's definition of a quota while at the same time refusing to give even a hint of what their definition of a quota is.

In doing so, the opponents raise the real and dangerous possibility that they are not just against the mandatory numerical requirements that are commonly understood to constitute a quota, but their real agenda is to undo voluntary affirmative action agreements for increasing minority participation in the workplace. Voluntary affirmative action has been a vital part of the pro-civil rights consensus that has built up over the past quarter century, and if the naysayers want to kill it off, they ought to say so straight out.

Mr. Chairman, this is a time of testing for all of us. This bill is a test of what we believe in and what our convictions are. And, I might add, it is a test of what our President believes in as well. The coming days will show us whether this is the President who professes to wish to sign a civil rights bill, or whether this is the President who let his subordinates trash the efforts of affected private parties to reach agreement on the issues involved in this bill. They will show us whether this is the President who speaks glowing words of "racial harmony" as he did this weekend, or whether this is the President who showed such a willingness three summers ago to play the race card in order to achieve short-term political gain. For the sake of the country, for the sake of all that we have achieved through painful progress over the past decades, I hope the answer that we find will be a positive one.

□ 1430

Mr. HYDE. Mr. Chairman, I am pleased to yield 10 minutes to the distinguished gentleman from New York [Mr. FISH], the ranking Republican on the Judiciary Committee.

Mr. FISH. Mr. Chairman, I thank my colleague from Illinois for yielding this time to me.

Civil rights laws are the handmaiden to the great American experiment in self-government. They are the rules by which we conduct our relations with each other and achieve fairness in a multicultural society. Civil rights laws are at once a contract and an affirmation that we have a goal of opportunity and dignity for all; that we value and respect each other. In short, they are the manners of a civilized society.

Since the beginning of the 102d Congress, I have had many opportunities to emphasize to representatives of civil liberties organizations, members of the business community, and colleagues in this body the importance of developing new legislative language that addresses various concerns about H.R. 1. I am pleased today to report that the result of a major redrafting effort is a substitute meriting broad support in the Congress and the country. We definitively answer the "quota" argument not only by providing assurances that employers will have no reason to hire by the numbers but also by explicitly denominating quota use as an unlawful employment practice. The new version of this legislation provides major protections for employers without sacrificing the remedial goals of a critically important civil rights bill.

The initial question supporters of this compromise must answer is why we cannot simply embrace the administration's proposal. The answer—in short—is that the administration alternative is too selective in rectifying injustices that result from recent Supreme Court decisions. Out of the five Supreme Court decisions that are most problematic, the administration—to its credit—devises an appropriate response to two and a portion of a third. The significant omissions in the administration's proposal, however, underscore the importance of favorable action on the Brooks-Fish substitute.

It is disruptive to reopen consent decrees in civil rights cases when groups choose not to intervene in a timely fashion—yet this result in Martin versus Wilks is left untouched by the administration alternative. The Brooks-Fish substitute is responsive to the need for legislation to protect the finality of judgments and orders. We recognize the need to discourage relitigating issues that already have been resolved if the circumstances are fair to those who seek to initiate new challenges.

It is unjust for our courts to ignore reliance on discriminatory employment criteria simply because an employer can show that "its legitimate reasons, standing alone, would have induced it to make the same decision"—yet this gap in civil rights law remains under an administration proposal which fails to rectify the Price Waterhouse problem. The Brooks-Fish substitute gives expression to the conviction that discriminatory practices must be discouraged regardless of whether they turn out to be outcome determinative.

The administration proposal appropriately rectifies the Wards Cove burden of proof problem but fails to address other Wards Cove issues:

First, the administration alternative provides no exception to the requirement that a complaining party link a specific employment practice to "disparate impact," a term that refers to an unintentional adverse impact on women or members of minority groups. The Brooks-Fish substitute, by contrast, provides some flexibility here in recognition of the fact that an employer's own conduct may foreclose the possibility of a complaining party establishing such linkage—and it would be unfair to penalize the victims of alleged discrimination in circumstances that are beyond their control.

Unlike earlier versions of this legislation, however, the Brooks-Fish substitute essentially requires a complainant relying on group practices to obtain a judicial determination that information—linking a specific practice or practices to disparate impact—cannot be obtained from an employer. The requirement of a judicial finding is designed to reassure the American business community that identifying the specific practice or practices resulting in disparate impact is the rule rather than the exception—a requirement that only a court can waive in special circumstances.

Second, the definition of "justified by business necessity" in the administration's proposal is excessively broad—regrettably serving to defeat legitimate discrimination claims. The Brooks-Fish substitute incorporates a compromise provision that is fair to both claimants and employers. The two-pronged, somewhat complicated business necessity definition in H.R. 1—which some employers view as problematic—now is replaced with a single, simple standard that specifies: "[T]he practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance." Employers are further protected by the substitute's broad definition of "requirements for effective job performance"—a definition that clearly recognizes the empha-

sis of many businesses on disciplined work habits.

The administration is to be commended for recognizing that courts need greater flexibility—than is available under current law—in fashioning relief for the victims of harassment. Monetary relief, however, cannot appropriately be limited to harassment cases—as in the administration's proposal—because employment discrimination takes other forms that are equally pernicious. It is too late in our national struggle for equal opportunity to contend that damages may be justified for the victims of racial discrimination but not for those who suffer from intentional discrimination based on sex, religion, and national origin.

The Brooks-Fish substitute seeks to place intentional employment discrimination based on various invidious criteria on a footing comparable with discrimination based on race. We have decided, however, to incorporate a punitive damages ceiling applicable to all employers—identical to the ceiling adopted last year following the second conference report—to allay business community concerns about excessive punitive damages awards.

Nothing in the Brooks-Fish substitute provides any basis for concern that statistics can be used in new ways in disparate impact cases. The term "disparate impact," which we purposely do not redefine in this legislation, generally requires looking to the qualified population in the relevant labor market. Employers who choose to disregard qualifications in order to bring the composition of their work forces into conformity with the general population figures do not protect themselves—as opponents of H.R. 1 have suggested—but rather violate civil rights law by discriminating against qualified members of other groups.

The Brooks-Fish substitute removes any ambiguity on this point by explicitly stating that an employer may "rely upon relative qualifications or skills as determined by relative performance or degree of success on a selection factor, criterion, or procedure * * *." [Sec. 102]. We also incorporate into the substitute antiquota language that is much stronger than the corresponding provision of H.R. 1 and last year's final conference reported bill; former language clarifying that "[n]othing in the amendments made by this Act shall be construed to require or encourage an employer to adopt hiring or promotion quotas * * *" is expanded to refer to "require, encourage, or permit"—with the critical word "permit" added. We then remove any possible lingering ambiguity about the legality of reliance on quotas by stating explicitly that "the use of * * * quotas shall be deemed to be an unlawful employment practice under * * * title [VII] * * *."

Significantly, the Brooks-Fish substitute does not merely outlaw quotas imposed in response to this legislation but outlaws quotas more generally with an exception for affirmative action in accordance with existing law.

In the past, I often have parted company from those who have argued that existing law results in reliance on quotas. Such reliance, to the extent that it may exist, clearly and explicitly is barred by the Brooks-Fish substitute—fully justifying describing this substitute as antiquota legislation.

Those who fear that H.R. 1 denigrates the importance of qualifications in employment decisions can, in my view, embrace the Brooks-Fish substitute with confidence that businesses are fully protected in making employment-related decisions based on qualifications. I believe many of my colleagues who have reservations about H.R. 1 will be pleased with our effort to accommodate employer concerns.

In our full committee markup, I welcomed the opportunity to support an amendment offered by the gentleman from Illinois [Mr. HYDE] outlawing group norming of test scores. I am pleased that the Brooks-Fish substitute prohibits the discriminatory use of test scores—and in addition, protects individuals from the use of tests that unfairly discriminate.

I urge my colleagues to read the Brooks-Fish substitute carefully and commend to your attention the significant number of innovations that substantially improve this legislation.

□ 1440

Mr. GOODLING. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, I rise in strong support of the President's civil rights bill and in opposition to both Democrat substitutes to H.R. 1, which dramatically, and I believe mistakenly, impair title VII's historic focus on conciliation and settlement of employment discrimination disputes.

I am not normally a suspicious man and try to give others the benefit of the doubt in assessing their motives to the point where many indicate I am naive but the process by which H.R. 1 is finally coming to the floor for consideration leads me to believe that its proponents want an issue, not civil rights legislation. If the proponents of H.R. 1 really wanted civil rights legislation, they would have given Members notice of the substantive change they were making to the bill and they would have tried to build support for those changes among the whole body. If the proponents of H.R. 1 really wanted civil rights legislation, they would have voted for the President's bill, which he has pledged to sign into law and which addresses many of the same issues as H.R. 1. Sadly, the proponents of H.R. 1 chose neither of these courses of action, but instead have rushed to the floor, with little notice, substitute legislation that they claim should diffuse all opposition to the bill. The tragedy is that this game-playing brings the fuzzy far left and far right out of the woodwork back in our districts which does not serve the cause of civil rights at all.

Mr. Chairman, I realize that we have two Democrat substitutes before us, but I will focus my remarks on the Brooks-Fish substitute which is driving our consideration today. The proponents of the Brooks-Fish substitute are claiming that this latest formulation of H.R. 1 addresses both the quota problem and the litigation bonanza that have plagued that legislation since it was first introduced 18 months ago. Mr. Chairman, I have looked at the new language prohibiting quotas and, no matter how many times the proponents deny it, the quota implications are still there. Opponents to H.R. 1 have never argued that the bill would legitimize quotas or that current law would permit them. Our consistent point has been that the pressure on employers to avoid costly lawsuits would lead them to covertly engage in quota hiring and promotion. The only way to eliminate the quota implications is to eliminate the pressure on employers to avoid lawsuits, and the Brooks-Fish substitute for H.R. 1 fails to do this. The substitute fails to eliminate this pressure, because it fails to significantly alter the rules of proof in disparate impact cases which are stacked against employers and because it fails to address in any meaningful way the tremendous liability of employers for punitive and compensatory damages in class actions based on statistical imbalances. The prohibition against quotas contained in the substitute leaves employers in a catch-22: They are liable for disparate impact or intentional discrimination if their workforce numbers don't come out right and they are liable for reverse discrimination if they use race or sex preferences to make the numbers look better.

Even as it fails to deal with the true quota implications of H.R. 1 which are caused by the substantive provisions, the prohibition of hiring or promotion quotas contained in the Brooks-Fish substitute is a very narrow one. The ban only applies to those quotas which are "a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or cannot be exceeded, regardless of whether such persons meet the necessary qualifications to perform the job." Even in using a quota for hiring or promotion, few employers would resort to selecting individuals who don't meet the necessary qualifications for a job. Thus, the quota ban does not address the types of hiring or promotion practices that typically would be covertly used by employers seeking to alter the makeup

of their work force. Indeed, and quite ironically, the narrow definition of "quota" in the bill arguably implies that any other kind of preferential treatment is legal. A supposed prohibition against quotas has become a sweeping endorsement of many forms of work-place preferences. Do we really understand where we are going with all this?

I think Members should also be aware that the Brooks-Fish substitute attempts to codify, in one fell swoop, the whole body of Supreme Court decisions approving the lawfulness of affirmative action. These decisions, which are quite complex and are not entirely consistent, deal with a variety of affirmative action policies in a variety of circumstances. I find it intriguing that a bill, which is being portrayed as reversing six or seven Supreme Court decisions which misinterpreted employment discrimination law, would codify at least the same number of Supreme Court decisions with one stroke of the legislative brush. I am not certain that it is prudent to place the imprimatur of congressional approval on this body of affirmative action law without a thorough examination of the issues.

With respect to the litigation bonanza, again the Brooks-Fish substitute for H.R. 1 fails to make any meaningful change to the punitive and compensatory damages provision that will diminish the bill's litigation incentives. The possibility of huge damage awards is still there and the hope of winning the litigation lottery will induce every good plaintiff's lawyer out there to file title VII claims. The so-called cap on punitive damages that is being touted by the proponents of the substitute is the same cap that was in the bill vetoed by the President last year and is the same cap on punitive damages that is bound by the completely uncapped amount of compensatory damages. We were not fooled last year by this noncap, and we won't be fooled this year.

Mr. Chairman, to touch on one final issue, the language prohibiting race norming that is contained in the Brooks-Fish substitute is typical of the circularity of each provision that is purportedly designed to address concerns generated by the original formulation of the bill. With one hand, the substitute generally prohibits the race norming of employment tests. However, with the other hand, the substitute places so many limits on the use of employment tests at all that it makes the issue of race normings almost meaningless. This giving with one hand and taking away with the other is symptomatic of the political game that is at the heart of this substitute.

Mr. Chairman, I want to support civil rights legislation that will provide real redress to the victims of workplace discrimination and that will not lead to endless courtroom battles that benefit no one but the attorneys. I cannot support these Democrat substitutes for H.R. 1, but I am prepared today, as I was a year ago, to vote yes on the President's civil rights bill and to provide those who suffer the indignity and pain of an employer's bias, meaningful and accessible remedies consistent with title VII's goals of conciliation rather than confrontation and getting back on the job rather than wasting years in court.

□ 1450

Mr. BROOKS. Mr. Chairman, I yield 10 minutes to the distinguished majority leader, the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Chairman, at the end of my statement I would like to engage in a colloquy with the chairman and will ask for time at that time to do that.

Mr. Chairman, the history of civil rights in America is a history and a story of struggle. It is a story that is filled with setbacks and successes. So, the Declaration of Religious Freedom that founded John Winthrop's Rhode Island, to John Kennedy's inauguration as the first Catholic President, from the Civil War of the 1860's to the civil rights marches of the 1960's, from President Truman's integration of our armed services before Korea to General Powell's command of the Armed Forces during Kuwait, from Frederick Douglass to Dr. King, from the struggle of Susan B. Anthony to win the vote, to the struggle of Sandra Day O'Connor to find a job practicing law, America's march toward freedom has been halting at times, dark at times, but for every one step backward, we have always managed to take two or three steps forward.

Mr. Chairman, in the history of America we know the compelling, moral, and social case for civil rights, and in the pragmatic nature of the American people we see the reward for its justness and its decency. Civil rights works. Because of civil rights, millions of blacks, women, Asians, Hispanics have moved through the door of opportunity and into the mainstream of American life. Because of civil rights millions of Americans are earning more money, paying more taxes, providing more stable and secure homes, and, most important of all, raising their children to believe that the American dream of opportunity is for every person in this country, and it is a reality for all of them.

Mr. Chairman, the legislation before us arises from that history and that proud tradition. The Civil Rights Act of 1991 is an antidiscrimination bill. It restores the law as it existed before the 1989 Supreme Court decisions that weakened an individual's recourse against discrimination and all but denied victims of discrimination protection under the law. It enables the victims of intentional sex and religious discrimination to sue for monetary damages. It abolishes race norming and unfair tests. Under our bill, employers, as always, will hire on the basis of merit. Our legislation grants no one special privileges. In fact, it outlaws special privileges and special preferences. If people feel the sting of discrimination or reverse discrimination, our bill gives them their day in court. Our bill prohibits quotas, and the language we have used is based on language written by Sandra Day O'Connor, a Reagan appointee who has never heretofore been accused of being sympathetic to quotas, white or black, male or female.

Mr. Chairman, all we offer is equal justice. We say no to guarantees. We say no to quotas. But we say yes to equality, dignity, and opportunity for all. The bill is good for all Americans and for America.

So why the fuss? Why the assertion from the highest levels of Government that this bill is somehow a quota bill? I think the answer lies in power politics and protecting privilege.

This country is in the middle of a Republican recession. Millions of working men and women have lost their jobs because of the economic policies of this administration and its predecessor. Thousands of these working men and women live in my hometown in St. Louis, and they have been laid off in droves. Americans, some Americans, want to blame this recession on someone, and so I think the administration wants to blame quotas. They want to find a villain for what is happening to millions of Americans, and so the Bush administration says to those workers, "You didn't lose your job because of our economic policies. You lost your job because of a quota," and more ominously, though implicitly, "You lost your job because of a woman or a minority." They are willing to pit white working people against black working people because they do not want either of them to recognize that under this administration the system works for a few, but not for them. Black or white, they get the same pink slip in a Republican recession.

Mr. Speaker, I do not know if this political tactic will work, but I do know this: It is the first time in the civil rights era that an administration has tried to divide Americans on the basis of race in order to score points in a political campaign.

□ 1500

While we are disappointed by their actions, we are not surprised. The forces who would take us back are simply doing the bidding of powerful interests who believe, mistakenly and cravenly, that progress for society means regress for their bottom lines. Just as they did not want a plant-closing law,

just as they did not want a minimum wage change, just as they oppose real health care coverage, today they are asking Congress to shield them from the consequences of intentionally discriminatory hiring decisions.

The reality is that discrimination is bad for business, it is bad for what we value about the United States, and the American people know it. They see through these arguments because they are smart and because they are good, and I think the American people know that words like "hoax" and "big" and "quotas," hard, divisive words that come from the President's lips, do not fairly reflect what is in his heart. They instinctively believe that the man who voted for the Fair Housing Act in 1968, who defended that vote, and who called that vote a proud moment in his public service cannot be at peace with the position he takes today.

And just as Elie Wiesel appealed to Ronald Reagan not to visit Bitburg, we remember his words and say to our President: This place is not your place. Be a unifier, Do not overreach, help us overcome.

Today this House has an opportunity to replace one of those steps backward with a couple of very significant steps forward. Today this House can extend the right to collect damages for discrimination to women who have been harassed on the job. Today this House can open the courthouse door to any American who has been discriminated against because of race or color or gender or creed. Today this House can put some meaning behind the American dream of equal justice under the law.

Mr. Speaker, these are the reasons why we support this bill, and it is why I am proud to ask my colleagues today to support it as well.

Mr. Chairman, before this debate proceeds any further, I think it is essential to clear up any questions about the one issue that the President has attempted to use as a rhetorical smokescreen to obscure—or distort—the important substantive work that you and others have done on the Civil Rights Act of 1991. I refer, of course, to quotas. Would the gentleman, as manager of the bipartisan substitute, respond to a number of questions aimed at establishing the clear intent behind the antiquota provisions for purposes of legislative history.

Mr. BROOKS. Mr. Chairman, if the gentleman will yield, I would be pleased to do so.

Mr. GEPHARDT. Does the Brooks-Fish substitute outlaw quotas, and does the Michel substitute establish a similar prohibition?

Mr. BROOKS. The bipartisan substitute clearly and unequivocally bans all forms of quotas in the workplace. The Michel substitute does not address this issue in any manner.

Mr. GEPHARDT. How do you construe silence in failing to address the issue of quotas?

Mr. BROOKS. The silence of the Michel substitute to address the issue in any manner must be construed to mean that the supporters of the bill believe that there is no legal or business confusion about this point. I must confess that their silence on this point is curious given their repeated statements in public debate about quotas in the workplace. The absence of an antiquota provision in the Michel substitute thus would seem to imply that supporters of that substitute are content with the status quo and do not see the need to clarify the quota issue in legislation.

Mr. GEPHARDT. Mr. Chairman, supporters of the Michel substitute have stated that quotas either cannot or should not be defined. Why has your bill attempted to define the term?

Mr. BROOKS. It is defined for a simple reason: That is what responsible legislators do when dealing with a highly technical legal subject. I must add that the definition is drawn from a 1986 Supreme Court decision by Justice Sandra Day O'Connor—a Reagan appointee of impeccable conservative credentials.

Justice O'Connor supplied a definition of quotas in *Local 28, Sheet Metal Workers* v. *E.E.O.C.*, 478 U.S. 421, because the issue of quota was of concern in that case, just as it is of concern to Congress in this legislation. There is a very fundamental reason why courts develop definitions: Because their decisions affect real people in real ways. In crafting legislation, Congress has no less a responsibility to define terms. By using the O'Connor definition, we will simply be connecting our statutory language to recent legal terminology, which itself was based on existing precedent.

Mr. GEPHARDT. Mr. Chairman, some have claimed that the quota language would forbid quotas in terms of hiring unqualified persons, but would not forbid them with respect to hiring qualified workers. Is this distinction valid?

Mr. BROOKS. The distinction is not valid. The language forbids quotas being applied to any employment situation—whether it would involve qualified or unqualified persons. That is why the bill clearly states that quotas are forbidden "regardless of whether such persons meet necessary qualifications to perform the job."

The adverb "regardless" is purposely used to eliminate any distinction between setting quotas as between qualified and unqualified workers, or as between different qualified employees.

Moreover, those who make this argument also have not read—or choose to ignore—other provisions of the bill that reinforce this interpretation. For example, in section 101(p), the term "effective job performance" indicates that the requirements for effective job performance may include factors other than "actual work activities"—factors bearing on performance such as "attendance, punctuality and not engaging in misconduct and insubordination." Thus, establishing relative job performance qualifications among various qualified workers is solely within the unilateral right of management to run its own business. Obviously, this language, taken together with the plain meaning of the antiquota provisions, rebuts any assertion that quotas are to be tolerated in any context.

Mr. GEPHARDT. Does the quota provision of the bipartisan substitute permit what opponents have called flexible quotas, provided that no fixed numbers or no fixed percentages are established?

Mr. BROOKS. The bill does not permit quotas of any kind. What opponents confuse—purposely or not—is the difference between a quota and a goal. A quota is hiring by the numbers based on race, ethnicity, or gender. This is an illegal employment practice under the bipartisan substitute. As the President himself has endorsed and made clear, goals and timetables are voluntary actions taken by employers who seek to have more diversity in their workplace.

Mr. GEPHARDT. To clarify one more time, under the antiquota provisions of the Brooks-Fish substitute, any person who is harmed by the use of a quota may sue for damages and seek all other available relief?

Mr. BROOKS. That is correct. Any person who is harmed by the use of a quota may seek all available legal remedies under the civil rights statutes—including damages—for such an unlawful employment practice.

Thus the bill makes clear that the same remedies would apply to reverse discrimination as to discrimination.

Mr. GEPHARDT. Mr. Chairman, will the gentleman continue to make these points clear as the bill moves through the legislation process?

Mr. BROOKS. You can bet on it.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the issues that we debate today are of transcendent importance because they involve the heart and soul of our Constitution—equal protection of the law.

Before we discuss substance, I should like to comment about the effort of some to structure the vocabulary of debate about H.R. 1. The first politically correct notion is to avoid the "Q" word—quotas.

We who believe this is a quota bill, not a civil rights bill, have been warned that we will be held accountable for using what one Member has called the new snarl word, quotas. There exists a whole menu of epithets such as racist, sexist, Euro-centrist which can be used as a substitute for

debate on the merits, but at the risk of being called all of the above and more, I propose in the few minutes that I have, to candidly analyze H.R. 1.

I want to utter a shocking statement—a radical statement in the context of today's debate—and that is, that civil rights are for everybody.

The early and middle years of the civil rights movement sounded a battle cry that all fair-minded citizens, the overwhelming number of Americans, could respond to—the essentially moral argument that race must not be a source of advantage or disadvantage to anyone.

This claim sought to shatter what Shelby Steele has called the corrupt union of race and power with principles of fairness and equality.

Back then color-preference was known as white supremacy, and we thought we had delegitimated color preference in 1964. Americans supported, and still support, the Civil Rights Act of 1964 because we recognized racial power as the enemy, and used moral power as the weapon.

The Civil Rights Act was about unifying people. But I fear that H.R. 1 in its consequences, if not its intention, is about dividing people—tribalizing and balkanizing our society—and in the end, when its complexities are understood at the employment offices of countless businesses and factories, it will not have the support of the American people, but their resentment and indignation.

Under H.R. 1, civil rights is no longer about equal opportunity, it has become a contest of statistics. The notion of equality has been subsumed into the concept of proportionality.

I would advise all employers to abandon the outdated claim, "An Equal Opportunity Employer," for the more accurate claim, "A Statistically Proportional Employer" and I would recommend all help wanted signs revert to the old "Irish need not apply" signs in 19th century Boston, and perhaps advertisements can specify: "Help Wanted, four women, two African-American males, and one Hispanic required."

My old-fashioned reading of the Constitution is that the promise of the 5th and 14th amendments is equal protection, not proportional protection of the law.

I oppose H.R. 1 because while it enriches contingency fee lawyers, it impoverishes the principle of the equality of all Americans.

The practical and predictable consequences of this bill—notwithstanding its contrary assertions—is to institutionalize color, ethnic, and gender preferences under the false flag of civil rights.

By stacking the deck against employers they have made this a quota bill, and as Lady Macbeth once complained, all the perfumes of Arabia will not sweeten it.

As Morris Abrams has written, this bill will accomplish precisely what the 1964 civil rights bill stood foursquare against—a color-conscious society.

Now proponents can point to alleged exculpatory language on quotas as their argument that quotas are not required, encouraged, or permitted.

Pity the bewildered employer if his numbers are wrong. He's sued for disparate impact discrimination. But if his numbers are right, he's sued for maintaining a quota.

The word for this is incoherence.

Next, they can point to a too clever by half paragraph that says statistical imbalances in an employer's work force are not "alone sufficient" to show disparate impact. Notice that it is silent about any disparity between the available labor pool and this work force. The reality of this legislation is that it creates a presumption of guilt based only on crude race or gender statistical imbalances in the workplace as compared with the available labor force—and then forces the employer to rebut that presumption under a standard of proof that rules out excellence as a defense, and is almost impossible to meet.

This bill reminds me of the philandering husband caught red-handed who says to his wife: "Are you going to believe what you see or what I tell you?"

This bill rewrites 20 years of civil rights law in its definition of "business necessity," distorting it from the definition in the Griggs case—from having a "manifest relationship to the job in question" to having a "substantial and manifest relationship to the requirements for effective job performance."

Incidentally, I strongly suggest you review the ethnic, racial, religious, and gender makeup of your office and committee staffs—and should you be hiring or promoting, consult the raw statistics—don't bother measuring skills, experience, training, or quality of education, motivation, or anything else.

Forgo the search for excellence, or you'll be personally sued. That's what we're imposing on the rest of the country and that's what we should be imposing on ourselves.

This bill's presumption of guilt and its high hurdle of proof will force employers to hire by the numbers, promote by the numbers. And the imposition of the tort system—you know how well the tort system works for medical malpractice, for products liability, don't you?—and the prospect of jury damages of unlimited amount, both compensatory and punitive, will drive any sane employer to quotas or bankruptcy. But either way, the country and the cause of civil rights is set back 30 years.

The lidless cap on punitive damages is a farce, because the amount of punitive damages can equal the amount of compensatory damages, where the sky is the limit.

You no longer hear the argument that racial preferences are a temporary expedient reserved for the most difficult circumstances—instead they have become an end in themselves, a permanent fixture in our laws and our society, thus emptying the goal of equal opportunity of any substance and generating a poisonous cynicism about racial justice.

Racial preferences destroy the only principal on which a national consensus on race has ever been achieved—that of equal rights for all, and discrimination against none.

In 1963, Dr. Martin Luther King expressed his dream as wanting his children to live in a society where people would be judged not by the color of their skin, but by the content of their character.

Proponents of H.R. 1 insist that it outlaws quotas. The Washington Post, which supports the bill, correctly criticizes the majority in its Monday editorial by commenting:

> We don't think the Democrats helped their cause by including in their bill a definition of quotas that, whatever, its legal provenance, is a straw man. Quotas cannot be limited in definition to forcing employers to hire the unqualified; the question is whether, as among qualified applicants, they will have to hire by the numbers based strictly on race.

Sunday's New York Times comments:

> Court imposed hiring and promotion plans that call for fixed numerical percentages are rare, experts in civil rights law say. And because the civil rights bill defines quotas so narrowly, such progams would still be permitted, even though the measure's supporters say that they are explicitly outlawing quotas.
>
> As presently drafted, the bill defines a quota as hiring or promoting a "fixed number or percentage of persons from a particular group even if they are not qualified to perform the job."

This all reminds me of an old Italian saying: "Though you dress the shepherd in silk, he still smells of the goat."

On race-norming, one paragraph in H.R. 1 purports to outlaw it, only with reference to written tests, while the preceding paragraph really outlaws testing.

This bill codifies racial preferences, and is a quantum leap back from Martin Luther King's dream—and that's a real pity.

Mr. Chairman, I include the Washington Post and New York Times editorials for the RECORD, and reserve the balance of my time.

[The Washington Post, June 3, 1991]

THE HOUSE VOTE ON CIVIL RIGHTS

The hotly contested civil rights bill is expected to come before the House tomorrow, and three versions of the measure will be debated and voted on. By now the apocalyptic scare and hate rhetoric on the subject has moved out far ahead of any prospective impact this legislation is likely to have. The bill now backed by the Democratic leader-

ship embodies a compromise between the other proposals—sponsored by the Black Caucus and the Bush administration—and it also reflects the effect of much backing and forthing over the past year.

To our mind, all these proposals have flaws and no one can be 100 percent certain how any of them would play out. The Democratic compromise, flawed along with the others, strikes us as being the preferable bill. Congress has already spent two years considering these measures, and it is important that some resolution of the matter be concluded well in advance of next year's election campaign. That should not be as difficult as the long wrangle has made it appear.

The debate is ferocious, but the intricate proposals themselves are not exactly the stuff of public argument. That's because the subject matter is fairly technical involving, as it does, questions of shifting burdens of proof, rights to reopen settled cases, and potential damages, actual, compensatory and punitive. Civil rights forces claim that without legislation employment discrimination will be resurgent, while some employers predict that if the Democrats' bill is passed they will be obliged to observe quotas in hiring. Both sides overstate.

Everyone, including the President, agrees that a series of Supreme Court decisions making it harder to win employment discrimination cases ought to be changed by Congress. Proposals other than the administration's however, go beyond that goal in the area of remedies. Now, in all cases except those involving racial discrimination, plaintiffs must bring their cases before a judge who can order only reinstatement, or a promotion and back pay. The leadership and Black Caucus bills would grant jury trials and both compensatory and punitive damages in cases of intentional discrimination on grounds of sex, ethnic or religious origin, and handicap. The Black Caucus bill would allow unlimited punitive damages in all cases—which we think is a bad idea—but the leadership bill caps these penalties.

The threat of quotas is another divisive issue. We don't think the Democrats helped their cause by including in their bill a definition of quotas that, whatever its legal provenance, is a straw man. Quotas cannot be limited in definition to forcing employers to hire the unqualified; the question is whether, as among qualified applicants, they will have to hire by the numbers based strictly on race. In fact though, this hasn't happened in cases involving race where the law already allows jury trials and punitive damages, and it is unlikely to become a major problem under a new law either.

The Democrats need a veto-proof 290 votes for their bill. If they don't have that kind of strength, there will be more negotiations and more revisions. There is already broad agreement on the core of the bill—reversing the Supreme Court's actions. Politics is what has made legislative agreement so hard to achieve. It is a welcome sign that a group of Republicans, led by Sen. John C. Danforth of Missouri, is reportedly trying to break the impasse.

[The New York Times, June 2, 1991]

QUOTAS: DESPISED BY MANY, BUT JUST WHAT ARE THEY?

(By Steven A. Holmes)

WASHINGTON, June 1—Far more than any other issue, quotas—the "Q word," as President Bush called it the other day—has dominated the debate about the civil rights bill. But the sloganeering, campaign advertisements and fervent speeches on whether the legislation will force companies to adopt quotas point out that there is little consensus on the legality of quotas or, indeed, just what they are.

The confusion surrounding job quotas has been compounded by the dearth of clear definitions of the practice in Federal law and by the unwillingness, until recently, of either supporters or opponents of the civil rights bill to say just what they believe quotas to be.

"There is little agreement on what a quota is," said Mark Ditcher, a Philadelphia lawyer who defends corporations in job discrimination suits. "We just know we're not supposed to like them."

Confusion has also been sown by Supreme Court rulings that often appear inconsistent. For example, the Court has ruled that employers may give preferences to nonwhites and women when it comes to hiring and promotion. But the Justices have rejected extending these same preferences when it comes to layoffs.

"There is only one thing that we know: under certain circumstances, race-conscious and sex-conscious plans, including rigid quotas, are lawful," said William Gould 4th, a professor at Stanford Law School. "But under what circumstances is not always clear."

The Supreme Court has allowed judges to require employers to adopt rigid numerical hiring or promotion plans, but only in very narrow circumstances.

In 1986, the Justices upheld a lower court order that directed a New York sheet metal workers union to set up an apprentice program in which 29 percent of the slots would be reserved for nonwhites. A year later, the Justices affirmed a court-ordered plan in which the Alabama State Police had to promote one black trooper to corporal for every white trooper given the same advancement.

In both instances, the High Court determined that the employers had not only discriminated against nonwhites, but had defied previous district court orders to stop. "Both of these cases were situations where the employer was saying, 'I'm not going to pay attention to you,'" said Pamela Perry, a professor at Rutgers University Law School in Camden, N.J. "So the Court decided that there could be no fudging."

Court-imposed hiring and promotion plans that call for fixed numerical percentages are rare, experts in civil rights law say. And because the civil rights bill defines quotas so narrowly, such programs would still be permitted, even though the measure's supporters say that they are explicitly outlawing quotas.

As presently drafted, the bill defines a quota as hiring or promoting a "fixed number or percentage of persons from a particular group even if they are not qualified to perform the job.

The language, based on an opinion written by Justice Sandra Day O'Connor in the 1986 sheet metal workers case, would allow the one-for-one hiring imposed on the Alabama State troopers, for example, since both blacks and whites who were promoted had to have the necessary qualifications.

On Thursday, Mr. Bush denounced the Democrats' bill once again, this time declaring that the restrictive definition of a quota "would allow employers to establish personnel systems based on numbers, not merit."

Some supporters of the bill counter that the definition is in accordance with Supreme Court opinions and, at least the measure says what they mean by a quota—something that the President has yet to do.

"You hear Bush saying, quotas, quotas, quotas," said Afred Blumrosen, a professor at Rutgers School of Law in Newark. "But nobody has said to him, 'Mr. President what do you mean by a quota?'"

Some opponents of the measure like Clint Bolick, director of the Landmark Legal Center for Civil Rights, a conservative group, say they would define a quota as any employment practice that takes into account a person's race or gender. Such an all-inclusive definition would encompass every race- or gender-conscious program, including those that do nothing more than attempt to encourage more blacks and women to apply for a job but gives them no special treatment once they have done so.

* * * * *

Several times since 1979 the Supreme Court has validated such plans. The most recent ruling came four years ago when the Justices voted 6 to 3 to reject a claim of reverse discrimination brought by a man in California who had been passed over for a promotion in favor of a woman who had a slightly lower score in a competitive interviewing process.

In approving the use of either rigid, court-imposed numerical hiring programs or voluntary affirmative action plans with looser goals and timetables, the Supreme Court has set strict terms on when they can be used.

The Court has generally ruled that no employment practice that takes race or sex into consideration can be implemented only to remedy past discrimination. Other motives, like enhancing an employer's image or providing role models for nonwhite children, are not sufficient to justify such practices. The program must be temporary and it may not "unduly trammel" on the rights of third parties, generally white males.

□ 1510

Mr. GOODLING. Mr. Chairman, I yield 7 minutes to the distinguished gentleman from Wisconsin [Mr. GUNDERSON].

Mr. Chairman, I regret we are here today. I regret we are here in this fashion, because it is unnecessary. Very frankly, civil rights ought not be a partisan issue. Very frankly, if this Congress were truly committed to getting a law passed, rather than having a political issue, the overtures made by the gentleman from Illinois [Mr. MICHEL], made by the gentleman from Georgia [Mr. GINGRICH], and made by myself, to the Democratic majority leader, the gentleman from Missouri [Mr. GEPHARDT], to sit down and negotiate a bipartisan bill, would have been responded to in an affirmative way, and we would have repeated what we did last session with the Americans With Disability Act, rather than using race and civil rights as a political issue.

Mr. Chairman, I would like to call to the attention of Members during this debate the greatest secret in this town, and apparently in this country, and that is that the President of the United States has offered us, if we decide to have a bill, rather than an issue, and have reconciliation, rather than confrontation and litigation, a civil rights bill to do as the gentlewoman from Colorado [Mrs. SCHROEDER] suggested in the debate on the bill, and that is to re-

store the Supreme Court rulings of the late 1980's.

□ 1520

Not too many weeks ago I had the chance to speak to the Madison, WI NAACP on civil rights and on the President's position. I want to share with my colleagues a little bit of what I shared with them. I simply took the charts to my left and I said, let us talk about what is happening in the area of civil rights.

We have the issue of Wards Cove. The President's bill overturns Wards Cove. It does so in the area of business necessity, as does H.R. 1, the substitute, although they obviously use very different language. And I have to say, to quote Sandra Day O'Connor as the basis for your language in Wards Cove, you could not even be accused of plagiarism. You take a word here and a word there, you do not quote at all the holdings of Sandra Day O'Connor in that regard.

Now, we go on from business necessity to the area of shifting the burden of proof. The President shifts the burden of proof. Any time a disparate impact is stated, all of a sudden the President says the burden is on business to prove the business necessity for that disparate impact in their work force. The President says in the area of grouping of practices that, yes, indeed, you have to articulate the specific elements of discrimination in the complaint that you indicate.

Both bills overturn that, obviously in very different ways, as we will find out later on. But the President's bill does overturn it.

Finally, both bills suggest that if indeed one is offered an alternative means and one rejects that alternative means, that is a per se violation of title VII.

Now let us go on. In the area of Lorance, the issue that deals with seniority systems, the President's bill overturns that Supreme Court ruling. So does the Democratic bill.

Let us deal with the issue of Patterson, probably the basic issue in the civil rights debate today, that dealing with discrimination in all aspects of a contract, not just the hiring of that person but in the promotion and all other aspects. The President overturns the Supreme Court on Patterson. Yes, the Democratic bill does, too.

In the area of damages, both bills deal with damages for sexual harassment. Now, I will admit the Democratic bill goes far beyond that, and we will talk about that in just a bit.

In the area of expert witness fees the President says we ought to allow the recovery of expert witness fees in order that that plaintiff might have the opportunity to make the best case possible. H.R. 1 does the same.

So let us take it down the list: Wards Cove, Lorance, Patterson, damages, expert witness fees; the President's bill overturns the Supreme Court in all of those areas. Now, if we have that much that is similar, why do we have a dispute today?

The dispute, ladies and gentlemen, is because of the differences. In the area of Price Waterhouse, the President did not include Price Waterhouse in his bill. Do my colleagues know why? Because since the Supreme Court ruling, every case, every case has been decided on behalf of the plaintiff.

In the area of Martin versus Wilks, the ability to challenge a consent decree, the President has the naive belief that if one is going to be a victim or if one is going to be brought under the impact of a consent decree, one ought to have his or her right to a day in court. Up to 1991, that has been the American way.

Here is where we get into the real differences. That is in the area of damages.

Since 1964, civil rights law in this country has been determined on the basis of reconciliation and make whole. The reality is that H.R. 1 says we reject that, that civil rights law up to this point in time has not worked and that rather what we ought to do is we ought to pursue the opportunity not for reconciliation but for confrontation; not for make whole but for punitive and compensatory damages in jury trials.

If my colleagues believe that litigation is the best way to go on behalf of the victim, then I ask them to go back to those cases I listed earlier, such as Wards Cove, a case filed in 1984, that is still not resolved. Do my colleagues believe that those victims have been served justice by trial and deliberation and appeal? I will be the first one to tell my colleagues, H.R. 1 does not mandate quotas, but I will also be the first one to tell my colleagues H.R. 1 results in quotas. Because as a result of the jury trials, the punitive and compensatory damages, no business with any kind of credible management in this country is going to do anything but take a look at the population of their work force at every possible level, because if he does not do that and there is a disparate impact, there is an opportunity for jury trials. And if there are jury trials, there are punitive and compensatory damages. And in wrongful discharge cases in California, the average compensatory damage is in the area of $600,000 and only on appeals was that brought down to $300,000.

Now, they say they are going to put a cap on damages, $450,000 or compensatory damages, whichever is higher. So the lawyers focus in the area of litigation, and in the area of litigation they focus on jury trials. And in the area of jury trials, they focus on compensatory damages. And, ladies and gentlemen, the cap is gone. And that is why that businesses have to resort to quotas as a protective measure.

We have a chance for bipartisan civil rights. We have a chance for civil rights legislation, not an issue. But that will only happen if we pass the President's bill.

Mr. BROOKS. Mr. Chairman, I yield 30 minutes to the gentleman from Michigan [Mr. FORD], the distinguished chairman of the Committee on Education and Labor, and I ask unanimous consent that he have the right to assign time en bloc to other Members.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection?

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. I must start out by saying, I am a little disappointed to hear my friend, the gentleman from Wisconsin [Mr. GUNDERSON], say that he was searching long and hard, like Diogenes, for somebody to sit down and talk to him about a compromise bill.

I have been here every day. Why did the gentleman not talk to me? Nobody came to me to compromise except the White House, who asked me not to talk to the gentleman from Wisconsin as a member of my committee and not to talk to the gentleman from Pennsylvania [Mr. GOODLING], as a member of my committee, but to go over and see Mr. Sununu about negotiating a civil rights bill, an invitation that caused me to chuckle, which caused the gentleman from the White House to get a little embarrassed at me. And I apologized to him and I said, "I have nothing against Mr. Sununu but he isn't elected to anything. You talk to GOODLING and GUNDERSON and other people in my committee who are interested in this. Tell them what you want. I will negotiate with them."

Well, my good friend STEVE GUNDERSON never talked to me, and I want to make it clear on the RECORD that in his search for somebody to develop a bipartisan package, he overlooked the chairman of his own committee.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, will the gentleman deny that during committee deliberations more than once I personally talked to him on the dais and suggested we ought to find a way to work this out?

Mr. FORD of Michigan. As I recall it in the committee deliberations, the gentleman supported a substitute for the bill rather than discuss any changes in the bill, and we had a vote

on it. The gentleman asked us not to do it by rollcall because he did not want to be embarrassed.

Mr. GUNDERSON. Mr. Chairman, if the gentleman would yield further, was it not my distinguished chairman of the Education and Labor Committee who suggested that probably he was not the right one to negotiate with on this bill because he was suspect in the eyes of some of his own Democratic Members, and so that I ought to talk to somebody else if I was interested in negotiations?

□ 1530

Mr. FORD of Michigan. Mr. Chairman, I do not recall ever indicating to the gentleman that I was suspect in the eyes of Democratic Members. Some of the outside organizations might have been suspect at my replacement of the former chairman, and I was sensitive to that earlier in the year, but never any member of my caucus.

Mr. GUNDERSON. If the gentleman will yield further for one more question, if the gentleman is not suspect anymore in the eyes of his caucus, can I suggest that we table this bill at this time and begin bipartisan negotiations for a real civil rights bill that can be signed into law?

Mr. FORD of Michigan. If I thought the gentleman had any authority to deliver any votes from that side, I would sit down with him, but I think it is now apparent that I would be wasting my time and his as well if we started negotiating at this point.

Mr. GUNDERSON. You would sure put us to the test.

Mr. FORD of Michigan. Mr. Chairman, I rise today in strong support of H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. The need for this legislation grows from a number of recent Supreme Court decisions which weakened Federal safeguards against job discrimination. These decisions, taken together, have put at risk the basic American principles of fairness and equal opportunity for all hard-working American men and women.

H.R. 1 will not affect those employers who provide fair and equal opportunity to all workers based upon their merit and hard work. The bill does not confer any new civil rights; those covered by the bill are already afforded protection under title VII. Nor does the bill create new remedies which are unfamiliar to employers; rather, it extends longstanding remedies available to racial minorities to women and the disabled. H.R. 1 is simply designed to prevent bad employers from doing bad things to good hard-working employees.

The road to this day has not been without potholes. For far too long our bipartisan efforts have been hindered by subterfuge and innuendo. This was recognized last week in a New York Times editorial, which I am submitting for the record along with my written statement.

Substantive opposition has been all but obscured, the editorial suggests. It goes on to say that for Mr. Bush, "to persist so unreasonably in the quota canard invites the belief that he is driven, instead, by ugly political reasons." But he continues with his political campaign based on Willie Horton baiting.

Opponents have argued that H.R. 1 would force employers to resort to quotas; that white men will have to stand aside and give up their jobs to women and minorities. That claim is pure hogwash. This is not a quota bill despite President Bush's petulant insistence.

Nothing in H.R. 1 requires or even remotely suggests such an outcome. As reported by the committee, the bill includes safeguards against such abuses. In simply restoring the law to its pre-1989 state, we seek to continue two decades of experience under legal rules which produced no pattern of quotas.

In fact, the Brooks-Fish substitute flatly outlaws quotas. H.R. 1 states that quotas are not encouraged or permitted. The President's bill and the Michel substitute do neither.

Opponents have argued that H.R. 1 would lead to a "lawyer's bonanza" by affording victims of intentional sex discrimination the remedy of compensatory and punitive damages to redress the offense. I could not disagree more.

Today, victims of intentional race discrimination can recover compensatory and punitive damages under Federal law, but victims of intentional sex discrimination cannot. H.R. 1 corrects that inequity by equalizing the remedies available for all types of intentional discrimination on the job. One cannot look at the history or race discrimination cases, with their severe burden of proof to establish and win claims, and call that history a lawyers' bonanza.

According to a report prepared by Shea & Gardner, a large Washington, DC, law firm, compensatory or punitive damages were awarded in only 69 of 594 racial discrimination cases decided between 1980 and 1990. In two-thirds of these 69 cases, the total damage award was $50,000 or less, and in only 5 instances did the award exceed $150,000.

Mr. Chairman, now is the time to join forces to pass legislation to ensure fair treatment in the workplace for all workers. Our committee heard from one particularly articulate attorney, Nancy Ezold, who told of her successful challenge to her firm's intentional sex discrimination. She was foreclosed from recovering damages simply because she is a woman. H.R. 1 would correct that anomaly by strengthening title VII to permit recovery of monetary damages in all cases of intentional discrimination.

Mr. Chairman, after 15 months of discussion, debate, and attempts at compromise, the truth finally emerged several weeks ago. When discussions between the business community and civil rights groups appeared ready to bear fruit, the President's men resorted to only slightly veiled threats against those who would deny them a political issue.

Electoral politics can be the only reason for a rancorous debate on the substance of the legislation before us. The administration's specious arguments against the legislation are not only dangerous because they intentionally misinform, but also because they are divisive and damaging to our Nation's continuing dialog on civil rights issues.

We have sought to compromise with the President. But, when I suggested earlier this year that all parties join in crafting the best product, the administration responded with an alternative which in many instances codified rather than overturned the misdirected Supreme Court cases.

There is a need to protect hard-working people—women, minorities, people with disabilities, and older workers, among other—from the misguided actions of those who put corporate profits ahead of basic fairness. H.R. 1 is the legislation needed at this time to ensure fair treatment in the workplace for all people.

[From the New York Times, May 28, 1991]

QUOTA? NO, MORE LIKE A CANARD

Don't bother me, says President Bush, with the facts. House Democrats, alarmed at the slogan-slinging that defiles their proposed Civil Rights Act of 1991 as a "quota" bill, are revising it to forbid hiring quotas for minorities and women. The President hasn't seen the revised language yet, but hey—he doesn't have to.

"As far as our experts can tell," Mr. Bush says, "the changes that they are proposing are strictly cosmetic." And according to the White House Press Office, it's still a quota bill. What if it specifically contains language barring quotas? "That is still a quota bill as we regard it," according to a spokesman, Roman Popadiuk.

Mr. Bush may not like the proposed legislation for substantive reasons. But for him to persist so unreasonably in the quota canard invites the belief that he is driven, instead, by ugly political reasons.

The revised bill will probably be made public today. House members will be eager to see whether the Judiciary chairman, Jack Brooks, is right when he says the bill explicitly bans quotas.

In this context, quota means hiring and promoting by race, sex or other characteristics according to fixed percentages and without regard to qualification. Civil rights laws have never authorized that form of discrimination even as an antidote to centuries of bias. Yet the Bush Administration contends that the bill would force employers to use quotas just to avoid getting sued.

That charge has never been fair. The bill's most hotly-contested feature would require employers to justify job practices that disproportionately screen out minorities and women. That, basically, would put the law

back where it was before a series of recent Supreme Court misinterpretations. Thus there's no need to speculate. Two decades of experience under the old rules produced no pattern of quotas.

Lack of evidence hasn't stopped the Administration from sounding the quota alarm. That alarm has been effective, as when Senator Jesse Helms raised it in his North Carolina re-election campaign last year. It stirs racial anxieties not easily answered with reason. The explicit ban on quotas is important so that members of Congress can defend themselves against such demagoguery, not because of the merits of the argument.

Barring quotas does not mean that numbers will be meaningless in assessing job discrimination. When a challenged employer asserts that there are no qualified blacks or Hispanics in the available labor pool, the work force has to be measured and compared with the employer's performance.

When Mr. Bush vetoed last year's civil rights bill, 66 senators saw through his "quota" name-calling and voted to override, falling one vote shy. This week the President would do well to get past those "experts," read the new bill for himself and base his opinion on facts rather than surrender to, and foment, ugly fears.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in strong support of the Michel-Hyde substitute, which I believe is a vast improvement over both the legislation—H.R. 1—reported by the Judiciary Committee and the recently unveiled Democrat substitutes. The Michel-Hyde proposal contains all of the language from the President's civil rights proposal—which was introduced as H.R. 1375. I was proud to be an original cosponsor of that measure.

The Michel-Hyde alternative would strengthen the Federal law against employment discrimination without favoring employees or employers. Most importantly, it will accomplish this without pressuring employers to establish quotas. Unfortunately, under the language of H.R. 1 and the Democrat substitutes, employers will believe that the safest response to protect against discrimination claims would be to establish a "quiet quota system" for both hiring and promotion. Instead, the Michel-Hyde substitute relies on and strengthens the existing settlement process under the Equal Employment Opportunity Commission [EEOC]. It would overrule the Wards Cove decision by shifting the burden of proof to an employer once a prima facie case of discrimination has been established in a disparate impact case. However, unlike the committee version of H.R. 1, and the Democrat substitute bills, an employer can rebut that prima facie case if he can show the challenged employment practice has a "manifest relationship" to the employment in question, or that "legitimate employment goals are significantly served" by the challenged employment practice. Thus, importantly, the Michel-Hyde substitute utilizes the standards in *Griggs*, v. *Duke Power Co.* 401 U.S. 421, 432, 1971, and *New York Transit Authority* v. *Beazer*, 440, U.S. 568, 587 n.31, 1979.

The approach in Michel-Hyde is also a tremendous improvement on the difficult damages issue. Both the committee-approved bill and the proposed Democrat substitute would encourage counterproductive litigation in employment disputes by allowing compensatory damages, including damages for pain and suffering, punitive damages and jury trials. Instead, our substitute would continue the current system of backpay and injunctive relief. In addition, it would establish a new equitable remedy for on-the-job harassment—where a judge, rather than a jury, could award equitable damages up to $150,000. This approach will deter harassment without creating a lawyer's bonanza. The provision also provides employees with emergency relief in harassment cases—by allowing a complaining party to seek immediate injunctive relief in a Federal court to halt harassment based upon sex, race, color, religion, or national origin.

Our substitute also comprises other significant changes in civil rights law. For example, the much criticized Patterson case is overruled so as to make it clear that 42 U.S.C. 1981 applies to racial harassment on the job. *Patterson* v. *McLean Credit Union*, 109 S.Ct. 2363 (1989). The substitute also amends title VII to eliminate a needless and unfair limitation on the time for filing challenges to discriminatory seniority systems, overruling *Lorance* v. *AT&T Technologies, Inc.*, 109 S.Ct. 2261 (1989).

Mr. Chairman, when the Judiciary Committee considered this legislation, I offered an amendment that would have made all changes in current law in H.R. 1 prospective only. I argued at that time that it was simply not fair to "change the rules in the middle of the game" for parties already in proceedings before the EEOC or for existing litigants in court. Further, it is particularly unfair to retroactively apply the new law to what are essentially final judgments. For example, after 20 years, $2 million in litigation costs and eight court decisions—the Wards Cove Packing Co. should not be forced to go through more litigation.

Therefore, I am particularly pleased that the Michel-Hyde substitute adopts my effective date language. Section 15 of the substitute makes it clear that this act and the amendments made by this act take effect on the date of enactment. Furthermore, section 15 states that "(T)he amendments made by this Act, shall not apply to any claim arising before the effective date of this Act."

Before concluding, I want to congratulate and express my appreciation to my good friend, the gentleman from Illinois [Mr. HYDE] for bringing the matter of racial discriminatory and ethnic test scoring to light. This practice—technically known as "within-group norming"—is really an already existing strategy to achieve quota hiring. It is a clearly discriminatory practice that should not be permitted under title VII or any other Federal law. Congressman HYDE has done a great public service by bringing this outrageous practice to our attention. I supported his amendment to clarify that race-norming is an unlawful employment practice under title VII, when it was offered in the Judiciary Committee. I am pleased to see that his amendment has now been made part of the Republican substitute.

Mr. Chairman, the Michel-Hyde substitute offers the House of Representatives an opportunity to enact a civil rights bill that is both fair and sensible. It overrules both Wards Cove and Patterson without imposing quota systems or creating a plaintiffs' lawyers paradise. We already know that H.R. 1 and the proposed substitutes would earn a Presidential veto. The substitute offers us an alternative that President Bush can and would sign. I urge an aye vote, at the appropriate time, for the Michel-Hyde legislation.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Chairman, H.R. 1 is a moral and intellectual sham. Mr. Chairman, it is a betrayal of the civil rights ethics of this Nation. I am personally embarrassed for its hypocrisy.

The bill co-opts the words civil rights from their legitimate purpose of protecting and guaranteeing the equal rights of every single individual American citizen and protecting and guaranteeing the equal protection of the law for each and every American citizen to the purpose of guaranteeing statistical norming for arbitrarily defined categories litigated by lawyers seeking large settlements. It then goes further in this collectivizing mentality and resurrects under this buzzword blackmail of civil rights the intellectually specious notion of comparable worth.

Mr. Chairman, I cannot tell you how amused I was to find that somebody would take such a cockamamie notion as comparable worth and disguise it within the context of the pretension of affection for the rights of American citizens. Comparable worth is the idea that we can test through sociological models the relative social value of different jobs, not different people, not different groups of people not statistical categories, but different jobs, and determine the extent to which the job of stockbroker has the same relative social value as that of truck driver.

□ 1540

Comparable worth is in this bill. On that basis alone Members ought to vote

against it, and the President would on that basis alone veto the bill.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I just want to answer some of the charges I have heard down here.

First of all, I will point out that we are talking about keeping on track a bill that passed 27 years ago. Twenty-seven years ago. Therefore, there are no real surprises in what we are attempting to do on the majority side by rolling back these five decisions that really took the mainstream and put it off track.

I also want to point out to my colleagues over there who have been quoting Dr. King and others, he not only talked about race relations, he talked about sex relations. He said we are either going to learn together to live together as brothers and sisters, or we are going to perish as fools.

Now, I think this bill is very important because the historic new inclusion is for sexual harassment in the workplace. People may think that is funny. People may not think that is necessary, and people may think that is a lesser order in which women do not need jury trials, or they do not need adequate damages. I find that very surprising.

However, the same debate was held in 1964 when we took this bill to the floor. It was very interesting because Judge Howard Smith, who was head of the Committee on Rules, was an old segregationist, and he fought civil rights and kept it bottled up for years. Finally, it came to the floor, and he was very angry. He thought what he would do was add a little amendment that would be sure to kill it, and that was to add to the bill a three-letter word called sex—sex discrimination. He thought, "Aha, now we have really put a spear in the heart of civil rights." But there was a very distinguished Congresswoman who was a Republican, by the way, from New York, Katherine St. George, who rose to the occasion and said to this chairman, "Women do not need any special privileges * * * but are entitled to this little crumb of equality. The addition of the little terrifying word 'sex' will not hurt this legislation in any way."

Indeed, it did open the door to women. We are pleading to open the doors equally to women this time, too. I think it is about time.

The CHAIRMAN. The Chair will exercise its prerogative and advise those controlling the debate that the gentleman from Pennsylvania [Mr. GOODLING] has 26 minutes remaining, the gentleman from Illinois [Mr. HYDE] has 26 minutes remaining, the gentleman from Texas [Mr. BROOKS] has 36 minutes remaining, and the gentleman from Michigan [Mr. FORD] has 25 minutes remaining.

Mr. FORD of Michigan. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, I rise in support of H.R. 1, the Civil Rights and Women's Equity in Employment Act. This legislation simply seeks to restore the fair balance between employers and employees that existed for 25 years prior to the Supreme Court's notorious 1989 term.

Contrary to President Bush's intemperate, racially inflammatory remarks that this legislation would impose quotas, despite his appeal to the worst in human characteristics—ignorance, prejudice, intolerance—this bill is necessary to overturn 6 unjust decisions of the Supreme Court.

Those 1989 decisions gutted title VII's effectiveness in combating employment discrimination against women, Hispanics, and blacks. Although our society has a commitment to the ideal that all citizens should have an equal opportunity to succeed to the extent of their abilities, we have failed miserably to make this promise a reality. Historically, race, sex, national origin, religion have been used as a basis for denying fair employment and equal opportunity.

Mr. Chairman, the Civil Rights Act of 1964 addressed the problem of job discrimination. The antics of our President in attempting to deny the protections of law to those who are discriminated against because of race or sex is a disgrace. He is further dumping on those already impoverished in body and spirit. What a dismal message he is sending to minorities and women, especially the poor ones. What does his ranting about quotas and reverse discrimination convey to those hungry black children in tattered clothing whose fathers are unemployed at three times the rate of white fathers? What does his race-baiting remarks say to those jobless black youth hopelessly trapped in rat-infested tenements? Mr. Chairman, it tells them that America, the land of the free and the home of the brave, is not free and certainly our leaders are not brave. To this large group of disadvantaged, discriminated people, America, with her distorted sense of purpose and direction, where dishonest men frustrate solutions to honest problems, America offers them little hope and no solace. Mr. Chairman, I urge the passage of H.R. 1.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. JAMES].

Mr. JAMES. Mr. Chairman, the majority's substitute is different than last year. I cannot support it. The President's bill says hiring decisions should be related to the job. I agree.

The majority's substitute says it is OK to prefer an unqualified person to the best qualified person to make your numbers, just as long as a person does not do it every time. I say that is wrong. They say it is OK to prefer a less qualified person to the best qualified person in order to make your numbers every time. I say that is wrong.

The majority says that is not a quota. They are wrong about that, too. It says unless a person can prove a significant and manifest requirement for the best person, they better hire by the numbers. That means unless a person can prove they need a .350 hitter, they have to hire and promote the person who hits .225.

Congress can do better. I hope by the time we are finished there will be a civil rights law all fair-minded people can support.

There has been some discussion about the definition of the word "quota" and it says in the substitute offered by the majority, for the purposes of subsection (a) the term "quota" means a fixed number or percentage of persons of particular race, color, religion, sex, or origin which can be obtained or which cannot be exceeded, regardless of whether such persons meet necessary qualifications to perform the job, regardless of whether they meet those qualifications. That is the only narrow area that the word "quota" is allowed to mean. It is inconsistent with Webster's Dictionary definition, and inconsistent with statements I have heard earlier. There is no other way to read that definition.

Mr. GOODLING. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Chairman, there are two kinds of discrimination cases under title VII, to be very elementary, intentional discrimination or unintentional discrimination. Under the Brooks-Fish substitute, both will be changed, in my view for the worse, and will cause employers to covertly opt for quotas.

Why? One reason is that under a claim of intentional discrimination, the substitute, Brooks-Fish, guts the traditional remedies of back pay and injunctive relief which have served this country well for over 25 years, and in favor of unlimited damages.

□ 1550

Why is this of concern to employers, you may ask? Because a claim of intentional discrimination often uses the same racial or gender job statistical imbalances used to support a claim of unintentional discrimination. Thus, under class action intentional discrimination cases, the employer would face unlimited compensatory damages for mental distress and pain and suffering, plus punitive damages for every member, no matter how numerous of a class action discrimination lawsuit.

The liability exposure would be astronomical, and so would also be the explosion of costs of liability insurance premiums.

Thus, employers will attempt to avoid the statistical imbalances leading to those kinds of exposure, and that is only human nature, and this will be done, of course, covertly.

In addition, under the substitute, an employer may be held liable for such unlimited damages even for employment practices which have no discriminatory intent.

Now, let me repeat that. You can have your unlimited damages even in instances where there is no discriminatory intent.

The substitute establishes an "unlawful employment practice" whenever the complaining party demonstrates "that race, religion, sex or national origin was a motivating factor for any employment practice."

Now, note, it is not stated that there is any discriminatory intent needed and note also that the employer has no defense. It is strict liability in tort.

Thus, if an employer, without any intent to discriminate, were to assign a black officer to a heavily black area because the officer was black and familiar with the area, he would be automatically guilty of an unlawful employment practice and subject to jury awards for unlimited damages upon suit by a white, by an Hispanic, or by a woman or even by the black officer himself.

Now, let us look at unintentional discrimination claims. The bill makes it easier for the plaintiff to prove unintentional discrimination against an employer and almost impossible for the employer to defend itself by showing reasonable justifications for hiring practices which may cause unintentional discrimination.

The only defense an employer has under the substitute is not as to whether its hiring criteria has a manifest relationship to the employer's business or employment, as held in Griggs, but whether its hiring criteria bears a significant relationship to effective job performance, and that is a standard never used by the Supreme Court.

Now, that means that subjective and largely nonjob specific hiring criteria, such as leadership potential, ambition, trustworthiness, common sense, loyalty, good judgment, those traits which are necessary for productive work in the competitive work force, they cannot be measured through objective standardized tests.

The substitute then goes on to make sure that subjecting hiring criteria will not be used by the employer to justify hiring practices by requiring only objective evidence to show job-relatedness. But how can an employer prove job-relatedness for his subjective hiring practices without using subjective evidence?

Mr. Speaker, under the substitute, an employer is even prohibited from presuming—and I tried this in an amendment, to have this amendment passed, from presuming that academic achievements are relevant to job performance, and the committee said partisanly, absolutely not.

Now, Mr. Speaker, there is not one Member of Congress who does not make the presumption that academic achievements are relevant when you interview a job applicant, not one of us.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. GOODLING. Mr. Chairman, I yield 1 additional minute to the gentleman from Illinois.

Mr. FAWELL. Finally, Mr. Speaker, even if an employer is able to jump through the burden of proof "hoops" to which I have referred of the substitute and finally prove that his hiring criteria was justified, still the employer loses anyway if the complaining party simply shows that there is another hiring practice or a whole group of hiring practices which would have produced less disparate impact, that is to say, less unintentional discrimination, or less statistical disproportions.

Mr. Speaker, add together the obstacles and the potential damages which face the employers of America under this substitute and, of course, you have the fear that is very sound that you are going to have employers opting for quotas. That is very understandable.

Mr. BROOKS. Mr. Chairman, before yielding further, I want to make sure that the RECORD is accurate. Both the gentleman from Illinois [Mr. HYDE] and the gentleman from Wisconsin [Mr. GUNDERSON] made a misstatement when they said that we relied on Justice O'Connor for our definition of business necessity. That is incorrect.

I relied on Sandra Day O'Connor's definition of quota in a 1986 Supreme Court case.

Hopefully the two concepts will not be confused as the debate proceeds.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I agree with the gentleman, and I have the quote here. While the gentleman's definition of a quota in the bill does not exactly track Sandra Day O'Connor, it is reasonably close.

Mr. BROOKS. Reasonably close, Mr. Chairman, is good enough for government work.

Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Chairman, I rise in support of the Civil Rights and Women's Equity in Employment Act of 1991. I rise in support of the citizens of this Nation, who live under the tenet that all men and women are created equal, and are endowed with certain inalienable rights.

The fundamental belief of equality and civil rights for all are the principles upon which this country was founded, it is our heritage and our birthright as citizens.

As we engage in this debate we must remember why we are here today.

We are here today to fight against discrimination, not quotas, not damages, but discrimination. We cannot allow ourselves to be diverted by red herring issues that would lead us away from the true purposes of this bill.

We are here to decide whether or not all citizens of this country are entitled to the same rights and privileges as promised them by the Constitution. This includes not only the right to seek justice, but to expect justice in a court of law.

Every day, qualified people are barred from promotions or job opportunities because of discrimination in the workplace. Many more endure constant harassment and prejudice, both overt and covert, in order to put food on the table for their families.

If we do not pass this bill, let me provide you with a few examples of the people who will suffer.

A Hispanic woman applies for a job, but when she starts work she is subjected to abuse from her Anglo colleagues. Unlike them, she is expected to sweep the office and perform other menial tasks. She is paid less because she is told "Hispanics work more slowly than Anglos by nature." She is also denied access to promotional opportunities. Under present law this woman cannot challenge her treatment in court.

An Asian man applies for a job in a white-dominated area of work. He does not get the job. Race is the prime reason, but as an ancillary reason the employer mentions that the man's most recent work had been of a different type. The employer's reason for denying the job to the Asian worker is lawful right now because of the mixed motive.

Employers should not be able to mask their intentional discriminatory practices under the title of "business necessity." Just as racists should not be able to mask themselves behind a white hood.

If we fail to pass this bill, we have failed the people of this Nation. If 290 Members of this body do not vote in favor of this bill, it will be tantamount to turning our backs on all the progress we achieved in the 1960's and 1970's.

If we do not send this bill to the Senate, we effectively close the door on the consideration of any civil rights legislation for years to come.

My colleagues, we will bring shame on this institution if we do not pass the Civil Rights and Women's Equity in Employment Act of 1991.

We were elected by the people of our districts to represent and protect their constitutional rights. If we do not pass this civil rights bill, we have simply failed in our duty to them. We can only go one of two ways, either forward or backward.

My friends, we cannot change the past, but we can shape the future. We have the opportunity to rectify six devastating blows to the freedoms of all Americans, to ensure that anyone, regardless of race, religion, gender or ethnicity, be guaranteed the constitutional protection of their civil rights.

Mr. BROOKS. Mr. Chairman, I yield 30 seconds to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute and also the bipartisan substitute that will be before us shortly.

Mr. Chairman, I rise in strong support of H.R. 1, the Civil Rights Act of 1991, legislation designed to insure that our laws prohibiting discriminatory employment practices are more than hollow rhetoric. The central purpose of the bill before us is simply to restore equal employment opportunity law to where it was before a series of recent Supreme Court decisions made it much more difficult for victims of discrimination to get into court and to prove discrimination. In this respect no new legal ground is broken: no new legal standards are established, nor is any new affirmative action remedy proposed. The only new initiative contained within H.R. 1 is to give to women, to persons with disabilities, and to religious minorities the same right to sue for monetary damages in the case of intentional discrimination as is now available to racial minorities.

Given the modest objectives of H.R. 1, the emotional intensity of the debate surrounding this civil rights legislation is remarkable—a commentary, perhaps, on how far we have yet to go in resolving the issues of race and gender discrimination in America, and on how urgent the need is for this legislation.

Make no mistake about it: nothing, absolutely nothing in H.R. 1 is about quotas. In fact, the Democratic substitute before us states unequivocally that "Nothing in * * * this Act * * * shall be construed to require or encourage or permit an employer to adopt hiring or promotion quotas * * *" H.R. 1 simply reinstates the law as it existed for 18 years under the unanimous 1971 Griggs decision, which held that employer practices that worked to disadvantage minorities and women violate title VII unless justified by business necessity. To this day, even the strongest opponents of this legislation have offered no evidence that the Griggs standard led to quotas. If it didn't lead to quotas for 18 years, why the panic all of a sudden about quotas? Furthermore, if employees did initiate racially based quotas, they would be subject to suit on that ground alone. Under current law, and under H.R. 1, quotas are illegal! Period.!

The real issue that is before us is whether we are serious about combatting discriminatory employment practices and upholding the concept of equal opportunity. If there were any doubt about the critical importance of this legislation, surely it was dispelled by a recent study of continued racial bias in access to jobs in America. The Urban Institute study concludes that racial discrimination continues to prevade U.S. workplaces, more than 25 years after it was outlawed. Pairs of young black and white men with similar qualifications, appearances, and personalities were sent to apply for entry-level jobs in Chicago and Washington. While most of the employers did not seem to differentiate by race, the black testers still were three times as likely as their white counterparts to be denied job offers. Such discrimination was particularly apparent in white-collar and sales jobs.

Also on point is a recent publication of the American Medical Association. An editorial in the AMA Journal concludes that "long-standing, systematic, institutionalized racial discrimination" denies many minorities the opportunity to get the kind of medical care generally available to whites. The Journal notes that adequate health insurance is based predominantly on employment and personal wealth, and minority Americans are more likely to be unemployed or underemployed because of past discrimination or continuing racial bias. Indeed, institutionalized racial inequities in America are literally a matter of life and death: a black baby is twice as likely to die within its first year of life as a white infant, and African-Americans have over 6 years lesser life expectancy than white Americans.

Just as racial inequities are institutionalized in America because of past discrimination, so are continued gender inequities. Today, almost half of all American workers are women, the majority of whom work out of economic necessity. Yet women continue to earn only 68 cents for every $1 that men earn; women with a college degree still earn, on the average, less than a man with only a high school diploma. An estimated 40 percent of women experience sexual harassment on the job. And women continue to be blocked from job advancement: Only 3 percent of individuals in upper management positions in business are women.

But the Civil Rights Act of 1991 is not designed to protect only particular groups of workers. To the contrary, its purpose is to insure fairness for all working Americans, white as well as black, male as well as female, by strongly discouraging employers from substituting race or gender for job qualifications.

Mr. Chairman, three decades ago this country of ours began to address America's longstanding racial and social inequalities. Americans were challenged to do some self-examination, to recognize our racial and sex-based myths and stereotypes for what they were, to confront honestly and openly our irrational fears and prejudices, to abandon racially-entrenched institutions and ways of behavior, and to recognize the inherent worth and interdependence of all Americans. The sixties were full of tumult and controversy, and they were difficult and painful years for many of us. But they were also years of vision and rebirth and renewal—as Americans began to understand that we all stood to gain by creating a fairer—and therefore a more harmonious and productive—society. We came to recognize that the American dream of equal opportunity offers not a zero-sum game, but a set of rules that lead to a more just and open society in which all Americans emerge as winners. Brown versus The Board of Education, The Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Civil Rights Restoration Act of 1988, and the Americans With Disabilities Act of 1990 all helped to strengthen our sense of national unity by reaffirming, in statute and in the courts, America's commitment to full political rights for all and to equality of opportunity. Those were important victories for all of us, and Americans everywhere can take pride in the steps our Nation has taken to close the gap between America's ideals and America's reality.

But all that we worked so hard to achieve in the sixties is now at risk because of a new kind of economic discrimination. The gap between the haves and the have-nots is greater today than at any time since the Great Depression. Racial and ethnic tensions have intensified in cities and on campuses throughout America. Our society is increasingly polarized along racial, ethnic, and economic lines. And we are beginning to see the riots and violence that are the inevitable byproduct of continued injustice.

The Civil Rights Act of 1991 will not solve all of the problems we face. But, by overcoming the effect of some regressive Supreme Court decisions, it will help to bring us together and to preserve the civil rights gains that have been achieved the past few decades.

Mr. Chairman, the Civil Rights Act of 1991 is vitally needed legislation that is deserving of the broadest possible bipartisan support of this Congress. It appears that the White House would rather have an issue than a bill—even at the risk of the social and political turmoil that the rejection of this important civil rights initiative will surely invite. We must not let this manipulative and divisive strategy succeed. Let us act now to make unmistakably clear this Congress' determination to uphold the civil rights laws of this land and to insure their fair and effective enforcement. I urge passage of the Civil Rights Act of 1991.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Chairman, the debate we are engaged in is about eliminating discrimination from the workplace. This goal is not a new one nor is it one that can be ignored. This debate is not about special privileges or granting new rights to certain groups of persons. The Civil Rights Act of 1991 ensures that qualified American workers have the ability to enforce the rights to which we, as Americans, are all entitled to under our Constitution.

The right to seek and secure employment based on one's individual skills and merit without facing the barrier of discriminatory hiring practices is fundamental to a just society. Unless there is equal access to jobs, there is no true equality.

As I speak in support of this bill today, I would like for the Members to consider the debate that took place in 1964. The House debated for 9 days on the historic Civil Rights Act of 1964. Of that, almost 1 day was on title VII, the title we are amending today. Ironically, and somewhat sadly, the rhetoric from those Members opposing the bill today could have been copied from the CONGRESSIONAL RECORD of that time.

Member after Member who opposed the bill in 1964 spoke of the dire effect title VII would have on businesses and free enterprise in America. It was predicted that our constitutional system of Government would come to an end and our system of free enterprise would expire. It was often stated that quotas

would have to be put into place if businesses were forced to not discriminate in hiring employees. Such legislation was assailed as "interfering with a businessman's right to hire and fire and promote as he wished; that it would wreck seniority systems and set up quota systems." I cannot believe or accept that we as a Nation and as Members of Congress have not advanced in the 27 years that have passed since the passage of the original title VII.

As the chairman of the Judiciary Committee said at that time, "What is objectionable about much of the criticism directed against the civil rights bill is that it seriously misrepresents what the bill would do and grossly distorts its effects." Such comments are certainly pertinent to today's debate and the public debate that has gone on for the past year.

The drastic consequences predicted in 1964 by the opposition did not materialize under 25 years of civil rights enforcement. There is no rationale basis today for believing that the opposition's predictions will come true in the next 25 years.

Much has been made of the fact that our military is free from discriminatory employment practices. Minorities and women fill a number of prominent positions. In fact, there is a higher level of management type positions held by women and minorities in the military than in the private sector. This should serve as an example of what could be achieved in the private sector if discriminatory hiring practices were not so prevalent in the workplace.

As President Kennedy once said, "No one has been barred on account of his race from fighting or dying for America. There are no white or colored signs on the foxhole or graveyards of battle." In his address to Congress, Gen. Norman Schwarzkopf pointed out that "* * * we noticed when our blood was shed in the desert it didn't separate by race but it flowed together." It would be ironic if those persons who fought together leave the military only to find out they can no longer work side by side because of discrimination.

If I did not support the legislation that we are considering today, it would be tantamount to saying that I believed the Civil Rights Act of 1964 to be a failure. It has not been a failure, but it has not yet achieved its original goal of eliminating discrimination in the workplace. It must be restored in order to achieve this goal.

As Hubert Humphrey stated in 1964, "* * * the Constitution of this country is on trial. The question is whether there will be two kinds of citizenship or one." Congress has a responsibility to provide leadership and enact a national policy that denounces discrimination on all levels and ensures that there is only one type of citizenship.

□ 1600

Mr. CLAY. Mr. Chairman. I am controlling the time for the gentleman from Michigan [Mr. FORD].

Mr. Chairman, I yield 2½ minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Chairman, I rise today to speak in support of H.R. 1, the Civil Rights Act of 1991. Today I read an article in the Washington Post which expressed the fears of some southwest side Chicagoans and Suburbanites as it concerns the Civil Rights Act. I just can't understand their fears because my city of Chicago is a city that has a 41-percent African-American population and, yet, African-Americans do not dominate in public or private sector employment. Their fears cannot be substantiated by any factual information and stem only from the rhetoric that has been coming from the White House. If you look at the fire and police departments in the city of Chicago you will see that discrimination is alive and well. Several white firefighters have filed a reverse discrimination suit that is based on nothing more than fear. I am disheartened because the numbers for African-Americans in these departments do not reflect those in the population. As a matter of fact, most of the decent jobs in the city are controlled by political clout and influenced not by black or white but by the color green, the green that signifies the all-mighty dollar. Now we are faced today with restoring rights that should be fundamental to all Americans.

Mr. Chairman, I have always believed that tearing down barriers to opportunity in America is a moral command for us all. That is why I support this bill. While admitting it is not as strong as I would like, however, it does tear down barriers that were created by the Supreme Court. Between now and the year 2000, 91 percent of the new work force will be minorities and women—the very people who have been victims of discrimination in the past and, all too often, still are denied the opportunity to make their fullest contribution to American life.

In the competitive new world order of the 1990's when America's destiny depends on bringing out the best in all our people, it is more important than ever to continue America's progress toward wiping out discrimination.

Yet the White House fails to realize this simple fact and continues to use divisive terms such as quotas in an attempt to derail this bill and scare white America. The fact is that we all know that the Civil Rights Act of 1991 expressly says that it does not allow quotas. I have said it time and time again that the best way to alleviate quotas and lawsuits is to simply not discriminate. Furthermore, the Civil Rights Act of 1964 didn't result in a slew of businesses initiating quotas. nor have other earlier Supreme Court rulings that interpreted the law. Why should the Civil Rights Act of 1991 bring about quotas? It wouldn't and the White House knows it.

During last year's civil rights negotiations, this bill was revised, compromised, and rewritten and yet the President vetoed it. He played his objections for political advantage, saying in so many words that the bill would victimize innocent white male workers. The President would never use the same words as Louisiana's David Duke, but the message in his rhetoric is the same: White America fear not for George is here to protect you from black folks and women who are trying to gain equal footing. President Bush should be ashamed of himself for what he has done to this country's race relations. By failing to appeal to Americans' sense of justice and fairness, he has further divided the country. His title as the education President was a farce and now he is trying to lull us into accepting him as a civil rights President. Well, it will not happen here.

Remember as we celebrate our great victory in the Persian Gulf, as we parade here in our Nation's capital this Saturday, as we write books and make videos on how victory was achieved, please do not forget that 30 to 35 percent of those troops were African-American men and women who cannot find a job when they return to this country.

Mr. Chairman, in closing, I want to encourage my colleagues on both sides of the aisle to take that courageous and morally just step and vote in support of the Civil Rights Act of 1991.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, the reason that the Democratic bill results in quotas and the President's bill does not is that the Democratic bill replaces the present system of conciliation and mediation through the EEOC with a tort litigation system, with jury trials, and compensatory and punitive damages. I would ask the membership to place themselves in the position of an employer who is sued by an employee, maybe with merit or maybe without merit. After the suit papers are served by the U.S. marshal, the employer goes and talks to his lawyer. He tells the lawyer the story. The lawyer says, "Well, I can probably get the jury to exonerate you, but it will cost about $250,000 in pleadings, depositions, interrogatories, pretrial motions, preparing for trial and then actually conducting the trial before the case goes to the jury for their decision. On the other hand, I think maybe we could buy a piece or a settlement for $50,000," a third of which, of course, will go to the lawyer

who brought the suit on a contingency fee basis. The employer then responds to his lawyer and says, "Doesn't that put us in a lose-lose situation?" The lawyer says, "Of course. It is a question of whether you want to pay me a much bigger amount of money to get you exonerated or whether you want to pay this settlement."

The employer then asks the lawyer, "Isn't there any way we can get out of this?" The lawyer says, "Well, I probably could try a motion for summary judgment, which would short-circuit all of this pre-trial cost, if we win it." And the employer says, "Well, then what do I have to do?"

Well, under the Democratic bill what they can do is they can file an affidavit that says that they have hired by the numbers. And because that is an uncontested fact, that is admissible in a motion for summary judgment, and if the judge agrees, then the case is dismissed and the plaintiffs and the plaintiffs' lawyer receive nothing.

However, under the revised Democratic bill that purports to abolish quotas and to make them illegal, the employer cannot even put that in an affidavit for summary judgment. And that is the real cynical curve ball in this new antiquota, alleged antiquota language that is in the Democratic bill.

It is time that we stopped playing games on civil rights. It is time that we look forward to a method of resolving these disputes that encourages settlement, not litigation, and it is time that we balance the scales between employers and those who may be victims of discrimination through a legal process or an adjudicatory process that treats both sides fairly.

The President's bill does that. The Democratic bill does not.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from North Carolina [Mr. BALLENGER].

Mr. BALLENGER. Mr. Chairman, we have all heard: "The check is in the mail"; "I gave at the office"—now add to those—"The latest version is not a quota bill."

Unfortunately, the proponents of H.R. 1 continue to resort to political gimmickry to try to pass their bill.

As a small businessman let me tell you the most recent version of the civil rights bill will continue to force small employers to hire by community, racial, and ethnic makeup to avoid expensive and lengthy court battles over hiring and promoting decisions. Such quotas will remain their only sure defense. Under new language added, employers will be sued even if it appears they are hiring by quotas. Your small business constituents are now guilty if they hire by the numbers and guilty if they don't hire by the numbers.

As a member of the Education and Labor Committee, I wanted to alert you to a new wrinkle the majority slipped into the bill during full committee mark-up—comparable worth.

The new provision, "Pay Equity Technical Assistance," better called comparable worth, requires studies by Government employers to identify and eliminate discriminatory wage disparities. The new add-on, slipped in without the benefit of hearings and a full and open debate by the Education and Labor Committee, calls for wage rates based on "work performed and other appropriate factors."

As a small businessman, it sounds like the proponents of comparable worth are using the guise of pay equity to support equal pay for different jobs of similar comparable value.

The comparable worth theory excludes market-oriented factors, such as qualified workers, and wage rates paid by other employers in deciding wage scales for workers. Even worse, the comparable worth theory dictates that Federal bureaucrats determine job worth and wages for American workers. Comparable worth is inherently subjective, counterproductive to current practices of merit pay and established promotion systems. Further, it is incompatible with our free market economy.

As we well know, studies have a way of coming back to haunt Congress as full blown legislative proposals. Do we really want a pay equity study to be the foot in the door toward mandating comparable worth on the private sector? The answer is no.

I oppose any effort to mandate comparable worth in the public or private sector. It is a fundamentally flawed concept which ignores the marketplace in evaluating the fairness of wages.

In addition, the Attorney General Dick Thornburgh, in a letter to the Republican Leader BOB MICHEL, indicated the administration's consistent opposition to comparable worth plans.

While we may not see the words comparable worth in print in H.R. 1, believe me—they are there. This provision, just like the quota bill, should be strongly opposed.

□ 1610

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from West Virginia [Mr. STAGGERS].

Mr. STAGGERS. Mr. Chairman, I rise in support of a fair, just, and effective civil rights bill.

The administration has tried to label our bill a quota bill which would require employers to hire by numbers regardless of a person's qualifications for a particular job. In evaluating their allegations, I urge my colleagues to examine the facts.

The Brooks-Fish bipartisan compromise explicitly prohibits the use of quotas by employers. The claim that employers would be required to adopt quotas is baseless. In fact, during the hearings on the Civil Rights Act, employers could not produce any evidence that they were forced to use quotas in response to the Griggs standard during the 18-year period it was in use from 1971 to 1989. All the compromise would do is restore this standard.

The Brooks-Fish compromise is the only proposal we have before us today which would ban the use of all quotas and would entitle the person harmed by quotas to sue for damages. The administration's bill doesn't contain any antiquota language. The administration tries to label this legislation as a quota bill yet produces no evidence to make it stick.

For those of you who believe that civil rights is actually a debate which belongs in the 1960's, I ask you to examine the most recent statistics.

Over the past decade, complaints of sex discrimination and harassment on the job received by the EEOC have increased over 14 percent, while staffing decreased by 24 percent. Women continue to earn only 68 cents for every dollar a man earns in the workplace. The goal of equal pay for equal work continues to elude the vast majority of women in America.

On this important issue, Congress should not be sending mixed messages. Support the Towns-Schroeder substitute which would remove the cap on punitive damages for victims of intentional sex discrimination. The message we are endorsing through this civil rights bill must be one of equal treatment for all victims of intentional discrimination, not unequal remedies for some.

Simple justice requires that Congress enact a strong civil rights bill. If it was my daughter or son being denied a job or a promotion based on discriminatory treatment, I would want them to be able to challenge that injustice. We should not steal the dreams and aspirations of our children by creating a society where our principles are compromised and justice is denied.

Mr. CLAY. Mr. Chairman, I yield 2¼ minutes to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Chairman, today is a moment of truth. Today we find out if America—or at least those of us in Congress—mean what we say when we say "and justice for all". Today, we find out if we in Congress have the courage to change how America has come to think in the last 10 years—that civil rights is for a few, not for the many, when in fact, civil rights is for everyone.

I rise in support of civil rights restoration for all Americans. This legislation simply says that every American deserves a fair chance. It says that the Constitution is right. It clears up a Supreme Court misreading to reinstate what was the law of the land for over two decades. As the law was before, our Nation's businesses found it worked

well. It didn't lead to quotas—except in cases where an employer was found to discriminate—and only then did a court, after having found that there was systemic discrimination, impose quotas. The law itself does not impose quotas, and the law itself did not trigger unnecessary litigation: In only 69 out of 594 cases during the 1980's were damages awarded. In two-thirds of those cases the award was $50,000 or less.

Unfortunately, there are those who would, for whatever reason, scare the American people into believing that somehow on giving people the right to prevail where they have been denied unfairly is to deny the rest of us fair treatment. Nothing could be further from the truth. It's just plain wrong. We should bring Americans together—not divide them. Congress, the President, and the Justice Department all have a sacred duty to make sure that every American has a fair chance.

To those who buy on to the idea that this is a quota bill, I would like to show them oceanfront property in Arizona. In fact, already the leading business group in America, the business roundtable, has stated that they do not believe this is a quota bill. Their only fear is that they may have to manage fairly or it will cost them big bucks. Remember, most businesses already do the right thing—this bill is for those few who do not.

That is why this bill will not have an adverse effect on most businesses. But it does say that if citizens in the community find that an employer is denying them their rights on the basis of race, ethnicity, or gender, then there ought to be a way for them to have their day in court.

This legislation is simple. It says that you should hire on the basis of merit and ability—not on the basis of stereotypes.

It is about ensuring that we have a color-blind society where every American, regardless of race, creed, or gender, gets a fair chance.

This legislation also calls for valid and fair use of tests and other selection criteria for activities covered under this Act. In part that means that the degree of reliance on tests should not be greater than their ability to predict performance on the specific job in question (not just an ability to do well on other tests or in a training program). Test content should be clearly and directly related to the skills and knowledge required for the job, and the predictive power of the test should be comparable for all race, ethnic, and gender groups. Only after test [content and] predictability have met these standards should determination of "cut" or "passing" scores, if needed, be done. This determination and use should be in accordance with the Uniform Guidelines for Employee Selection Procedures as they currently stand. In any event, the results of tests for activities covered under this Act should never be the sole criteria of selection for activities covered under this Act. Prohibition of group norming for tests under Section 116 also requires that such tests meet close scrutiny under the provisions of Section 115 which bans discriminatory use of tests.

In sum, this modest bill helps ensure that fair opportunity is the birthright of every American. I urge my colleagues to join me in strongly supporting this fair opportunity for all Americans legislation.

Mr. HYDE. Mr. Chairman, I yield 4 minutes to the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, discrimination does exist in America. It is a hate that erodes the heart and destroys promising futures. It is personally harmful and professionally impeding. It has forced many of us to double our efforts over our competitors for the same outcome of recognition and respect. Discrimination will leave most of us at many times in our lives short of our goals and far short of our rights.

Can we, Mr. Chairman, legislate attitude improvement and outlaw all prejudice and bias? Unfortunately not. Can we, however, attempt to guarantee opportunity, guard against senseless antagonism, and take significant steps toward a color-blind and gender-indifferent workplace? Yes, and only one bill can accomplish these goals in a fair and equitable manner, only one bill protects performance over preference, only one bill will move us rapidly and aggressively toward this utopic workplace without the divisive use of quotas. That is the bill that could wear this President's signature, H.R. 1375.

Mr. Chairman, the President's bill places the burden of proof on the employer to defend his or her hiring practice based on a specific allegation or employment practice. The President's bill caps damages through the discretion of the judge, preventing lengthy and extensive jury trials and keeping it from becoming a lawyers' bonanza, and the President's bill avoids quotas and allows employers to hire the best and brightest regardless of race or gender. If, however, hiring is done along prejudicial lines, the President's bill smokes them out, and it has the firepower to shoot them down.

Now, contrary to the impression some of my colleagues on the other side of the aisle might like to leave this debate with, the American people trust this President. They believe in his leadership, and they have faith in his direction, and this President believes in the greatness of this country derived from the commitment and dedication of all of its people. He believes in freedom and fundamental fairness for all of his people, and he believes, this President truly believes, that H.R. 1375 is the civil rights bill to accomplish that goal.

Yes, to one of my colleagues, we are a nation which almost every day gratefully pledges liberty and justice for all. We, therefore, should pledge our support to H.R. 1375. We should pledge our support to this President.

I would only like to add, Mr. Chairman, that my colleague from Colorado stated that it is time for women to walk through that door of equality, and I agree.

□ 1620

But I do not need government to hold that door for me. Just give me access to that door, and I as a woman will open it for myself.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Washington [Mr. MILLER].

Mr. MILLER of Washington. Mr. Chairman, the debate we are having here today really revolves around the direction of civil rights in this country. Are we going to continue in the tradition, the bipartisan tradition, of Senators Humphrey and Dirksen and President Kennedy and make civil rights a matter of equal opportunity, or are we going to go in a different direction that guarantees equal results through unequal opportunities, through preferences and through quotas?

Now, the proponents of the major bill before us today say that it is unfair to raise the quota issue. It is not unfair. Two weeks after the major antiquota Supreme Court case of this century came out, these same people proposed the civil rights bill that is really the predecessor of the bill that is before us today, and last year they insisted that their major purpose was to reverse the Wards Cove Packing Co. case, to reverse this major antiquota case of this century, and reversing that case still remains the major purpose.

So it is legitimate to look at what their bill does in terms of quotas. We did not get the fine print until today, but if the Members turn to page 21 of the report, they will find that the definition of quotas that are outlawed is very peculiar. It does appear to outlaw quotas that would lead to the hiring of an unqualified person over a qualified person, but what it does not outlaw and what it appears to allow is the hiring based on race of a less qualified person over a more qualified person. That is quotas. That is patronizing to minorities. That is unfair to those who want to be hired on the basis of merit. That is why the President's bill is better.

Mr. Chairman, let us get a civil rights bill that does not create unequal opportunities, that does not move toward quotas or special preferences. Let us get a civil rights bill that is based on equal opportunity.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentlewoman from Connecticut [Mrs. KENNELLY].

The CHAIRMAN. The Chair will inquire, is the gentleman controlling the time of the gentleman from Texas [Mr. BROOKS]?

Mr. EDWARDS of California. That is correct, Mr. Chairman.

Mr. FORD of Michigan. Mr. Chairman, I also yield 1 minute to the gentlewoman from Connecticut [Mrs. KENNELLY].

The CHAIRMAN. The gentlewoman from Connecticut [Mrs. KENNELLY] is recognized for 2 minutes.

Mrs. KENNELLY. Mr. Chairman, I stand in strong support of passing a civil rights bill here today. There are so many important issues which this bill addresses—it overturns five Supreme Court cases, changes the definition of business necessity, and allows women to collect compensatory and punitive damages for intentional and proven discrimination. Issues that are legally complex and issues which are far too important and serious to relegate to the status of sound bites like "quota." I am proud to be an original cosponsor of this bill, the text of which we are considering today.

Last week I challenged the Democratic compromise proposal. I challenged it because as a Democrat, I thought we could do better. And I challenged it because as a woman, I felt it was my responsibility to speak out on behalf of all women—women who don't always feel free to lend their voices to the political process, however, women that make up over 50 percent of the population and are essential contributors in the workplace. And today on the floor, I must challenge it again.

The compromise package of the Civil Rights Act includes a cap on punitive damages. A cap which I feel codifies a basic inequity. A cap which I feel is wrong and which I continue to oppose.

Mr. Chairman, I fear that to pass a civil rights act which includes a cap on punitive damages for proven and malicious discrimination is to recede in our commitment to protect civil rights for all Americans.

Caps codify inequality. Our legal system is charged with administering justice fairly and equitably. However, with a cap on damages, some individuals guilty of discrimination will be more equal than others. The message will be clear: While discrimination based on race is wrong and worthy of serious punishment, discrimination based on sex is somehow less wrong.

Caps validate specious arguments. Losing a civil law suit for racial discrimination has never caused a business to fail—a small business or otherwise. Winning a sexual discrimination case is hard and rare. Those cases which end with a monetary settlement constitute a small percentage of those tried in our courts. And even when money is awarded, the average settlement for proven racial discrimination is $40,000—a figure well below this proposed cap on damages. And keep in mind, of all the civil rights cases considered in the last decade, only in three were settlements awarded that exceeded $200,000. Settlements are neither that common, nor that high to warrant an arbitrary cap.

Caps deflate the value of damages as effective deterrence against discrimination. The philosophy behind punitive damages is to issue a punishment or penalty to someone who has committed an egregious offense that is so serious, it discourages others from committing similar offenses. In other words, punitive damages appeal to the language of economic choice and business decisions. Damages make discrimination not worth the cost. With caps on damages for proven intentional discrimination, financial deterrence is hampered; and as a result an employer's risk is lessened. Women in the workplace deserve to rank higher on the balance sheets.

Women of America do not want to dominate the work place, but neither do they want to be subordinate in that same work place. There is little dispute, whether H.R. 1, the Towns-Schroeder substitute or the leadership substitute, American workers—men and women—will be better off. All workers will have greater protection against discrimination in the workplace.

I would be irresponsible if I did not also address the Michel substitute. Mr. Chairman, I stand in strong opposition to the Michel substitute.

Mr. Chairman, in the past few weeks we have all been caught up in the legalisms and jargon of the Civil Rights Act. This substitute stands as proof that the many complicated legal issues have been reduced to sound bites and buzz words. When we look at the merits of the Michel substitute, we find that it is an empty shell at the very best, a wolf in sheep's clothing at the very worst.

The Michel substitute proclaims that it will offer additional protection for women in the workplace. However, the only form of discrimination against women this legislation addresses is sexual harassment. If a woman is denied a promotion, a job assignment or a raise based on her sex, the Michel substitute has told her tough luck—she will have no chance to collect compensatory or punitive damages. Only if she is sexually harassed, the most blatant, undeniable form of sex discrimination, will she have a chance at full legal recourse with damages.

And the Michel substitute has ensured that this chance will be slim. Instead of protecting the victims of sexual harassment, the language in the Michel substitute stacks the deck in favor of the harasser. Under the Michel substitute a women must thoroughly exhaust the internal complaint mechanism within her workplace within 90 days, in order for her case to be considered. This time period is half that afforded to victims of racial discrimination and is throughly unreasonable. Exhausting complaint procedures involves reporting the harassment to superiors—superiors which are often the harassers themselves. By stalling the process the guilty party can easily kill a case.

Don't be fooled by the Michel substitute. It may be called civil rights legislation, but its contents are not worthy of its name. This substitute will lure us in with pithy slogans and buzz words, however, it is a wolf in sheep's clothing. It will draw us away from our principles and commitment of ensuring civil rights for all Americans.

I urge my colleagues to oppose the Michel substitute and support the Towns-Schroeder substitute.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. OWENS].

Mr. OWENS of New York. Mr. Chairman, I rise in strong support of H.R. 1.

H.R. 1 is a well-crafted bill designed to clarify the intent of Congress, designed to answer a Reagan-appointed Supreme Court that is an activist court with a legislative agenda, a conservative legislative agenda, and that agenda must be answered.

Mr. Chairman, this could easily have been taken care of because most of the employers of the Nation who worked with the past civil rights bill found it workable and were willing to help work out a compromise, but the administration does not want to succeed in getting a decent civil rights bill. The administration does not want to have the intent of Congress clarified. The administration wants an issue.

This has been true since August 3, 1980, when Ronald Reagan launched his campaign for President at Philadelphia, MS, in Neshoba County, MS, which is famous for only one thing. Neshoba County, MS was the place where three civil rights workers were murdered during a summer voter registration campaign. He launched that campaign from Philadelphia, MS—and that was the first time that a major party had appealed to the politics of racism, used that politics of race-baiting to win an election. We started making race-baiting respectable. We now have today an eloquent race-baiting appeal being made here on an issue that is being reserved for the 1992 campaign.

This is very dangerous politics. Instead of appealing to such politics or using the politics of race-baiting, we should try to guarantee the rights of every worker to get a decent job. We can win elections that way. You can win elections at the local level that way, and you can win elections with race-baiting at the national level. It works for campaigns, but it undermines the Constitution and it undermines nations. You reach a point similar to the one in Yugoslavia where the Serbians and the Croatians want to get at each other. They do not care about

the nation; they would just let the Nation go down the drain.

The Azerbaidzhanis in Russia and the Armenians all want to get at each other. All over the world the easiest way to inflame sentiments and get people excited is to appeal to these kinds of emotions and to divert their attention from the real issues. It wins for candidates, but this use of race-baiting for politics is very dangerous for the Nation and for the Constitution.

We must stop the race-baiting and pass a just and meaningful civil rights bill.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the learned gentleman from South Carolina [Mr. RAVENEL].

Mr. Chairman, before the gentleman proceeds, will he yield briefly to me?

Mr. RAVENEL. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I would just like to say, with reference to the remarks of the previous speaker, that that activist right-wing Supreme Court yesterday denied prosecutors the right to exercise a preemptory challenge to dismiss a juror because of race. I think that is a progressive ruling by any standard.

Mr. Chairman, I thank the gentleman for yielding.

Mr. RAVENEL. Mr. Chairman, I do not know how many of you folks have ever run a business, but let me say something—it is tough. Only about 3 percent of the people can do it. Most men have to work for a few, and thank goodness for those few, because it is business that has made America what it is today, and it is mostly small business at that.

□ 1630

With all the problems business has to deal with these days, being involved in lawsuits is the most disconcerting.

Under the existing law, if I work for you, and I figure you are discriminating against me, I can charge you with discrimination. If I can prove my charge, my wrongs are going to be righted. All Americans understand that process.

But if Brooks-Fish passes, the shoe goes on the other foot. If I charge my employer with discrimination, then he has to prove that it ain't so. And if he cannot, and the lawyers' fees do not wipe him out, the damages assessed will finish him off, along with all those jobs he provided and all the taxes that he paid.

Good Lord, how mindless can this Congress get?

So despite these new sections outlawing the utilization of quotas, the poor, embattled employer, to protect himself and his employees, hires by the numbers. And what is that? That is quotas. What else?

How more demeaning and insulting can this Congress be to minorities, than to say to them, by enforcing quotas, "Hey, look, you people; in addition, you are not up to the mainstream in this country. And despite the fact that all Americans are assured equal opportunity by our Constitution, we are going to force employers to give you some jobs, because we realize that you cannot earn them on your own."

This is the most antiminority, antibusiness, shameful piece of legislation I have ever run into in the 5 years that I have been here, and I am not going to vote for it.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I rise this afternoon in favor of a strong civil rights bill that will reflect the intent of those truths that are a part of the soul of this Nation.

I rise in defense of the dream that envisions a world free from prejudice, discrimination, and racism.

Mr. Chairman, I rise today to talk about this Nation, founded on those truths, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, among them life, liberty, and the pursuit of happiness, in all its many facets in these United States. The history of America is the unique individual initiative on the part of its citizens.

Mr. Chairman, I have looked at these bills that we call civil rights bills of the past several weeks with a very critical eye, with a tremendous amount of critical analysis, based on both sides of the issue, and I have come to a conclusion just today. I have a sense that both bills seek to reduce discrimination in the United States. But which of these bills will be best for the Nation? Which of these bills has the best potential to unite all factions in these United States? Which bill has the potential to unravel that thick vein of prejudice that has clung to this beautiful tree of liberty for 400 years?

Mr. Chairman, I grew up in the forties and the fifties, and I remember those days when there were signs that said "White only." We have moved away from that. We have passed bills and legislation, and we have heard Supreme Court decisions, and heard debate on how we can be one Nation under God, free.

Mr. Chairman, no one bill will erase the fact that there is some discrimination left in the United States. No one bill will be that thing which will create a situation where we will not have racism. But we are taking it a step at a time.

If we want to unite this Nation, if we want to release us from a sense of animosity and acrimony, then we need to look at this in a very critical way.

Mr. Chairman, I rise today to say that the Michel 1375 bill will do that.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. CONYERS), a valued member of the Subcommittee on Civil and Constitutional Rights for many years.

Mr. CONYERS. Mr. Chairman, in the last 11 years we have witnessed 3 significant points in civil rights. The first was the wholesale political program by the Reagan administration to attack the Bill of Rights and the judicial and legislative advancements that we have made in this country in enforcing the 13th, 14th, and 15th amendments to the Constitution over the last 30 years. This attack began with an effort to grant tax credits to segregated schools.

The attack continued with the unwillingness of the Justice Department to enforce the Voting Rights Act.

Finally, we witnessed William Bradford Reynolds leading the Civil Rights Division in an effort to dismiss the voluntary affirmative action decrees that had been operative in 51 cities.

Mr. Chairman, we then witnessed the use of anticivil rights litmus tests for the appointment of Federal judges.

So the Court that once gave us Brown versus the Board of Education, Swann versus Charlotte-Meckeleberg, now gives us Wards Cove Packing Co. and Price Waterhouse.

Mr. Chairman, I ask Members to join us in an effort to turn back the Michel amendment and support both the Brooks bill and the Towns and Schroeder bill.

In the last 11 years we have witnessed 3 significant turning points in civil rights. The first turning point we witnessed was a wholesale political program by the Reagan administration to attack the Bill of Rights and the judicial and legislative advancements that we have made in this country in enforcing the 13th, 14th, and 15th amendments to the Constitution over the last 30 years.

This attack began by an effort to grant tax credits to segregated schools. The courts ultimately ruled that granting these credits violated the constitutional principle of equal protection.

This attack continued by an unwillingness of the Justice Department to enforce the Voting Rights Act. In cases involving Mississippi, Louisiana, North Carolina, and Virginia, the Justice Department supported the annexation of areas designed to dilute black voting strength. In 1985, the Reagan Justice Department initiated a series of criminal prosecutions against civil rights workers in the five black-majority counties in Alabama. Over 2,000 mostly elderly black voters were fingerprinted and interrogated by the FBI as to their votes. Eight of the very people who had led the march from Selma to Montgomery, which resulted in the 1965 Voting Rights Act were indicted for voting fraud.

Finally, the William Bradford Reynolds led Civil Rights Division engaged in a campaign to go into court and dismiss voluntary affirmative action decrees that had been operative in 51 cities, despite the fact that none of the cities had requested the Justice Department's assistance. The courts once again rejected the Justice Department's approach in the case of William versus City of New Orleans stating

that the Department's position violated the 13th and 14th amendments.

The Reagan administration's lack of success in the courts led to the second significant turning point in civil rights, that was using an anticivil rights litmus test for the appointment of Federal judges, including appointments to the Supreme Court. In one of the great court packing schemes in history, the Reagan and Bush administrations have now succeeded in turning our Federal courts into arenas where no civil rights attorney wants to litigate cases. Thus, the Supreme Court which once gave us Brown versus Board of Education, Swann versus Charlotte-Meckeleberg Board of Education, and Griggs versus Duke Power now brings us Grove City College versus Bell, Ward's Cove Packing Co. and Price Waterhouse versus Hopkins. The Supreme Court which once was an ally in the struggle for equal justice in the country has now become a cruel enemy.

The third and final major turning point in civil rights has been the willingness of the President to set a moral tone in this country which says that it is all right if African-Americans and other minorities are second-class citizens. By pressing the phony racially polarizing quota argument at every available opportunity, and by advancing a toothless civil rights bill which codifies the Ward's Cove case, the President has in effect said that this country owes no legal obligation to remedy the unequal treatment which racial minorities are subject to every day. The President now takes every opportunity to divide our country along racial lines in order to achieve partisan political advantage for the Republican party.

Two months ago the White House sabotaged constructive negotiations between the civil rights and business communities to develop a compromise bill. Encouraged by the number of votes which David Duke received in Louisiana, the President has now decided that any positive progress on civil rights is a political liability. The President now looks to manufacture opportunities, to spread his racial divisiveness, such the recent commencement address at Hampton University.

All of these efforts have lead this country into the new Reconstruction era, where the small progress we have made in racial progress is being eroded. In 1863 the Nation through the Emancipation Proclamation freed African-Americans from physical bondage. But President Andrew Johnson refused to provide these newly freed slaves with any land to make that freedom meaningful, at the same time giving away millions of acres of land in the West and Midwest to white males. Meanwhile State legislatures were passing the "black codes," rolling back the promises of the 13th, 14th, and 15th amendments. We have now returned to the Reconstruction era where the President is leading the charge to reverse civil rights progress.

President Bush has now joined the ranks of Ronald Reagan and Andrew Johnson as the only American Presidents to veto a civil rights bill.

Now some political commentators who are usually supportive of civil rights advancements have been critical of our efforts to overturn these Supreme Court decisions. They have argued that we are spending too much time on this. We are not addressing the more serious concerns effecting our communities such as health care, education, housing, jobs, drugs; and so forth. And we must honestly say that this is true, that this bill will only marginally affect many important issues confronting our communities, and is merely an effort to restore us to where we have been in this country for the past 20 years.

The problem, however, is that it is impossible to move forward while you are being pushed backward. We cannot allow ourselves to lose ground. We cannot abandon the values that have formed the foundation of the civil rights movement. If we do our entire structure may collapse. Which is what those who would reverse our progress are counting on.

I recently came across a 1953 article in Collier's magazine, entitled "Can Eisenhower End Segregation in Washington?" The article talked bout the fact that the first Negro clerical secretary ever to be employed by the White House had recently happened. But the article went on to raise questions about the lack of progress in hiring blacks in theaters, restaurants, and the city fire department. Here we are in this country, nearly 40 years later, still litigating the same issues involving firefighters. The point is we cannot abandon our commitment to our historic struggles to remedy employment discrimination.

Now to the quota issue. The first thing that must be said is that the quota issue is without merit. In last year's bill, H.R. 4000, we said this bill does not "require or encourage an employer to adopt hiring or promotion quotas." Despite this clear language the President vetoed the bill, arguing that we did not mean what we said. This year we have gone even farther. The Brooks substitute bill declares quota unlawful and gives victims the right to sue for damages. The President, before he even saw the new language in the bill again called it a quota bill. There were no quotas in the 20 years since the Griggs case. There will be none after this bill is passed.

It is important to see the quota debate clearly for what it is, merely a new name for an old phenomenon. It is merely the surfacing of old prejudices and latent hostilities that were always there, they are just coming out in the open now. It is an expression of the same vacillation and lack of commitment to equal opportunity where black people and women are concerned.

The irony about our efforts to pass the civil rights bill is that it will in the end help our economy. America will never again return to the economic supremacy it once enjoyed without the work of racial minorities. By the year 2000, our work force will be predominately minorities and women. If we as a nation fail to provide meaningful employment opportunities, if we allow employment discrimination to flourish, our future work force will not be in a position to have America compete economically in the 21st century.

This is why the tactics by some business groups such as the Fair Employment Coalition, are so destructive for America's future. This business group has run race-baiting ads targeting at certain Democratic Members of Congress. These racially divisive tactics should have no place in legitimate legislative lobbying.

Finally it is important at this point to say that unfortunately America has been and continues to be largely a racist society. African-Americans and other racial minorities still live in the basement of our society. Despite the few that have penetrated to slightly higher levels, the majority of African-Americans live in poverty. As the recent Urban Institute study has made plain, racial discrimination is still widespread.

The roots of racism run very deep in the American psyche. Therefore it is easy for the President or any political leader to appeal to the racist instincts and fear of many Americans. Often it is difficult to stand up for what is morally correct. Because what is morally correct may not be politically popular. My colleagues, we are at this hour called on to stand up for what is morally correct. We are called on to stand above the racial politics of George Bush. We are called upon to lead America to a brighter tomorrow.

We are called on to stand up for the principle embodied in the historic Civil Rights Act of 1964—that no man or women should be denied a job, a promotion, or a fair salary, or be harassed at work, because of race, sex, national origin, or religion. I call upon my colleagues to support the Towns-Schroeder bill and the Brooks substitute. Reject the Michel substitute.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I rise in vigorous support of a strong civil rights bill, H.R. 1.

I believe that this bill has one goal, and that is to promote equal opportunity for all Americans regardless of race, gender, religion, or ethnicity.

Last year I stated that pervasive discrimination based on race, sex, and skin color is the most destructive element in American society. Since that time American men and women continue to be adversely affected both economically and psychologically by the weakening of laws which undermine the essence of a truly democratic society.

This President should act responsibly to amend such injustice. How many studies are needed to convince Members that racism is still pervasive in this society? The recent Urban Institute report only highlighted what many of us in this Chamber know to be true—that minorities are often denied jobs, and those employed, denied opportunities to advance their careers.

An amendment I sponsored has been incorporated into this legislation. It seeks to address Hispanic and other underserved minority groups whose cases of employment discrimination have not been actively investigated by the Equal Employment Opportunities Commission.

Mr. Chairman, what we are attempting to do is provide minorities and women with that very opportunity that EEOC was created to protect—not pref-

erential treatment as this legislation's opponents claim.

It is sad to note this is the same struggle of the early 1900's—to secure liberty and equal rights today for any American citizen who has experienced discrimination.

□ 1640

Mr. Chairman, in closing, Mr. Chairman, this coming Monday, New York City will put forth one of its typical ticker tape parades in honor of the troops coming back home. Black, white, brown, yellow, Asian, Native Americans, and women will march hand in hand in equality. Yet once they take off that uniform, there are many in this society who feel that they are not equal.

I believe they are equal. That is why I am supporting H.R. 1.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, there is already legal recourse for the victims of discrimination. Legal suits can be brought or, in employment cases, complaints can be filed with the EEOC. We just do not need any more laws in this area. We have civil rights legislation and regulations up the ying-yang, Federal, State, county and local laws. The only ones who are going to benefit from this unneeded legislation are those who will benefit from unnecessary litigation. This is right, the lawyers are the ones who are going to benefit.

Of course, politicians and political activists who cannot find work doing anything else also expect to gain from this legislation. And who will not be helped by this obtrusive civil rights bill? The less fortunate of our fellow citizens. That is who will not be helped.

We have got an underclass of people of all races trapped in poverty, living in wretched conditions, enveloped in helplessness and hopelessness. We need economic growth, business expansion, not more civil rights legislation that is redundant and useless.

Mr. Chairman, the breakdown with the family, the failure of our inner city schools, drug and alcohol abuse, the unwillingness of some to take entry level jobs, a welfare system that provides the wrong incentives to people who need an inspiration to change, not pressure to remain the same, these are the factors that will make a difference between deprivation and self-government.

We care about these people living in horrible situations, whatever their race, and they come in all colors. Our hearts break and we really feel a terrible pain for these people who are living a painful existence. Far too many Americans find themselves in these horrible situations.

Rarely is this a result of bigotry. During the 1980's, not only did we not get enterprise zone legislation passed, but the rhetoric from liberals who thwarted that effort deterred the self-improvement of those who needed it the most.

The job explosion experience throughout America during the Reagan years was for far too many a missed opportunity. They were listening to so-called liberal leaders who were telling them that they should not try because they did not have a chance rather than listening to conservatives who were telling them to go for it.

As a result, immigrants who flooded our cities easily found entry level jobs, poor immigrants from Mexico, Asia, and, yes, Africa and black Caribbean islands began to support themselves with dignity, and with hard work and their own personal perseverance they began their personal economic ascent.

We cannot sit by and watch our own citizens being bypassed. The first step is to recognize that racial discrimination plays only a minor role in the economic tragedy befalling our inner cities. We need to talk about getting our economy moving, creating new jobs, and personal economic advancement of our citizens.

Let us level with these people. Let us create jobs and opportunity in their neighborhoods. Let us quit playing the cynical game of ward politics at the national level. Let us defeat this legislation. It is going to hurt those it claims to help.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Chairman, I rise in opposition to H.R. 1 which, despite its new packaging, remains a quota bill.

Many of us who oppose this particular bill are longtime supporters of equal opportunity and civil rights for all Americans. And while great progress has been made since the enactment of the Civil Rights Act of 1964, nearly all of us would admit that more needs to be done. Where discrimination in hiring practices still exists, whether on the basis of race, sex, religion, or ethnic background, we must work to completely eradicate it.

Unfortunately, H.R. 1 will not accomplish the goal of bringing about an end to discrimination in the workplace. Its passage will send the wrong message to the American people, cause turmoil and confusion in the business community, clog our courtrooms, and, most regrettably, set the cause of civil rights back.

While supporters of this legislation have claimed in recent days that H.R. 1 is a compromise, it clearly is not. Under the bill's provisions, quotas in hiring and promotion will be encouraged. The new language, intended to prohibit quotas, is nothing more than a new label on the same old product. It offers no protection to employers. In fact, under this legislation, businesses in my Long Island district will face a future clouded by the prospect of jury trials and damage awards in the hundreds of thousands of dollars if they do hire by the numbers.

I am particularly concerned that the bill's supposed punitive damages "cap" of $150,000 or an amount equal to compensatory damages plus equitable relief will be all too easily evaded. In fact, H.R. 1 allows unlimited compensatory damages and there is every reason to believe that $150,000 would be a floor and not a ceiling for awards in job discrimination cases. As many in this Chamber are aware, a recent study found that the average jury-trial award is over $640,000.

It does not make sense to threaten small businesses—the most productive and job producing sector of our economy—with the prospect of bankruptcy and ruin for losing the kind of discrimination suit that H.R. 1 will inspire. The enactment of this legislation will ensure that the only way a vast majority of small businesses can avoid a sudden-death legal challenge is to make sure that their numbers match up. Many owners of small businesses will be forced to resort to quotas in order to protect their livelihoods, and the livelihoods of their employees. Indeed, many others will resort to quotas just to avoid any potential aggravation this bill might cause.

The last few days have seen the supporters of H.R. 1 adjust, amend, modify, and tinker with their bill in the hopes of gaining a supporter here or a supporter there. Yet, at the same time, these same people have accused the President, who put his civil rights plan on the table months ago and made his opposition to hiring quotas well known, of playing politics with the issue.

The President's position has been clear, consistent, and correct throughout this debate and I am proud to be a cosponsor of legislation, H.R. 1375, embodying his antidiscrimination proposals.

Mr. Chairman, I cannot vote for a bill that will destroy jobs, businesses, and lives and, in doing so, severely damage the true cause of equal opportunity and civil rights. I urge my colleagues to stand firm with the President and vote "no" on H.R. 1—a quota bill and in favor of the Michel substitute.

Mr. EDWARDS of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BUSTAMANTE].

Mr. BUSTAMANTE. Mr. Chairman, I rise in strong support of H.R. 1.

This week our Nation's Capital will hold a parade in celebration of our military victory in the Persian Gulf. Countless other parades have been held and will be held throughout the country in honor of our troops as our way of showing our appreciation for the personal

sacrifices our soldiers had to endure in order to defend our freedom. During these celebrations, the administration has underscored the substantial contributions of women and minorities to our Desert Storm victory.

The administration has emphasized that the military contributions of those groups of Americans illustrate how our national defense is predicated on a unified America. But while the administration emphasizes unity in the military sphere, its attacks against the civil rights bill only serve to divide our Nation. By opposing H.R. 1, the administration is essentially refusing to protect the very groups of Americans who helped make our military victory a reality—women and minorities. In this regard, I counsel my colleagues to recall President Lincoln's admonition that "A house divided against itself cannot stand." President Lincoln made those remarks on the eve of the Civil War out of this belief that "Government could not endure permanently half free." The same holds true today in the advent of our Desert Storm victory: Either we have full civil rights or we have no rights at all. I encourage you to support H.R. 1.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, H.R. 1, the Civil Rights and Women's Equity in Employment Act, all boils down to equality and justice.

Must we discuss the epidemic of job-related discrimination that we all, regrettably, know persists in 1991? Do we need to reiterate the litany of offenses, large and small, that take their toll every day in American business society? Do we need to once again spell out for non-believers how these forms of discrimination are linked to other societal problems, serving as the catalyst for widespread discontent, discouragement, and disenfranchisement of millions of Americans? I think not, because we all know it not only exists, but permeates our society.

Anyone who doubts that there are separate economies and separate worlds in the U.S. for white Americans and for members of minority groups need only look at the long lists of ghettos and barrios throughout this country. Anyone who disregards the difficulties of women trying to succeed in business needs a refresher course on contemporary American sociology. The sense of futility and frustration resulting from discrimination in hiring, layoffs, promotions and daily job concerns has a direct relation to substance abuse, homelessness, inadequate health care, and overall poverty. I am simply sick and tired of people being oblivious of the obstacles which millions of Americans face every day. Not every African-American family is as fortunate as the Huxtable family on television's Cosby Show. Department of Labor statistics showing that the percent of unemployed African-American males was over twice as high as for white males again in 1990 is proof of that.

To those critics who suggest that the committee bill and the Towns-Schroeder substitute go too far, I suggest that they consider the issue from the other side of the table. If they were the victim of an injustice in the form of employment discrimination, I believe that they would be hollering so loud that you couldn't hear a plane take off. And their screams would be for a bill even tougher than any of today's proposals.

Mr. Chairman, the committee bill and the Towns-Schroeder substitute we are debating today simply asks that the fundamental American principles of equality and justice be upheld as concrete rights, not dispensed as selective privileges.

As chairwoman of the Government Operations Subcommittee on Government Activities and Transportation through the 1980's, it was clear from our oversight investigations that for women and minorities, there is only an illusion of professional and business equality. Despite all the efforts by Congress to eliminate discrimination in the workplace and to improve the economic well-being of minorities and women, the dreams of equal opportunity are often only dreams.

My subcommittee found after a 2-year investigation of the airline industry, for instance, that the industry continues to deny opportunities from black pilots, managers, and other professionals. Minority airline employees are disproportionately concentrated in low-wage, low-skill positions. Few have been accepted into positions of authority, not to mention roles such as vice presidents and members of the board. The industry remains a bastion of white male domination.

The same picture emerges with respect to employment trends and practices of cultural institutions receiving Federal funds. In an investigation of the Smithsonian, the subcommittee found that in its 142-year history, there has been only one minority assistant secretary. As of 1990, none of the Smithsonian's seven assistant secretaries was a minority. The same underrepresentation extends to curators, researchers, the Board, and its many committees and councils.

In the procurement area, minority- and women-owned firms enjoy limited participation. Despite set-aside provisions and laws to encourage subcontracting with minorities and women, we found that opportunity for these groups falls typically in areas such as janitorial and food service.

And this employment for economic inequality is found in every sector of our economy: in the media, in retailing, in the automobile industry, financial services, professional services, manufacturing, textiles, agriculture—yes, and even the military where minorities and women often bump their heads on the glass ceiling.

With all that is known about discrimination in America, it is shocking that some people still prefer to simply label it "evil" and act as though the problem is cured.

It is unfortunate that civil rights, fairness, democracy and equality are not the issues surrounding this debate today. The debate over this issue—as framed by President Bush and our colleagues on the right—to quote the May 6 issue of Newsweek, "* * * has little to do with setting fair new rules for discrimination suits. It has everything to do with stirring racial resentment * * * on the eve of the 1992 elections."

For example, when discussing the civil rights bill a couple of days ago, President Bush said that what we need to do is "cooperate, not litigate." These were rather odd words coming from a President who recently pulled the plug on negotiations between the business roundtable and civil rights groups on the civil rights bills. He didn't like the possibility that business might actually cooperate, and take away his campaign theme against quotas.

Despite talk on both sides about this bill, the fact remains that the committee bill and the Towns-Schroeder substitute are about law and legal standards. It's in many ways a dry subject. We're told that the bill is for lawyers. And, as I said earlier, President Bush says we should cooperate, not litigate. But, this bill is not about companies that want to cooperate. It's about companies that don't.

Mr. Bush essentially wants a bill with no remedies. Well, we all know that there are rights without remedies. Civil rights without real remedies are merely civil hopes. It is amazing how many countries give all sorts of so-called rights to their citizens which are meaningless because there is no legal remedy when the right is denied.

The framers of the 14th amendment understood the difference between merely granting a right and providing a legal remedy. That's why they specifically included a section that simply reads: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." They understood that it would take real laws establishing legal remedies to make the rights granted in the 14th amendment real rights.

Have you ever noticed that whenever we have a bill to regulate business, the President always favors provisions making it easier for business to sue, to appeal, to make it harder for the agency to regulate. But apparently he thinks women and minorities shouldn't be so empowered. If we can sue, apparently all sorts of horrors will happen. He implies that businesses, with their high-priced, experienced lawyers will be so afraid of lawsuits that they'll run for cover. Clearly, the President is simply playing cheap-shot politics with

some of the dearest fabric of American democracy.

Which is why we must support the committee-passed bill and the Towns-Schroeder substitute today. The Supreme Court acted as a loose cannon in 1989 when it replaced well-conceived, broadly accepted interpretations with new, haphazard rules that are firmly rooted in a retreat from Government protection of its citizenry. I believe the Court simply made a huge mistake in rolling out a red carpet to prejudice. Our Government's role is not to create a freedom to be racist and sexist.

Today is an historic occasion in the House of Representatives. Today we have the opportunity to restore several essential rights and fashion a non-discrimination ethic for our Nation that is long overdue.

To begin with, courts have recognized that discrimination occurs not only in hiring, but also in promoting and other aspects of employment. In Patterson versus McLean Credit Union, the Court turned the clock back. The committee-reported H.R. 1 and the Towns-Schroeder substitute would reinstate these modern-day protections.

Second, in the Wards Cove case, the Court overturned its decision in the earlier Griggs case by shifting the burden of proof from the employer to the employee on the critical question of whether the discrimination was justified. That conclusion was incomprehensible, because only the employer has access to the employer's information on why they made their decisions. The committee-reported bill and the Towns-Schroeder substitute would restore the Griggs outcome.

Third, Wards Cove also lowered the Griggs standard of business necessity for justifying discrimination. This definition is the key to preventing justification of actions as a business necessity when the primary motivation is discrimination. The committee bill and the Towns-Schroeder substitute would reinstate Griggs here, too.

Fourth, in Lorance versus AT&T, the Court stated that the statute of limitations begins to run when a discriminatory practice is initiated. But that is patently unfair, since an individual employee is not able to keep abreast of every management decision. It may be years until that employee learns of the practice and is affected by it. That should be the time when the statute of limitations begins to run, and both the committee bill and the Towns-Schroeder substitute adopt that policy.

Fifth, in Price Waterhouse versus Hopkins, the Court allows intentional discrimination where it is not the primary factor in a management decision. That conclusion was unjustifiable since even our finest psychologists cannot distinguish between the No. 1 and No. 2 thoughts in the mind of an administrator. How do we really know discrimination was a primary factor? The committee bill and the Towns-Schroeder substitute make it clear that intentional discrimination is never acceptable.

Finally, the committee bill and the Towns-Schroeder substitute stipulate that compensatory and punitive damages, as well as attorney's fees, are available for victims of discrimination.

One of the thorny issues that has emerged in the past few days is the issue of caps on punitive damages for sexual discrimination. The notion that there should be such a limit shows a fear of the American people. Why do I say this? Because damages are decided by juries. And juries are Americans.

Are we afraid that the same people who entered a voting booth and elected us to our office can't be trusted to enter a jury room and make a decision on punitive damages? Explain to your constituents why you're afraid that if 12 of them get in a room, they can't be trusted to determine damages.

Well, I am tired of President Bush and his cronies telling us to cooperate, do not litigate. He and his supporters know all too well that legal remedies make rights and without them, there are no rights. The President thinks he has the votes to sustain a veto, so he feels no need to negotiate. I think the American people know which person doesn't want to cooperate.

Mr. Chairman, I urge my colleagues to support the committee bill and the Towns-Schroeder substitute.

□ 1650

Mr. EDWARDS of California. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. HUGHES], the distinguished chairman of the Subcommittee on Crime of the Committee on the Judiciary.

Mr. HUGHES. Mr. Chairman, I rise today in support of H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991.

As was the case last year, I do so with certain reservations. I commend Chairman JACK BROOKS and ranking minority member HAMILTON FISH for their efforts to craft a compromise which is both fair and reasonable. Although I believe there is still room for improvement, I intend to support the Brooks-Fish compromise.

Some of its provisions will restore civil rights standards that served us well for many years, while others will deal fairly with forms of discrimination that were not addressed by our earlier civil rights laws.

Without this legislation, employment practices which exclude or limit the opportunities of millions of Americans will continue to be left unchallenged. This legislation will correct the regressive tilt in the civil rights law created by five 1989 U.S. Supreme Court decisions.

H.R. 1 will guarantee women the right to sue employers who intentionally discriminate against them, and make monetary damages remedies available to women and religious minorities.

Just as importantly, it will send a clear signal to the business community that intentional discrimination is illegal, and that discrimination in the employment process cannot and will not be tolerated.

Mr. Chairman, the two major criticisms which have been leveled at this bill are that it requires hiring and promotion quotas and that it puts an unfair cap on punitive damages. Neither of these criticisms is valid.

With regard to quotas, the bill specifically states that employers cannot be charged with discrimination simply because of the statistical composition of their work force. In fact, it explicitly prohibits quotas and makes the use of quotas a violation of title VII, entitling the person harmed to damages. With this language, I believe we have eliminated any legitimate basis for calling this legislation a quota bill.

The Brooks-Fish substitute also prohibits the adjustment of employment test scores on the basis of race, color, sex, religion, or national origin, as well as the use of tests which are not valid and fair. This is a major improvement over H.R. 1, as reported by the Judiciary Committee.

The substitute also makes clear that final court orders may not be vacated unless there is a finding of manifest injustice. And finally the Brooks-Fish substitute honestly attempts to restore the business necessity standard of the landmark Griggs versus Duke Power decision.

By comparison, the Michel-administration substitute is a far less satisfactory alternative. It would allow selection practices which are weighted against women or minorities even when they have no relationship to the jobs in question.

In mixed-motive cases, it would permit discriminatory considerations as long as they are not major considerations. I do not believe that we should tolerate a little discrimination and thereby make our country a land of partially equal opportunity for all.

In addition, the administration's proposed limits on damages are inconsistent and arbitrary. Rather than provide true compensation to victims, the substitute bill authorizes equitable awards that would only be granted at the discretion of a judge. In addition, it only proposes these awards in harassment cases, rather than in all intentional discrimination cases. Such a provision is self-defeating and virtually guts the damage provisions of the bill.

Mr. Chairman, discrimination was once legally embraced by our country, and that fact is one of the greatest tragedies in our Nation's history. The rights to life, liberty, and the pursuit of happiness are the very principles

make the United States the greatest country in the world. Those rights should not depend on one's race, sex, or religion or national origin.

I urge my colleagues to support the Brooks-Fish substitute and vote for the Civil Rights Act of 1991 on final passage, and oppose the Towns-Schroeder and Michel substitutes.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Chairman, I thank the distinguished chairmen BROOKS, EDWARDS, and FORD for their leadership. I rise to support H.R. 1 and the Brooks-Fish substitute. It moves this Nation closer to equity in the workplace, closer to equity in employment, and closer to equal opportunity.

The President said "We want to sign a bill that advances the cause of racial harmony, and we want to sign a bill that encourages people to work together."

But the President said stop to members of the Business Round Table who sought to help develop just such a bill.

The President said, "We have a good record on civil rights and we have a good record on fair play."

But under the President's bill, businesses can refuse to hire employees who will not waive the right to sue; that is not fair play. The President's bill allows businesses to adopt a blanket policy of refusing to settle a suit unless the plaintiff waives attorney fees; that is not fair play.

The President and his high-paid Republican political consultants do not want hard-working Americans to think about what is happening in this country.

The President does not want hard-working women to remember that they earn less than men and that much of the disparity between what men earn and what women earn is due to employment discrimination.

The President does not want hard-working Americans to remember that during the 1980's white male high school graduates with 5 years experience had an average decrease in wages of 18 percent.

The President does not want hard-working Americans to think about their standard of living dropping while the Nation's wealthy have gotten wealthier. The President wants working Americans to think quotas are sending their jobs overseas, and quotas are lowering their standard of living. Baloney.

Men and women, regardless of race, religion, color, or national origin, fought side by side in the Middle East. Let us pass the Civil Rights Act of 1991 so that all Americans can work side by side in the United States.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Chairman, I have thought very deeply about the issues surrounding civil rights and what we here in Congress are trying to accomplish, and I've come to the conclusion that what is really at issue here are two very different visions of America.

Here is my vision: It is of an America where people are not denied nor offered greater opportunities in life on the basis of their skin color or sex. I believe, as most Americans do, that people should succeed on merit, on their talent, and on their ability. This is an America where all people, regardless of race, religion, or gender, compete on a level playing field.

But, Mr. Chairman, there are some in this House, supportive of the Brooks-Fish substitute who, sadly, believe in a very different vision for America. They would like to see an America where gender and skin color matter more than talent or ability.

What this bill says is that if you are a woman or a minority you will be given preferential treatment solely on the basis of your race or sex. This is a great injustice to the American people. And most of all, it is a great injustice to the minorities and women whom I finally believe have the talent to succeed on their own—without the help of the U.S. Congress. If we really are intent on helping women and minorities in this country we should quit the quotas now.

What we need is a color-blind society with equal opportunity for all Americans, and not a color-conscious society with equal results for all. I urge opposition to H.R. 1 and support for the Michel substitute.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. HOLLOWAY].

Mr. HOLLOWAY. Mr. Chairman, the last thing our country needs is for us to divide ourselves along racial and ethnic lines. Like it or not, the so-called civil rights bill will do just that—divide us—because it is a quota bill. Now, there is some new language in the bill which specifies that hiring quotas are specifically illegal under the bill.

Sorry, but the bill will still result in quotas. Employers and business owners are going to be so concerned about being hauled into court to prove their innocence, and that is just what they will be required to do under this bill; prove their innocence, prove they did not discriminate. Take it from me: Your small business owner is going to hire defensively to protect himself. The small business owner doesn't want to spend his time in court, he doesn't want to spend business money making some lawyer a little richer. Let me tell you: This bill is heaven for lawyers, and there are too damn many lawyers in this country already. That is the obvious benefit of this civil rights bill, it makes more lawyers more money. Besides being basically unfair, it would encourage more lawsuits and further burden our overworked court system.

Members should face the fact: This bill will drive a wedge between employers and job applicants, cause resentment, and cost money. Business will still face the prospect of jury trials and huge damage awards if they do not hire by numbers.

Mr. Chairman, I am not here to pretend that our society is color blind. I am not going to pretend that the workplace is color blind. But, I am here to tell you, that this bill will make the workplace color conscious. That is wrong. Our workplace should be concerned with skills, ability and need, not color. That is why I am going to vote against this civil rights bill.

□ 1700

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, this is not a debate on civil rights or job discrimination or capping punitive damages for sexual harassment. This is Presidential politics 1992, the opening salvo by the White House to exploit those so-called wedge issues like Willie Horton.

It is very simple. The White House has polled and found by using the word "quotas" they pick up votes. They even threaten business groups that simply wanted to negotiate a bill. Even if this bill were the quota abolition act, the White House would still say it is a quota bill.

Mr. Speaker, let Members rise above this divisiveness in our body politic. Let Members pass this good civil rights bill that addresses job discrimination. Let Members bury the Willie Horton issues once and for all.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, I rise to express my strong support for the Civil Rights and Women's Equity in Employment Act of 1991.

This measure embodies the fundamental principle that each person has an equal opportunity to seek employment and to expect equal pay for equal work. No more, no less.

H.R. 1 recognizes the increasing diversity of our work force and reaches out to millions of mainstream Americans. In doing so, the bill simply brings the laws up to date with the realities of present day America.

A quick snapshot of today's work force reveals the critical role of women who now comprise nearly half of all workers. The Democrats' bill and the bipartisan compromise recognize this

legitimate and significant place of women in our economy.

Not so the President's bill.

"You just don't rate," says the President to millions of women. "You don't deserve fair treatment, even if you are the victim of blatant discrimination." That is the President's loud and clear message to hardworking women. That is a slap in the face to the women of America.

H.R. 1 acknowledges that women have the right to equal treatment by providing them with a means to be compensated for intentional discrimination. And H.R. 1 requires that employers hire on the basis of an individual's ability. The bipartisan compromise expressly outlaws quotas and permits a quota victim to sue for damages. Under the substitute, a white male may sue an employer for discrimination just as a black female may sue an employer.

That is what this debate is all about—barring discrimination in the work force. Recognizing the legitimate contributions of workers, regardless of their color, sex, religion, ethnicity, disability.

The Nation's commitment to eradicating discrimination has been advanced by the bipartisan support of all Americans since the late 1950's: President Eisenhower, when he was faced with the first civil rights demonstration. John Kennedy, Lyndon Johnson, Richard Nixon, who played an important leadership role.

Republican congressional leaders like Everett Dirksen have taken this potentially contentious issue above politics.

The exciting part of what is happening today is that Democrats and Republicans in the House and Senate, may be even two-thirds, are maintaining that tradition.

The saddest part of this moment is that the President of the United States is more interested in politics than national unity.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Mr. Chairman, I was a little embrarrassed when the President of the United States suggested that if we were going to look for equal opportunities and equal rights we ought to take a look at what is happening at West Point.

First of all, if there is equality at West Point, the 435 Members had something to do about it. And there is no question in my mind that once we have reached that point, that we do not need quotas, we do not need preferential treatment, we do not need anything because for those who are willing to put their lives on the line, for those who are willing to say that they are anxious to serve, for those that are prepared to say that they want to defend the United States, you bet your life this country is prepared to give a lot of equality, whether it is in the Persian Gulf or whether it is in the invasion of Panama.

What we are talking about is that just being born a citizen of the United States, whether a person is black or white, whether they are male or female, let citizens have an equal playing field. When we take a look at the statistical data as to who is unemployed, who is denied college education, who are homeless, who are jobless, and who are hopeless, we do not find it in West Point.

I hope we start talking as friends and as colleagues around here and get on in doing what we are supposed to do, and that is that God made all people free, and let all people have a civil rights bill that would protect those unalienable rights.

Mrs. UNSOELD. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Florida [Mr. BENNETT].

The CHAIRMAN. Is the gentlewoman from Washington controlling the time of the gentleman from Michigan [Mr. FORD]?

Mrs. UNSOELD. That is correct, Mr. Chairman, and I have yielded 1 minute to the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT. Mr. Chairman, I rise in support of the Brooks-Fish civil rights bill. Things I particularly like in this legislation are:

First, this legislation gives the person discriminated against ample opportunities to seek needed relief, including compensatory and punitive damages.

Second, there is a reasonable cap on the amount of punitive damages allowed.

Third, it explicitly prohibits quotas and makes the use of quotas illegal.

Fourth, the bill makes it illegal for intentional discrimination to be any factor in the employment process; and the offending employer cannot excuse its discriminatory actions by asserting other contributing reasons.

Fifth, the bill reasonably allows an employer's practice to be justified where it "bears a significant and manifest relationship to the requirements for effective job performance."

Sixth, the bill sets a reasonable statute of limitations and starts the running of the statute when the employment practice is adopted or when it has an adverse effect on the plaintiff, whichever occurs later.

One of my greatest joys since I have been in Congress has been to see and help the progress in our laws, and in our country, in the field of eliminating deplorable discriminations. I feel very blessed to have been permitted to play a part in such improvements. The Brooks-Fish bill before us today is a carefully drafted bill that carries us forward again. I hope it can be overwhelmingly approved.

The CHAIRMAN. The Chair would advise the Members controlling general debate that the gentleman from Pennsylvania [Mr. GOODLING] has 7 minutes remaining, the gentleman from Illinois [Mr. HYDE] has 9 minutes remaining, the gentleman from Texas [Mr. BROOKS] has 22½ minutes remaining, and the gentleman from Michigan [Mr. FORD] has 10¼ minutes remaining.

Mr. EDWARDS of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Mississippi [Mr. ESPY].

Mr. ESPY. Mr. Chairman, I rise in support of H.R. 1.

Mr. Chairman, if you listen to all of the rhetoric, one would think that a major civil rights revolution is about to occur in America.

But if you look at the reality of the legislation we're debating, you will find that's not the case at all.

With the exception of adding damages for women who suffer intentional discrimination, the civil rights legislation we are debating today does not make any radical changes in civil rights law.

It will not create any preferences for minorities.

It will not create any bonanza for lawyers.

It will not cause small businesses to go broke.

It will restore laws which have served our Nation well. It will restore standards like that set by the Court 20 years ago in the Griggs case. The Griggs standard said that if an employment practice disproportionately disqualifies minorities and women, the employer must demonstrate that it is necessary for successful job performance.

There is no evidence anywhere that the Griggs decision promoted hiring by quotas. There is substantial evidence that it promoted hiring by qualifications—and that standard ought to be restored.

Griggs and similar decisions have promoted equal employment opportunity across this country. But they especially helped to transform my region from the old South to the new South. They helped transform the South from a region where people once left to escape oppression, to one where people are now returning in search of opportunity. I don't want to go back to the South of old.

And isn't opportunity really what this debate should to be about?

This Congress and the administration should be about creating jobs and opportunities for all Americans and not encouraging them to blame someone else for jobs that are being lost. Two million jobs have been lost in this recession. The average weekly wage for middle income workers has been falling over the last 20 years.

But it is easier to provoke anger and division over a pie that's shrinking, for political gain, rather than to expand the pie. Some people in Washington may get to keep their jobs—but that won't bring one more job to the people of America.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentlewoman from the District of Columbia [Ms. NORTON] who has been an enormous help in the writing of this bill.

Ms. NORTON. Mr. Chairman, as a former chair of the Equal Employment Opportunity Commission, I do not recognize the statute that the minority has been discussing. All sides purport to wish to return to the Griggs standard because, of course, the employer should have to justify his own selection standards.

However, the minority wants the Griggs standard to read "any standard that has a relationship to legitimate business goals." Mr. Chairman, any standard that is not illegal or criminal surely will have a relationship to legitimate business goals.

The Griggs standard, the standard of the majority substitute is relationship to the job to be performed. Surely, that is the rational standard, that is the Griggs standard. I might add, that is the standard recognized by the Business Roundtable.

When I was the Chair of the New York City Commission on Human Rights, a suit was filed in court by people who took a fire department test. The court threw out the test because the test had a substantial number of questions about current events, and the court reasoned that if a person was in fact at the top of a building 89 stories high in New York, the first question to come to your mind would not be who was Henry Kissinger, or what is the day's news.

In the same way, we should continue to require that the employer relate his job qualifications to the specific job to be performed, and not only to any legitimate business goal which I submit, Mr. Chairman, is almost anything.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the distinguished gentleman from California [Mr. MINETA].

□ 1710

Mr. MINETA. Mr. Chairman, I rise today in strong support of H.R. 1, the Civil Rights Act of 1991.

Mr. Chairman, who is kidding who with their opposition to this legislation?

Ever since the Supreme Court began chipping away at the laws protecting our civil rights, opponents of civil rights have been chirping away at this bill.

The White House does not want a bill protecting civil rights.

They know it, and we know it.

When the civil rights community and the Business Roundtable began working together to reach a compromise, the White House torpedoed the talks.

When the leadership in this House worked to assure American business about the quota issue, the White House chirped some more.

"It's a quota bill. It's a quota bill. It's a quota bill," They said again, and again, and again—trying to repeat a lie so often that it would be believed as the truth.

When explicit language was proposed to ban hiring quotas, the White House again cried out, "It's a quota bill."

And when that language was made even more direct, the White House flaks were making the media rounds saying, "It's a quota bill"—even before the White House had seen the new language.

Mr. Chairman, it seems that the White House doesn't know the difference between civil rights and civil wrongs.

Before the Supreme Court decisions, we had a system that worked for 18 years and could have worked for years to come.

We need to put that system back in place.

The Civil Rights Act of 1991 will do just that. It is not a quota bill. It has never been a quota bill.

The President cannot veto that reality even if he again chooses unwisely to veto a civil rights bill, as he did last year.

Mr. Chairman, if the President and his advisers persist in their myopia, Congress must not fail to stand up for fairness and the spirit of our Constitution.

Mr. Chairman, I urge my colleagues to support the bill.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from California [Mrs. BOXER].

Mrs. BOXER. Mr. Chairman, when we fight for civil rights what are we fighting for? Freedom.

We are fighting for the right of every individual to live up to his or her potential in the workplace. We are putting this Federal Government behind every individual so that no person can hurt us or harm us or stop us from succeeding because of their hatreds or their prejudices.

Those who would do this are a relative few, but they must know that they are wrong.

So whether we're male or female or black, brown or white or Protestant, Jew, Catholic, or Muslim or have a limp or a crutch, no one can stop us because of hatred or prejudice.

Through the years great leaders have spoken out on civil rights—

Dr. Martin Luther King, Jr., spoke movingly of "our triumphal march to the realization of the American dream." Dr. King knew then as we do now that the "season of suffering" of discrimination cannot last for long "Because no lie can live forever."

Robert Kennedy told us that the victims of discrimination do not need "the charity and favor of their fellow citizens, but equal claims of right and equal power to enforce those claims."

And our own hero, Congressman JOHN LEWIS, told us last year: "As Members of Congress, we are in a position to create a climate—an environment—to pave the way for the private sector to adhere to equal opportunity * * *.

On civil rights, Presidents have spoken out and have lifted our country higher because of their words.

President Eisenhower: "No true American, no American worthy of the name, would want deliberately to exclude another American from full opportunity to enjoy every guarantee under the Constitution."

President Kennedy: "We cannot afford to be complacent while any individual's rights are denied or abused."

President Carter: "The passage of the civil rights act during the 1960s was the greatest thing to happen to the South in my lifetime.

These words said to Americans: we are one nation—let us respect each other and live up to our greatness.

Now what does President Bush say? "You can't put a sign on a pig and say it's a horse."

He relates our civil rights bill to a pig. How sad for this Nation.

He talks about the civil rights bill at a graduation of cadets and he calls it a pig. When he had the chance to reach into the hearts of our young people and inspire them.

I'm very saddened by this. Saddened for our country. And saddened for this President that it will be written of him that when the debate on civil rights came before him he reached to the fears in our people not to the goodness, he reached to the hatred in our people not to the love, he reached to the division in our people, not to their unity.

I believe better of our people. I believe better of our business community, and I think we should pass a civil rights law that brings us together as one as we say; We stand for the right of each individual to reach for the stars. Because when we do that as a nation, there is nothing that can stop us.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Chairman, I rise in support of the Brooks-Fish Substitute. This bill is crucial to our efforts to end discrimination in the workplace, and to strengthen the remedies currently available for victims of discrimination.

This Congress attempted to put the issue of discrimination in the workplace to rest 27 years ago when it passed title VII of the Civil Rights Act of 1964. As disappointed as I am to see that we are here today debating issues which should have been resolved by now, the action we take today is necessitated by action taken by the Supreme Court in 1989.

Yesterday, during a press conference here in Washington, civil rights leaders issued a statement which succinctly states the purpose of H.R. 1. They said:

"The principle of the Civil Rights Act of 1991 is the principle of the historic Civil Rights Act of 1964—that no man or woman

should be denied a job, a promotion, or a fair salary, or be harassed at work, on account of race, sex, national origin or religion. That is a guarantee that all working Americans properly regard as their birthright. Two years ago the Supreme Court turned that right into a cruel hoax, writing in the law a series of loopholes that permit many employers to discriminate with virtual impunity. The Civil Rights Act of 1991 would bring to bear the full force of Federal law to enforce fundamental fairness for American workers.

Specifically, H.R. 1 would close the court-created loopholes:

First, by restoring the higher standard of business necessity that businesses must meet to defend an employment practice that has a disparate impact on women or minorities—a standard used between 1971 and 1989;

Second, by specifying that it is illegal for intentional discrimination to be any factor in the employment process; and

Third, by setting up a procedure to limit the ability of nonparties to later challenge a consent decree resolving an employment discrimination claim.

The action we take today, Mr. Chairman, is both appropriate and proper. It is not an endeavor to provide preferences, quotas or special treatment. It is simply an effort to guarantee that all Americans are afforded equal employment opportunities.

A review of recent data provides a clear picture of the type of disparities this bill attempts to correct. A recent urban institute study concluded that young white men seeking entry level jobs in the metropolitan areas of Chicago and Washington receive favorable treatment, including job offers, three times more often than their equally qualified African-American counterparts. Based on information gathered in the study, researchers noted that job discrimination against African-American men appears to be "widespread and entrenched." The authors of the study also noted that the level of reverse discrimination was limited and "was swamped by the extent of discrimination against African-American job applicants."

Mr. Chairman, these findings hit home for me. The U.S. Department of Labor recently reported that Cleveland, OH, which I represent in Congress has the highest African-American unemployment rate in the Nation. One in five, over 20 percent, of the city's employable African-Americans were unemployed in 1990. For employable whites, the unemployment rate was about 9 percent. These data underscore the need to reaffirm civil rights protections in the workplace.

President Bush asserts that passage of this legislation would result in quotas. This assertion is his attempt to politicize the issue, rather than deal with it as the moral and constitutional issue it is. In recent weeks, he raised the issue when speaking before cadets graduating from West Point. His comments were offensive, particularly in light of the fact that the minorities in that very class will be going into the military, which is the only area of employment in America in which African-Americans are able to acquire the education and training needed to achieve their full ability. Moreover, it is shameful that rather than giving this country the leadership it needs and deserves, the President chooses to use this issue for his own political purposes.

In light of the glaring disparities in the area of employment, the struggle to end discrimination must continue. Passage of H.R. 1 today is crucial to this effort. Otherwise, our efforts in the Congress for the last three decades will have been in vain. We risk having long-established civil rights laws being permanently placed in our Nation's past, rather than having a place in our Nation's future where they belong. I urge you to vote for H.R. 1.

Mrs. UNSOELD. Mr. Chairman, I yield 1½ minutes to the gentleman from Rhode Island [Mr. REED].

Mr. REED. Mr. Chairman, as a member of both the Education and Labor and Judiciary Committees, I am proud to have been a part of the debate over this historic measure.

This is not a quota bill. This is an opportunity bill. The problem with the Bush administration is that they just don't believe in people, that people given an equal opportunity have the capacity to do great things. What this bill will do is give everyone an equal opportunity to vindicate themselves in the workplace.

Opponents of this legislation have sought to scare Members of Congress away from this legislation with the same divisive tactics that we saw in the 1988 and 1990 elections.

It is an outrage to me that some people would prefer to play politics when people's rights are at stake. Members of the business community and the civil rights community worked to develop reasonable legislation to advance civil rights and the Brooks-Fish substitute reflects those efforts.

The White House responded by squelching those negotiations and continuing to label the bill—any civil rights bill—a quota bill.

To say this is a quota bill negates the 18 years of history between the Griggs decision and the Wards Cove decision. To suggest that during that time the business community was creating an elaborate system of quotas is just ridiculous. This bill does not take us any further than the law as it existed for the past 18 years before the recent series of Supreme Court decisions which dramatically weakened longstanding protections against discrimination on the job.

We should all be able to agree that every American deserves fair treatment on the job and a workplace free from discrimination.

Approval of this bill is particularly important for women, who are not protected by section 1981 of the United States Code, and who currently, even if they prove that they were the victims of egregious intentional discrimination, can end up with no relief at all from court cases that they have technically won.

H.R. 1 guarantees for the first time the right of a woman to sue an employer who intentionally discriminates against her and to sue for monetary damages as do victims of other forms of discrimination.

I am disappointed that the bill will include a cap on these damages. It is an unfortunate and regrettable turn of the legislative process that to get a veto proof margin, this cap was included. I would have preferred to vote for a bill without caps, that treats everybody equally. There isn't any reason why victims of sex discrimination or religious discrimination or discrimination based on disabilities should have a lesser remedy available.

However, President Bush was planning to criticize—and veto—this bill no matter what compromises were made. Last weekend he chose to attack this legislation at my alma mater, West Point.

When I was at West Point, I too heard a speech about civil rights given by a great American, but it wasn't President Bush, it was Vernon Jordan.

He told a story about an elderly woman sitting on her proch watching young people marching for civil rights go by her house in rural Georgia. And although she was too old to get up and march with them, she was able to rise up and shout at the marchers: march on children, march on.

Today we have the opportunity to tell a new generation, to tell our country to march on. That it is time to go forward and not retreat. This is not the time to surrender to our basest fears but to reaffirm our noblest principles.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. COX].

Mr. Chairman, will the gentleman from California yield to me?

Mr. COX of California. I am delighted to yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I just want to respond to the last gentleman from Rhode Island.

He said there were no quotas between Griggs and Wards Cove in 20 years. He is absolutely right, but there were no jury trials with unlimited damages under title VII then. This imposes jury trials with unlimited damages. That is the difference.

Now, the President has taken an awful bad rap all day long here. The gentleman from New Jersey [Mr. HUGHES] says, well, the campaign is

starting. It sure is, and you are starting it.

Let me read to you from Watson versus Fort Worth Bank and Trust. The gentleman from New Mexico talked about we are using the word "quotas," a bad word. Well, Sandra Day O'Connor, someone you have been quoting with approbation all day long, said this in a 1988 Supreme Court case, Watson versus Fort Worth Bank and Trust:

If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met.

That is where the quota langage comes from, your bill and the logic of Sandra Day O'Connor's statement in the Watson case, and I thank the gentleman for yielding to me.

Mr. COX of California. Mr. Chairman, I do not believe that if H.R. 1 or any of the substitutes becomes law that it will be the end of business and opportunity in America. It will however, be one incremental step along the road that is making America less competitive.

I do not think the people who are supporting this legislation have bad motives, nor do I think that the people who are opposing it have bad motives.

What we ought to do, it seems to me, is leave aside a lot of the rhetoric and focus on what works. What is it that we are trying to do? What we are trying to do is create economic opportunity because that is the way out of these social problems that we care about.

Yet, if we take a look at our record, go back and take a look at the Eisenhower and the Kennedy administrations during which time black teenage unemployment and white teenage unemployment were about the same.

Starting in about 1974, they started to diverge and now black teenage unemployment is over 50 percent.

What we are doing is not working. Minority set-asides, paternalistic group benefits, more government, more regulation, more lawyers and more expense for business, large and small, is not working.

What we are doing in this bill is adding even more lawyers to this overlay of government and we are attacking the most fundamental civil right that each of us enjoys, the right in court to be innocent until proven guilty. This legislation puts the burden of proof on a defendant, and in that sense it goes far to establishing quotas.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. GOODLING. Mr. Chairman, I yield 1 additional minute to the gentleman from California.

□ 1720

Mr. COX of California. It is in that way, by raising the expensive litigation, that this bill will lead to quotas. I should add that the notion, that we have, the rather quaint notion that these cases will all be decided by presenting facts and law to a judge, a benign Judge Wapner, who will then make a decision, is just flatout wrong.

Ninety-three percent of all cases in the Federal system are terminated, ended without a single day of trial. They settle. They settle on the basis of expected costs. Litigation takes years.

By shifting the burden of proof to the defendant, we cause the defendant, regardless of the merits of the plaintiff's case, to settle and to settle sometimes for hundreds of thousands of dollars because those transaction costs are run up by lawyers charging $200 an hour.

It is in this way that we will penalize job creation, raise the cost of doing business, hurt American competitiveness and destroy the best opportunity we have to solve our social problems, economic growth and opportunity in America.

Martin Luther King said, "Judge me by my character, not by the color of my skin." That is the kind of civil rights bill that we need.

Mr. GOODLING. Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Tennessee [Mr. FORD].

Mr. FORD of Tennessee. Mr. Chairman, I rise in strong support of H.R. 1, the Civil Rights Act of 1991, and say that America is a great Nation, one of growing diversity. By the year 2000, less than a decade, two out of three entrants into the labor market will be nonwhite. Our children will work and live in an environment more diverse than we can imagine.

Mr. Chairman, our focus today should not be on the matter of race but on how we best prepare our Nation to take the greatest advantage of that diversity and that which it can bring to the American business and society as a whole. Preparing our children and our businesses for the next century must be our paramount concern.

Today's children are tomorrow's workers. The Civil Rights Act of 1991 will help bring our Nation's work force into the 21st century.

This bill will encourage American businesses to include women, minorities and the disabled in today's work force so that our businesses will be better prepared for the future, to serve the future of America.

The actions of this Congress and the President will determine what kind of future we leave for our children. By making this bill law, we can guarantee that all Americans have an equal opportunity to succeed in today's society.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

One hundred and seventy-eight years after the Declaration of Independence was written that promise was finally fulfilled with adoption of the Civil Rights Act of 1964—all Americans—men and women, regardless of race, color, religion, or national origin were guaranteed an equal shot at the American dream—equal access to public accommodations, the provision of State and local government services, and perhaps most important employment.

Now the decisions of a right-leaning Supreme Court threaten to undermine the foundation of these precious rights. Under their Wards Cove decisions—men, women, people of color or certain religious beliefs could be excluded from a job for which they are fully—even best qualified—by virtue of their sex or color if their denial of employment met legitimate employment goals.

The President and his political advisers have cynically labeled this a quota bill. The Brooks-Fish substitute prohibits the use of quotas. The committee bill says nothing in this bill shall be construed to require or encourage quotas, and the Schroeder substitute would restore the pre-1989 Griggs standard which did not result in the adoption of quotas. There are no quotas in this bill, rather, a goldmine of ugly, divisive race- and sex-baiting by an administration more intent on advantages at the ballot box than true equality, fulfillment of the American dream.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Georgia [Mr. LEWIS].

Mrs. UNSOELD. Mr. Chairman, I also yield 2 minutes to the distinguished gentleman from Georgia [Mr. LEWIS].

The CHAIRMAN. The gentleman from Georgia [Mr. LEWIS] is recognized for 4 minutes.

Mr. LEWIS of Georgia. Mr. Chairman, I rise today to speak on behalf of the Brooks-Fish bill.

Mr. Chairman, I said this last year, during the debate on the Civil Rights Act, and I must say it again this year, this is an old, outdated and insulting argument. It is a shame and a disgrace that, in 1991, we are still debating whether or not we should protect our fellow American citizens from discrimination.

Thirty years ago, I first came to this city as a 21-year-old student to begin a historic journey called the Freedom Rides. As we traveled throughout this Nation, from Washington, into Virginia, through North Carolina, South Carolina, Georgia, Alabama, and Mis-

sissippi, I saw those signs that said "white men," "colored men." "white women," "colored women," "white waiting," and "colored waiting."

A large number of individuals and many Members of this body had the moral courage to help bring those signs down. Those signs are gone, and they will never return. We won that battle, but our mission is not over. The fact is, that almost 30 years after the 1964 Civil Rights Act and the 1965 Voting Rights Act, the scars and stains of racism are still deeply embedded in the American society.

I wish to remind my colleagues, the Civil Rights Act of 1991 only attempts to take us back to where we were before the recent Supreme Court decisions. There is nothing radical, there is nothing extreme, and there is nothing revolutionary about this piece of legislation. And I want to restate that there is not one section, one paragraph, one sentence, not one word which would suggest that this is a quota bill. For anyone to suggest this bill has anything to do with quotas is tampering with the truth and misleading the American people.

I must say, Mr. Chairman, that this bill is not a panacea—it is not a cure-all. It will not free millions of Americans from discrimination. But it will send a strong message that discrimination based on sex, on race, on disabilities, will not be tolerated and will not be supported by the Federal Government.

This legislation will help create a climate, an environment which will encourage and affirm the participation of all of our citizens in the workplace. As a body, we must do what we can to remove the remaining walls of racism.

It is strange to me that we have these "Johnny Come Latelies," these self-appointed civil rights do-gooders, many of whom opposed the 1964 Civil Rights Act, the 1965 Voting Rights Act—all at once they know what is best for women, they know what is best for minorities. I am referring to groups like the National Federation of Independent Businesses, the Fair Employment Coalition, the U.S. Chamber of Commerce, and the National Association of Manufacturers. I believe that if it were left up to some of these groups, we might still have those "white only" and "colored only" signs in many parts of our country.

If it were left up to some of these groups, women and minorities would still be the last hired and the first fired, or never hired or never promoted.

How can these groups explain their actions to the men and women returning from the Persian Gulf; Thank you for risking your lives for the "American Way," but sorry, you are not entitled the basic human rights guaranteed in our Constitution simply because of your sex, your race or your religion.

If we can send more than 500,000 of our young men and women, black and white, Protestant, Catholic, and Jew half way around the world to liberate a small nation, why is it so difficult for the 435 members of this body to stand up and liberate our own citizens in our own country from discrimination in the workplace.

I urge my colleagues to support this bill. It will move us—as a people, as a society, as a nation—a step closer to what I like to call the "beloved community," a society where we can forget about race, sex, and color and judge people by their character.

Mr. Chairman, it was Abraham Lincoln who once said, "Those who deny freedom to others, deserve it not for themselves; and under a just God cannot long retain it."

My friends, the message must go forward from this body, through our actions and our votes, that we are one Nation, one people, one family—the American family.

Mr. BROOKS. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from California [Mr. ANDERSON].

□ 1730

Mr. ANDERSON. Mr. Chairman, I rise today in support of the civil rights bill of 1991. For many, this is not an easy vote. But Congress' commitment to civil rights is as important to women, racial minorities, and religious minorities today as ever before. This bill will protect all Americans from the taint of discrimination by elevating our country's laws to a standard once adhered to, and without imposing quotas.

I am unequivocally opposed to quotas. Being a businessman myself, I understand the need to hire qualified personnel in order to survive in today's economy. Businesses must also be allowed to hire, fire, or promote an employee on a merit system, not on the basis of quotas and litigation avoidance. I would not support legislation that would force employers to sacrifice these rights by adopting statistical quotas. The Brooks-Fish substitute is the only measure that regards quotas as an unlawful employment practice and explicitly prohibits their use. Businesses are thus freed from hiring by statistical balance.

The goal of the Democratic civil rights bill H.R. 1 is to promote an equal playing field for all job applicants and employees. Unfortunately, our job markets are not color-blind. A recent study conducted by the Urban Institute found that job applicants who were equally paired in all qualifications, except for race, met with unequal results. White applicants not only received three times more job offers than the black applicants, they also advanced farther in the hiring process three times more often than their black counterparts. Contrary to the administration's position, this study shows that blacks are not getting preferential treatment in the job market. The fact remains that the real obstacle to an equal playing field is discrimination, not reverse discrimination. This bill will create this level field by requiring that job applicants and employees be judged on their abilities rather than on their race, sex, religion, or ethnicity.

The real issues in this debate have been overshadowed by rhetoric. The Civil Rights Act has been accused of both promoting quotas and creating a lawyer's bonanza by allowing punitive damages for women and minorities. Now, after these issues have been addressed, the bill is being linked to race-norming, which, like quotas, has been prohibited by the Brooks-Fish substitute. Congress must now see through this rhetoric and move forward on civil rights. In doing so, we will advance the rights of all Americans. As Americans, we will now look toward the President to sign this just and needed legislation.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. Chairman, I rise in strong support of H.R. 1, as well as the Towns-Schroeder substitute and the Brooks-Fish substitute.

For a third of a century Americans have believed that we ought to move forward, not backwards, in the struggle for equality. They have known that our Nation suffers morally and economically when any person is held down unfairly. They have put their time, their money, and yes, their lives on the line for simple justice—for the belief that there is no room in a great nation for bigotry and racial hatred.

But today that civil rights consensus is threatened. Not from a backlash by the majority. But by an administration hellbent on dividing this Nation for partisan political gain. And by a few white men in black robes who see nothing wrong with an America for the privileged few. Today's Supreme Court would resurrect barriers that most folks thought were knocked down years ago. Sadly, we have gone from a protector to a polluter of civil rights:

For decades, the Court said that an 1866—yes, 1866—law prevented discrimination on the job. Now the Court says that the law only prevents prejudice at the door—at the time of hiring.

For nearly 20 years, the Court told us that an employer had to prove that a racially imbalanced work force was not the result of discrimination. Now the Court says that victims must prove that it was—even though discrimination does not usually leave a paper trail.

And for years, Americans assumed that prejudice had no place in employment decisions. Now we are told that

discrimination is just fine, so long as the employer can find a good reason for it—after he has had time to make up an excuse.

Americans believe there is no room for bias and discrimination, no matter what the protectors of privilege say. We did something about the Grove City case. Now we are going to do something about these latest backwards decisions.

Because America will not tolerate racial bias on the job any more than at the time of hiring.

Because employers should prove why racially imbalanced work forces are required by a significant business objective, rather than just preferred as the old way of doing business.

Because discrimination is always wrong, even if it is just part of an employment decision.

And finally, because America knows it's time to face the challenges of the 21st century, not again fight the battles of the past.

Ninety years ago, W.E.B. DuBois said that "The problem of the 20th century is the problem of the color line." When the full history of this century is written years from now, let today be recalled as the day we put that line behind us once and for all.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Chairman, Dr. Martin Luther King had a dream, a dream about opportunity and justice for all people in this country, a dream for blacks, for workers, for women, for Hispanics, a dream that unified the United States of America. Now, in 1991, Mr. Chairman, we are afraid to dream. We are not dreaming in 1991; we are afraid of nightmares, nightmares about 30-second commercials that might be played against us.

Mr. Chairman, I rise in support of the Civil Rights Act of 1991 for three reasons. Our next generation of young people in this United States needs to know that civil rights is something that we all believe in. Second, Mr. Chairman, this bill outlaws quotas, and it outlaws intentional egregious discrimination. It is fair and balanced. Third, Mr. Chairman, racial hatred and bigotry is alive and well in the United States when somebody like David Duke, who ran against my father-in-law, Senator J. BENNETT JOHNSTON, in Louisiana gets 44 percent of the vote.

Mr. Chairman, we need civil rights. We need dreams in this country and we need opportunity for all of our people.

Mr. Chairman, I rise in support of the Brooks-Fish substitute to the Civil Rights and Women's Equity in Employment Act of 1991.

Since the enactment of the Civil Rights Act of 1964, we have made substantial progress in eliminating discrimination in the workplace for women and minorities. That progress has not come easily. It has come as a result of the struggles that have taken place in Congress, in the courts and in the streets of this country. However, that progress has been threatened by a number of recent Supreme Court decisions which have cut back substantially on the protections of the act. The bill before us today will restore and strengthen the equal employment opportunities that were severely weakened by Supreme Court decisions in 1989.

This legislation will assure equal access in the workplace for women and minorities and monetary remedies for victims of blatant and intentional discrimination. The denial of equal employment opportunities based on race, sex, or religion cannot and must not be tolerated. People must be judged on the basis of their own abilities, skills, and performance and not by the color of their skin, their gender, or religion.

Mr. Chairman, as we look to the future, it is clear that more women and minorities will enter the work force in the next decade. It is imperative that we, as a nation, open up opportunities for these Americans, which will strengthen our economy and enhance our competitiveness in the world marketplace.

Mr. Chairman, opponents of this measure, including the White House, have attempted to characterize it as a quota bill. I would not support this legislation if it encouraged or required the use of quotas in any way. The sponsors of the legislation have included very strong language in the statute itself which clarifies that nothing in the bill requires, encourages, or permits an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex, or national origin, and the use of quotas is declared to be unlawful under title VII of the Civil Rights Act.

This bill is not about quotas. It is about fairness and equality in the workplace. It is about reaffirming our Nation's commitment to civil rights and to ensuring that all Americans are afforded equal employment opportunities, and can defend those opportunities in our judicial system. Now is the time for Congress to take the opportunity to say, "Discrimination has no place in American society." I urge my colleagues to support the Brooks-Fish substitute, which protects the rights of women, minorities and the disabled.

Mr. McCOLLUM. Mr. Chairman, I yield 2½ minutes to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Mr. Chairman, as my colleagues know, I wish the debate on issues like this did not degenerate to finger-pointing on: "You believe in equal opportunity," and, "You don't believe in equal opportunity," back and forth, "if you accept this bill," or, "you don't accept this bill." I think every single Member—in fact, I refuse to believe that there is a single Member of the U.S. Congress that does not believe passionately in equal opportunity and abhors discrimination.

□ 1740

The American public believes in equal opportunity and deplores discrimination, and I think this is evidenced this week by the mayor's race in Denver, CO, where in an open primary, with white and black Democrat and Republican, two blacks came into the run-off of the Denver mayoral election. There were two blacks, and now there will be a black mayor in Denver, a city that is 70 percent white.

I do not think we ought to be debating whether this is a quota bill. Of course it is a quota bill. I think we ought to be debating whether quotas are a good idea in order to solve the problem of discrimination.

Of course this is a quota bill. Let me give the Members an example. Maybe some of the Members saw this on "60 Minutes" a few weeks ago. The Daniels Light Co. in Chicago, IL, is a 100-percent minority company, with 28 employees making lamps. It is a small business making lamps. The EEOC is about to put them out of business because a black lady came and applied for a job. She did not get the job, and she said, "Oh, they must be discriminating against me." So she brought charges against them, and they came in and said, "Yes, you are discriminating. Even though you are a 100-percent minority, you don't have the right ratio between Hispanics and blacks."

The narrator on "60 Minutes" said, "Well, isn't this a quota situation?"

"Oh, no, this isn't a quota situation."

"Well, how did you come to the realization that they didn't have enough blacks in the company?"

And they said, "Well, we drew a circle of the neighborhood, and in that radius there are more blacks than there are Hispanics in that radius."

So they are trying to put this little company out of business, and there will be 28 minority people out on the streets. That is under current law. We could multiply that by a thousand times, and we might have an idea of what this new law would do.

The American people do not want preferential treatment. They want equality. Let me just share this chart with the Members. The Gallup people ran a poll in 1977, 1980, 1984, and 1989. The blue lines indicate the people in America, consistently over 80 percent, that feel that people should be chosen on ability. The red line, about 10 percent over these years, indicates those who feel there should be preferential treatment to correct some kind of a discrimination that they perceive might be there.

Mr. Chairman, this is not a good way to do it. It just divides the American public further.

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. SANTORUM].

Mr. SANTORUM. Mr. Chairman, I rise in opposition to H.R. 1 and in support of the Michel substitute.

Mr. Chairman, I rise today in opposition to H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991.

Mr. Chairman, despite the title of the legislation before us today, I strongly feel that this body has not been presented with a true de-

bate on civil rights or consideration of a true civil rights package. The issue for me today is that of continued fair employment opportunity across the lines of race, sex, religion, and ethnic orientation. While I feel strongly that we must continue to foster this ideal, through responsible legislating in this body, I feel even more assuredly that this legislation, H.R. 1, does not effectively advance this objective.

As we consider legislation which will have such a far reaching impact on the labor force and employment in general, we all must ask ourselves if H.R. 1 is truly the course that our country should take over the next decade and well into the 21st century. The facts are, Mr. Chairman, that H.R. 1 goes well beyond restoration of the Supreme Court cases that have challenged and altered our country's civil rights laws. Employers and the business community will have no recourse, after enactment of this legislation, but to resort to adverse and discriminatory hiring practices. Quite simply, H.R. 1 rewrites 20 years of civil rights law by effectively making racial, ethnic, religious, and sex imbalance alone presumptively illegal. H.R. 1 holds employers guilty until proven innocent by forcing them to justify any racial, gender, religious, or ethnic statistical imbalance in any job in their work force. H.R. 1 eliminates the requirement that a plaintiff identify a specific employment practice causing a racial, ethnic, or gender imbalance. H.R. 1 creates a presumption of guilt so costly to fight that employers will resort to a system of hiring by the numbers. H.R. 1 will deny individuals their day in court by effectively barring challenges to civil rights consent decrees and litigated judgments to which they were not parties. Further, the fear of litigation espoused by H.R. 1 makes greater the temptation to hire by the numbers.

Mr. Chairman, the last point touches on perhaps my biggest concern with H.R. 1. In my opinion, H.R. 1 odes less for the worker or prospective employee than it does for the biggest benefactor, our Nation's lawyers. Enactment of H.R. 1 will only expand the reach of lawyers, lawsuits, and judges by encouraging an endless stream of litigation in pushing the parameters of new mandates on employment and hiring practices. H.R. 1 provides for collection of unlimited punitive and compensatory damages for alleged victims of intentional discrimination. I am inherently opposed to punitive damages and feel that proper redress of unlawful discrimination is better served with the absence of the punitive damages clause. I feel very strongly that punitive damages are only to the benefit of the lawyers and serve as a minor remedy to intentional discrimination victims.

To further this point, let me reference a recent statement by Florida Governor Lawton Chiles announcing his veto of a civil rights bill under consideration in the Florida State Legislature. Governor Chiles, in vetoing a civil rights package similar to H.R. 1, states that "the greatest threat to the civil rights reform movement are laws that mislead the public by raising their expectations, only to discover that the greatest beneficiaries are the lawyers who are involved in the process." Like Governor Chiles, I too am committed to a system for redressing unlawful discrimination that provides timely and effective remedies. I feel that we can achieve this without inducing lawsuits that drag on for years and foster adversarial proceedings. H.R. 1 certainly does not achieve this objective nor does it provide benefits to lawyers in proportion to any potential benefits for their needy clients.

The settlements on lawsuits that will be brought under the provisions of H.R. 1 will indeed be costly. H.R. 1 will undoubtedly lead to an excessive level of costs that will harm the overall interests of those who are subject to unlawful discrimination. Instead of benefiting only a few individuals and the vast majority of lawyers, I strongly feel that we should commit these dollars in the areas of education, equal employment opportunities, and programs which make amends for the devastating effects of past discrimination. While we must vote down this legislation today, this body must not suppress the ongoing dialog and debate on employment equality and opportunity for all. Although H.R. 1 is not the answer, we must continue to seek reform measures for the practices and attitudes of people and individuals who unlawfully discriminate.

Mr. Chairman, I realize that the rule today provides for consideration of a substitute proposal by Mr. BROOKS and Mr. FISH attempting a compromise on several of the provisions that I have outlined today. Also made in order under the rule is H.R. 1375, being presented as a substitute to H.R. 1 by Mr. MICHEL. While I recognize the efforts to draw a consensus on this issue, I firmly believe that the Brooks-Fish substitute falls well short of my obligation to vote for a responsible and effective fair employment opportunity package. As I am an original cosponsor of H.R. 1375, I will be voting for the Michel substitute and am encouraged that the issue of race-norming, addressed specifically in H.R. 1375, has surfaced in the compromise discussions. Here again though, the dressed up substitute language does not come close to meeting the standard of enacting an effective and productive legisative proposal.

As I will continue to encourage voluntary affirmative action, I also realize a pressing need for laws that prohibit intentional discrimination and that provide some redress for our disabled, our seniors', and our womens' communities as well as across race and ethnic lines. In my opinion, however, neither the bill before us, H.R. 1, nor the substitute to be offered later by Mr. BROOKS and Mr. FISH fairly or effectively meets this objective. Given these choices, Mr. Chairman, I urge my colleagues to defeat H.R. 1 and the Brooks-Fish substitute and vote for the Michel proposal.

Mr. GOODLING. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, it is good tactics for the majority to refer to H.R. 1 as the civil rights bill. Who could be against civil rights?

But though this bill is couched in the language of civil rights, this is not a bill of civil rights at all, but of civil division. The President will veto this bill, Democrats know that. Ask yourself why they won't work to pass a civil rights bill.

Some of my colleagues have stated that we do not need more civil rights laws. I disagree. I do support a civil rights bill, the Michel amendment to H.R. 1.

On the other hand, the benefits of the Democrats bills will never reach the poor. Rather, theirs is a lawyer-employment bill.

The millions of ethnic Americans who today are without jobs, who are without education and without hope, and wake up every morning to the crack dealers on their doorsteps, will never see a benefit from the Democrats' alleged civil rights bill.

So let us bring the debate back to the beginning, and ask an important question.

What are civil rights, anyway, and who should have them?

If this Congress wants civil rights, let us educate our people.

Let us free our neighborhoods from crime and drugs.

Let us build an economy that creates good jobs for all Americans.

And as to who should have civil rights, I say that in America, they are everyone's.

I am supporting the Michel amendment to H.R. 1. And I urge my colleagues to oppose the Brooks-Fish and Towns-Schroeder substitutes.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Chairman, can you imagine the strength and determination it took our colleagues in 1964, 1965, and 1968 to adopt civil rights legislation? It's difficult to believe that this debate is taking place in 1991.

Mr. Chairman, the behavior of the President regarding this civil rights bill is truly deplorable. At a time when the Nation needs every bit of leadership to unite us the President is engaging in the craziest kind of divisiveness—for political purposes.

When David Gergen, Ronald Reagan's media director, says, on national television that from his perspective the behavior of the Bush White House on this legislation is clearly political—the President should know that the fig leaf argument of quotas has slipped off—and he stands exposed.

What we are witnessing is racial politics at its lowest and and meanest. It is a revisting of Willie Horton.

The President may no longer know the difference between civil rights, and civil wrongs. But we do. I urge that we in this House stand up for what is best in America. Vote for Brooks-Fish and the Towns-Schroeder substitutes.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the distinguished gentleman from North Carolina [Mr. PRICE].

Mr. FORD of Michigan. Mr. Chairman, I yield 1 minute also to the gentleman from North Carolina [Mr. PRICE].

The CHAIRMAN. The gentleman from North Carolina [Mr. PRICE] is recognized for 2 minutes.

Mr. PRICE. Mr. Chairman, it is with disbelief and considerable sadness that I see what the civil rights debate has come to. What the President did last week, using the West Point graduation exercises as the occasion for a distorted and divisive attack on our efforts to resolve this issue, was as cynical and shameless as anything I have seen in politics for a long time.

If there is a more charitable interpretation to put on what he did, and on his speech yesterday before the National Federation of Independent Business, I would like to know what it is—for I have been one who has worked to develop a balanced and fair approach to this issue, and I have concluded only reluctantly that the President has no interest whatsoever in doing that.

I have always considered myself fortunate to have come to political maturity during the early 1960's, during the years when the civil rights struggle captured this country's moral imagination. I remember our efforts to break down the barriers of discrimination in our college town of Chapel Hill, NC, and I remember the flood of emotion that came over me as a young Senate staffer, when I witnessed from the galleries the final passage of the 1964 Civil Rights Act. Those were years of great hope, and they instilled in me an abiding faith that the political process could respond to injustice, that people of good will working together, could overcome division and distrust and achieve great things.

In my part of the country we have no desire to return to the days of racial fears and divisions and demagoguery. We've come too far for that. That is why the President's approach to the civil rights bill is so shocking and upsetting.

We recognized the potential for this sort of polarizing tactic last year, when scurrilous television ads labeled an earlier version of this bill a "quota bill" and attempted to manipulate the emotions of working people. That was distressing but not surprising to us in North Carolina, when we considered the source of those ads. Now, those same tactics are coming from the White House itself, from the President who should be taking the lead in finding common ground on this issue but instead is playing cheap and divisive racial politics.

This is a good bill. H.R. 1, as amended by the provisions of the Brooks-Fish substitute, is a better bill than the one passed last year. The quota charge was always inaccurate and unfair, but this year's bill has even stronger antiquota provisions. The business community has had legitmate concerns about this legislation—about the burden of proof they would have to sustain when their employment policies were challenged, for example, and about the possibility of runaway punitive damages—and these concerns are addressed seriously and substantially in this bill. We have, in fact, codified the agreements reached earlier this year in discussions between business and civil rights leaders—agreements reached before those talks were torpedoed by threats from White House operatives, in an unmistakable indication of what the President's strategy would be.

I will proudly support this revised bill, Mr. Chairman, for it is in the best tradition of our region and our country, standing firm against discrimination in the workplace, taking the interests of all parties into account, devising a solution that brings us together rather than drives us apart. That is the way it has got to be in a country as diverse and as expansive as ours. It is profoundly disappointing and saddening to see these efforts rejected and distorted by a President who apparently would rather have an inflammatory issue than a workable bill. But it is equally clear what we in the House must do. We must put forth our best effort—and the Brooks-Fish substitute, the product of hundreds of hours of consultation and conciliation, represents that. And then we must hold our heads high and pass this bill.

Mr. FORD of Michigan. Mr. Chairman, I yield such time as he may consume to the gentleman from the Virgin Islands [Mr. DE LUGO].

Mr. DE LUGO. Mr. Chairman, I thank the gentleman for yielding this time to me, and I rise in strong support of H.R. 1.

Mr. Chairman, our great Nation has derived its strength from the diversity of its citizens and the unity of their purpose under our democratic Government where freedoms are guaranteed by the Constitution.

But freedom for all of our Nation's people has not come easily; many today still bear the burden of discrimination, often subtle, sometimes not. And so, the Members of this House have enacted laws to insure that all share equally in the opportunities this country can bestow.

Today, once again, we are called upon to act to assure justice. Statistics have proven that recent court decisions have diminished substantially the ability of Americans to right discriminatory wrongs.

Emotions have run high, and in our efforts to unite our Nation in the guarantee of equal opportunity, deep divisions have been sown among us.

"Quotas." "Caps." "Race norming." These words have created great concern among our constituents and confusion in this House. But amid the rhetoric we must not lose sight of our aim: to ensure that all Americans are treated fairly.

Mr. Chairman, I am most disheartened that the administration has been so disingenuous as to continue efforts to frighten the people of this Nation into believing this legislation is a quota bill. I commend the House leadership for their diligent efforts to meet the President's objections by developing specific language to insure that it is not. The administration knows this, but sadly, continues its divisive efforts to convince Americans otherwise.

I ask my colleagues to support the H.R. 1 substitute offered by Mr. BROOKS and Mr. FISH, legislation that would specify a ban on quotas, cap damages at a fair and reasonable level, and put an end to race norming. I urge my colleagues to give this legislation the support it needs to protect against a Presidential veto.

Mr. Chairman, we must pass this legislation decisively and put the politics of race and disharmony behind us. Then, all Americans can move forward as one, with equality of opportunity and unity of purpose to build a future in which all may share the rewards.

Mr. FORD of Michigan. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I rise in support of the substitute offered by the gentlewoman from Colorado [Mrs. SCHROEDER] and the substitute offered by the gentleman from New York [Mr. FISH] and my chairman, the gentleman from Texas [Mr. BROOKS].

Mr. Chairman, I rise in support of H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. The bill has two titles:

Title I, reported by both the Judiciary and Education and Labor Committees, amends the Civil Rights Acts of 1866 and 1964 to restore and strengthen their prohibition against employment discrimination. The Supreme Court dramatically narrowed these laws in a series of decisions in 1989.

The Wards Cove decision placed a nearly impossible burden of proof on plaintiffs in cases involving non-intentional discrimination. H.R. 1 requires employers to justify practices that have a discriminatory effect.

The Price Waterhouse decision allowed employers to engage in intentional discrimination as long as they also could point to some nondiscriminatory reason to justify their decision. H.R. 1 bans intentional discrimination in all cases.

The Martin versus Wilks case allowed individuals to reopen consent decrees, even where they had an opportunity to participate in the original litigation. H.R. 1 assures that settlements can be reopened only if justified.

The Lorance case created artificial time barriers for filing discrimination suits. H.R. 1 establishes fair time limits to file lawsuits.

The Patterson case allowed racial harrasment on the job, saying that the 1866 Civil Rights Act prohibited discrimination only in the initial hiring decision. H.R. 1 prohibits racial discrimination at all stages of a contract.

Last year, Congress passed an effective bill to overturn these cases, but it was vetoed by the President.

H.R. 1 strengthens the 1964 Civil Rights Act by providing the same damages remedy for all victims of intentional discrimination that is currently available to racial minorities who sue under the 1866 Civil Rights Act. H.R. 1 will allow victims of intentional religious, gender or disability discrimination to receive compensatory and, where appropriate, punitive damages.

The bill before you contains two new sections which were added to reverse Supreme Court decisions announced after committee consideration of this year's bill. Decisions which affect the underlying statutes amended by H.R. 1:

Section 117 of the bill provides protection against employment discrimination to American citizens working for American companies overseas, reversing Aramco, decided March 26, 1991.

Section 118 extends the title VII attorney's fees provisions of H.R. 1 to the Civil Rights Attorney's Fees Act (42 U.S.C 1988), reversing West Virginia University Hospitals, decided March 19, 1991.

Title II encompasses the provisions added to H.R. 1 by the Education and Labor Committee:

Section 201 establishes a 4-year Glass Ceiling Commission to conduct a study and to make findings and recommendations on the elimination of artificial barriers to the advancement of women and minorities to executive and management positions in business.

Section 202 directs the Secretary of Labor to develop a pay equity program. The program will disseminate information, promote research and provide technical assistance to employers seeking to eliminate gender and race-based wage disparities.

Section 204 authorizes EEOC to establish outreach and public information programs for individuals, such as Hispanics and Asians, who historically have been victims of employment discrimination, but who have been underserved by EEOC's enforcement apparatus.

Last year, President Bush did not have a comprehensive proposal until after both Houses considered the bill. He has weighed in now and the Republicans will offer his proposal as a substitute. There have been news accounts and op-ed pieces suggesting there is no significant difference between H.R. 1 and the President's bill. That simply is not true.

The Michel Republican substitute reverses only one of the devastating 1989 Supreme Court decisions, the Patterson case. It does not overrule Martin versus Wilks, thus, allowing endless relitigation of settled cases. It fails to overturn Price Waterhouse, which means employers can commit intentional discrimination so long as they can justify their job action with some other nondiscriminatory motive.

The Michel substitute mitigates the harsh results of Lorance only for seniority systems, not all employment practices. Furthermore, the Republican proposal only partially reverses Wards Cove—it properly returns the burden of proof to the employer to justify discriminatory practices as a business necessity, but then codifies the lower business necessity standard announced by the Court's Wards Cove majority.

Finally, the remedies section is most perplexing. Unlike race claims brought under the Civil Rights Act of 1966, the Republican alternative would not permit compensatory or punitive damages. Instead, it would authorize courts to grant an additional equitable remedy of up to $150,000, but only if the court determines that such a remedy "is needed to deter" the respondent from discriminating, and only if it is "otherwise justified by the equities, consistent with the purpose of this title, and in the public interest." These remedies would only be available for harassment claims. In fact, the Republican alternative would legalize untimely harassment claims—victims of other intentional discrimination would be limited to the existing "make whole" relief currently available under title VII. There are other restrictions too, which when added together provide second-rate remedies for persons with sex, religious, and disability claims.

In conclusion, we have heard much in last year's debate and this year's as well about the quota issue. Much of this debate has been inflammatory and divisive. I urge opponents not to resort to this harmful rhetoric. But to those who still want to tag this a quota bill we say in the words of Eliza Doolittle, "show me."

□ 1750

Mr. GOODLING. Mr. Chairman, I yield myself 1½ minutes.

Mr. Chairman, language was apparently drawn from Justice O'Connor's language in a "Concurring and Dissenting Opinion" from the 1986 Supreme Court case of Local 28, Sheet Metal Workers versus EEOC. Even assuming this was accurately done, it must be noted that this case involved past egregious discrimination on the part of the union, and her comments were directed at attempting to draw the line between the types of workplace preferences courts could order to remedy that kind of past discrimination. But she was not stating that everything that fell outside of the definition of "quota" was therefore permissible. What is or is not permissible workplace preferences, under current law, will vary widely depending on the underlying factual circumstances. Variables include whether the case involves voluntary affirmative action or court-ordered affirmative action, whether past discrimination has been proven, whether the employer is a private or public employer, the degree of burden on innocent whites—for example, forced layoffs would rarely be allowed—the flexibility permitted in reaching numerical targets, the temporary nature of the preferences, the degree to which the less qualified are preferred over the better qualified, and other factors. These factors have been more or less established in a series of not always consistent Supreme Court decisions. Whether these decisions implement sound public policy across the board has never really been debated by the Congress. Justice O'Connor's discussion of quotas in Local 28 is but one small aspect of this case law in one factual situation. It should hardly be used as statutory language.

Indeed, it is worth noting that a year later in the 1987 Johnson case, Justice O'Connor noted, in the context of a voluntary affirmative action plan, that "an affirmative program that automatically and blindly promotes those marginally qualified candidates falling within a preferred race or gender category * * * would violate title VII." Here, she is using a different, more restrictive test. Is this inconsistent with her discussion in Local 28? Not necessarily; the fact situations were simply different, calling for the application of different legal principles.

One cannot legitimately draw one or two sentences from one case and build a statute around it.

The CHAIRMAN. The Chair would advise Members that the gentleman from Pennsylvania [Mr. GOODLING] has 3½ minutes remaining, the gentleman from Illinois [Mr. HYDE] has 3½ minutes remaining, the gentleman from Texas [Mr. BROOKS] has 8 minutes remaining, and the gentleman from Michigan [Mr. FORD] has 2¾ minutes remaining.

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I might consume.

Mr. Chairman, the civil rights bill that we are dealing with today is a little like the story of Tantalus: Every time he reached for the fruit it was yanked away from him. That is about the way that our Democratic friends have treated the quota issue. They seem ready to concede the point, and then at the last minute they pull away.

Follow the bouncing ball of their logic on this issue. When our Democratic colleagues first introduced H.R. 1, they said that they were doing no more than returning the law to what it had been prior to the Supreme Court's decision in Wards Cove. Then they said, "Well, just in case, we will introduce language in our bill that says it does not require quotas." Then they said, "Well, just to make sure, we will define quotas and then outlaw them—and for good measure we'll let people sue if they do not get a job because of quotas." All I can say, Mr. Chairman, is that I have never seen so much writing about something that is not supposed to exist.

The fact is, Mr. Chairman, that our colleagues on the other side of the aisle have been tap dancing around the core problem of their bill. That is—in the matter of disparate impact, they are not going to the status quo ante, rather they are going to the status quo fantasy. Look at the language that they claim they are taking from the Griggs decision defining "business necessity," a key point in disparate impact cases, I can't find it anywhere in that case, or in any other case for that matter.

Griggs required that where an employment practice had a disparate impact on minorities, the employer can defend the practice by showing that the practice in question has a "manifest relationship to the employment in question." Instead of using this standard, which incidentally has been the law of the land for nearly 20 years now, our colleagues have created a new standard which requires the employers to prove that their practices "bear a significant and manifest relationship to the requirements for effective job

performance." I would ask any one of my colleagues on the other side of the aisle to kindly point out to me in what Supreme Court case, let alone where in the Griggs case, their verbatim language appears.

While they are looking that up, I would also ask them to explain how an employer will avoid the need for quotas if a plaintiff only needs to assert that a "group" or "combination of business practices" is having a disparate impact? How is an employer supposed to respond when he is charged with discrimination because somewhere, amidst all the various factors that go into his or her employment decisions, that some unspecified practice is discriminatory? Wards Cove said, in effect, that if you are going to accuse an employer of a discriminatory job practice, you had better be able to say what practice it is. Is this unreasonable?

If you do not think so, then I would ask you to vote against H.R. 1 and the Brooks alternative and vote for the Michel substitute.

Mr. Chairman, the same thing goes for the question of punitive and compensatory damages. In the Michel substitute there are no punitive nor compensatory damages, because there are none in present law. We do not need any under title VII, for the simple reason that back pay and reinstatement on the job have been the traditional remedies for employment discrimination.

We do have in the Michel substitute a special $150,000 equity opportunity if somebody is being harassed in the workplace. It is a much more logical process.

There are quotas as a practical matter in the Democrat proposal, and we ought to vote "no" on it.

There is a very good alternative, the President's bill, the Michel substitute, and that ought to be the "aye" vote.

Mr. BROOKS. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, first let me say that I think designating the civil rights bill as H.R. 1 is significant symbolism, because all of us gathered in this place know that there are significant problems that cut across race and sex and sexual preference and religion that will require the highest and best in all of us. There are significant problems. So H.R. 1 is important, because it seems to me we ought to not have to be engaging in debating our status as blacks, browns, reds, yellows, and whites and men and women and gay and straight and mentally challenged or physically challenged, because we are going to have to come together to address the human misery across all of these lines. It is going to require our best.

Mr. Chairman, why are we here with the civil rights bill? If all employers were of goodwill, if everyone understood that we are all one Nation, there would be no need for a civil rights bill.

Mr. Chairman, those are not the facts. Discrimination in the workplace on the basis of race and sex are vivid realities. All Members know that. So that is why we are here.

Mr. Chairman, what is the context that brings us together in this legislation? What is the context around which we debate? Severe economic problems, poverty rising, mounting unemployment, dwindling benefits, and many other serious and challenging problems that are corresponding and concurrent issues that flow from these problems. And, yes, discrimination in the workplace.

Mr. Chairman, if we were serious about what we are doing, we would not be engaging in the politics of scapegoating; we would be addressing the economic realities of America and passing a significant civil rights bill full of integrity. But that is not what we are doing.

Mr. Chairman, how is this issue being played in America? How is it breaking down? Mr. Chairman, it is breaking down racially.

The front page of the Washington Post: White America believes that they are losing their jobs, that this threatens them.

Mr. Chairman, what we should be doing is addressing that human misery, not attempting to sell white America, steeped in poverty and unemployment, that in some way blacks, browns, reds, yellows, and women, attempting to redress their historical injustice, are in some way threatening them.

Mr. Chairman, to couple these issues at this particular moment is indeed dangerous. I repeat, it is dangerous. When white America is feeling pain, and we suddenly attempt to join these issues at the hip, we are playing a frightening and dangerous, exploitive and manipulative, game. It is called scapegoating politics.

□ 1800

All these problems need to be addressed. First, let us wake up and deal with the honesty that this is an imperfect society and we have not addressed the problems, but let us do it honestly. If we are not about racial and sex equality in this country, then let us say that. Then our expectations are different; we know how to draw the line. But if we are serious, then let us get on with it, not pitting people against people. This is dangerous.

To these issues of quotas, those are just code words. I listened carefully to the debate, two severe arguments dealing with quotas, one says employer faced with litigation engages in quotas, hires on the basis of race and sex. Suddenly the work force is inferior, unqualified. That on its face is a bigoted statement finally.

When we begin to use quotas as a way of separating people, we have engaged in the politics of divisiveness and we should expect more.

I ask my colleagues to move beyond this absurdity and pass the strongest civil rights bill that we can. That is the major statement we make to ourselves, our children, and our children's children.

Mr. BROOKS. Mr. Chairman, I yield such time as he may consume to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Chairman, I rise in opposition to the bill.

Mr. Chairman, I must reluctantly rise in opposition to H.R. 1 and each of the three substitutes. I find each to be fatally flawed and without the opportunity to amend any of the separate bills, I can support none of them.

It distresses me greatly to oppose the committee and the House leadership in this matter. I abhor discrimination and strongly support civil rights legislation. However, I believe that it would be a grave mistake to pass defective legislation which, rather than resolving the problems of discrimination that continue to divide our society, would merely result in a myriad of lawsuits.

This House has anguished over five Supreme Court cases issued in 1989 dealing with civil rights laws. Wards Cove Packing Co., Inc., versus Atonio; Hopkins versus Price Waterhouse; Martin versus Wilks; Lorance versus AT&T Technologies; and, Patterson versus McLean Credit Union. The expressed purpose of H.R. 1 and each substitute is to overturn this line of cases and return to pre-1989 standards in civil rights case law. However, I find that H.R. 1 and both the Brooks-Fish and Towns-Schroeder substitutes go far beyond overturning these cases and create new standards, new courses of action, and new damages provisions. And they do so with language which, I believe, is not well defined and will result in innumerable court challenges. On the other hand, the Michel substitute does not adequately address the issues either, only overturning two of these cases, codifying, one and not affecting two others.

Let me outline my support and opposition on the principal issues in question. In general I support H.R. 1 and applaud the efforts of my colleagues in crafting this very complex statute. I favor the provision extending title VII application to Congress to guarantee our employees the same protection as everyone else. I favor overturning Patterson versus McLean Credit Union by specifying that section 1981 bans discrimination in all aspects of private contracts. I also favor the overturn of Lorance versus AT&T Technologies to provide that the statute of limitations will begin to run on the later of implementation of the employment practice or when the plaintiff is adversely affected. I agree that there must be finality in consent decrees addressing past discrimination, and, therefore, I favor reversal of Martin versus Wilks. Intentional discrimination is abhorrent in all circumstances and must not be sanctioned. Therefore, I also favor reversing Hopkins versus Price Waterhouse.

Although I am very apprehensive about the provisions dealing with fees, I can accept the allowance to recover reasonable expert fees and awards for reasonable attorney's fees and costs of plaintiffs who successfully defend original judgments. I am cautious, however, because I do not want this bill to become an attorney's relief bill or one which makes it more beneficial for attorneys to go to trial than to settle cases. Therefore, I favor the provisions of the Brooks-Fish substitute which allows attorney's fees to be waived in settlement of disputes.

It is important for plaintiffs to have an adequate time period in which to file claims under title VII and, therefore, I favor the Brooks-Fish substitute provision extending the statute of limitations from 180 days to 18 months.

As I previously stated, I believe that there must be finality in cases of employment discrimination and the statute should encourage the prompt resolution of these cases. Therefore, I favor the administration's approach on effective dates which would apply all provisions of the statute on the day of enactment. To make the application of this bill retroactive would be to encourage the relitigation of numerous cases which have previously been closed.

On the issues of testing and scoring, or "race norming" as it is called, I favor the Brooks-Fish substitute to prohibit the adjustment of test scores on the basis of race, color, sex, religious, or national origin. However, I cannot support the prohibition of tests which are not valid or fair. I do not oppose the concept, but without a specific definition of "valid" and "fair" such language would simply invite litigation and have a deterrent effect on the use of any testing mechanisms.

Although I differ in some ways with the language, I believe that it is important to act on these issues and I could support H.R. 1 in these sections. However, I believe that the bill and the Democratic substitutes are fatally flawed in two very critical areas; disparate impact cases alleging unintentional discrimination resulting from employment practices, and the issue of damages for plaintiffs in cases where international discrimination is proven.

In disparate impact cases there is no intent to discriminate, but certain employment practices "operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability" *Griggs* v. *Duke Power Co.* (401 U.S. 424). In Griggs the Supreme Court held that a business practice which results in disparate impact and is not required by business necessity is unlawful. Much has been said today about the "business necessity standard" of Griggs. In attempting to codify Griggs language, H.R. 1 provides that an employment practice must "bear a significant relationship to successful performance of the job"; the language of the Towns-Schroeder substitute states, "bear a substantial and demonstrable relationship to effective job performance"; while the Brooks-Fish substitute requires the practice to, "bear a significant and manifest relationship to the requirements for effective job performance"; and, the Michel substitute would require the employer to show that the employment practice "has a manifest relationship to the employment in question" or that the employer's "legitimate employment goals are significantly served by, even if they do not require, the challenged practice."

The Supreme Court language in Griggs actually states that the employment practice must be, "shown to be significantly related to successful job performance" 401 U.S. 424, 426; "intended to measure the ability to learn to perform a particular job or category of jobs" at page 428; "practices that are fair in form, but discriminatory in operation," and "cannot be shown to be related to job performance," and "bear a demonstrably relationship to successful performance of the jobs for which it was used" at page 431; "have a manifest relationship to the employment in question" at page 432; and, be "demonstrably a reasonable measure of job performance" at page 436.

I believe that the opinion of the Supreme Court and the intent of Congress is correctly stated in Griggs 401 U.S. 424, at 431 where it states:

> Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

Each substitute attempts to create a different standard than Griggs, and although the language of H.R. 1 is not exact, I believe that it adequately states the rule of business necessity.

Where I have a problem with the disparate impact standard in H.R. 1 is in its expansion of the concept to allow plaintiffs to challenge a group of employment practices resulting in a disparate impact. In cases of unintentional discrimination the plaintiff should be required to challenge specific practices which result in the disparate impact. To allow litigation based upon blanket allegations of disparate impact is to invite plaintiffs to file lawsuits which could frighten employers into hiring by the numbers.

When title VII was enacted, there was no provision for compensatory or punitive damages. One objective was to encourage rapid resolution of disputes arising in the work place. I believe that it is a mistake to extend new damages provisions in title VII actions. New damage clauses are likely to encourage more litigation and refusal to settle disputes in anticipation of a large damages award thus discouraging rapid resolution of complaints.

If the Congress, in its wisdom, does extend compensatory and punitive damages to title VII actions, I believe that it would be unconstitutional to place a cap on damage awards. How can you justify having no limitation on damage awards to a victim of discrimination based upon race yet limit awards to victims of discrimination based upon sex or disability? Either both actions under section 1981 and title VII should be subject to cap limitations on damages, or neither should be. I cannot support the Brooks-Fish substitute which would place a cap on damages. Neither can I support the administration approach of calling the damages "equitable relief." Who was it that said "if it quacks like a duck * * *?"

Finally, let me say that this legislation is not a quota bill, and there is no need to defend it as such. The Supreme Court has already held that quotas are unlawful. However, if the Congress determines that the statute should outlaw quotas, I am in full support. The Brooks-Fish substitute states, "Quota means a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or which cannot be exceeded, regardless of whether such persons meet necessary qualifications to perform the job." The final phase, "regardless of whether such persons meet necessary qualifications to perform the job", could be interpreted to mean that hiring someone based upon race, and so forth, is unlawful only if the person is not qualified. But if from your pool of qualified candidates you hire someone based upon race, and so forth, it is lawful if the person is a minority, a woman, or disabled, but it is unlawful if the person is a white male. If the intent of this language is to codify affirmative action programs wouldn't it be better to do so plainly rather than requiring a back door interpretation of that statute? I recommend that a period be placed after the words "cannot be exceeded" and delete the remainder of the sentence. This would truly codify Griggs and prohibit "discriminatory preference for any group, minority or majority."

Mr. Chairman, some may say that I am being a purist on these issues, and I must compromise. I believe that I am a purist when it comes to interpretation of the U.S. Constitution. I cannot be anything less. But I am also a realist. I have only been in Congress for 5 months; before that I was in the real world of business and law. Based on my real life experience, I believe that this bill will do little to resolve the problems and much to generate hot litigation on the issue.

The laws we enact must ensure that the rights guaranteed by our Constitution are in fact guaranteed to all the citizens of this great Nation. This is my desire and it is the desire of the people I represent. I want to vote "yes" on civil rights protection, but in order to do so I must be able to vote on legislation that solves problems of fairness in our society rather than creating problems of litigation. I hope that I will soon have the opportunity to vote for such a bill.

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. EMERSON].

Mr. EMERSON. Mr. Chairman, I rise in opposition to H.R. 1.

Mr. Chairman, discrimination is reprehensible. We should strive to be a society which holds but a single standard of citizenship, and each individual member of our society will be judged on individual merits and abilities, on individual strengths and weaknesses. We should strive to be a society in which no one will be painted with the broad brush of prejudice—a word which literally means "prejudge"—solely on the basis of skin color, or of gender, or of religion, or of disability, or of national origin.

But if we pass H.R. 1 as it stands today, we will not be putting an end to pre-judging; we will be encouraging it. Why? Because H.R. 1 is a quota bill. Make no mistake about it. If a statistical imbalance becomes tantamount to employment discrimination under H.R. 1's re-

laxed "disparate impact" standards, then the employer who wishes to avoid the costs and burdens of litigation will have no choice but to balance his or her statistics. Translation: hire by the numbers. And that, my friends, is a quota system. That is discrimination.

I believe that we would do well to correct inadequacies in antidiscrimination law wrought by the Supreme Court's controversial 1989 decisions, but H.R. 1 is not the way to do it. A victim of discrimination should have a remedy available and within his or her reach. And we can do this without putting a system of de facto quotas in the American workplace, without presuming guilt until innocence is proven.

I strongly urge my colleagues to vote against H.R. 1 and vote against discriminatory quotas. Civil rights for all Americans can best be secured through the administration's legislative proposal.

Finally, the weakness of the proponents' case for H.R. 1 comes across in the afternoons' debate. I have my own difference fo opinion from time to time with President Bush and do well understand how people can view the same problems in different light, or view various solutions to the same problem as more efficacious, one than the other. But very little has been said here this afternoon by the proponents of H.R. 1 about the merits of H.R. 1. There has been a lot of Bush-bashing, calling him a racist and a lot of other things. Feeling a necessity to indulge in such rhetoric belies the weakness of their substantive arguments. The President is the President of all the people and it is his role to lead us to strive for equality and justice and fairness for all and the overwhelming majority of the American people will not believe that President Bush is a racist because he opposes reverse discrimination. Indeed they will applaud him because the overwhelming majority of people believe deeply in one standard of citizenship for all of our people.

And no one will believe this is not a quota bill in reality when they understand the construction of how it will work if they really want to know how it will work rather than just toss around a lot of rhetoric and all of the rhetoric and accusation of prejudice—name calling when the weight of the argument doesn't carry the argument—will not change the fact of the matter that this bill if it becomes law will indeed result in quotas.

Mr. GOODLING. Mr. Chairman, I yield myself the remainder of my time.

Mr. Chairman, I want to support civil rights legislation that will provide real redress to the victims of workplace discrimination and that will not lead to endless courtroom battles that benefit no one but the attorneys. I cannot support the substitute for H.R. 1 from the other side, but I am prepared today, as I was a year ago, to vote yes on the President's civil rights bill and to provide those who suffer the indignity and pain of an employer's bias meaningful and accessible remedies, consistent with title VII's goals of conciliation rather than confrontation and getting back on the job rather than wasting years in court and, above all, not giving, as I said earlier, the fuzzies on the left and the fuzzies on the right an opportunity to destroy a great Nation.

Mr. Chairman, I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. COLEMAN], an outstanding Member of Congress.

Mr. COLEMAN of Texas. Mr. Chairman, I rise today out of a deep concern about the current state of affairs that our Nation confronts in terms of all Americans coming together and sharing in all that our Nation has to offer. We are a nation founded upon the concepts of equality and justice. Over the years, our Nation has improved dramatically on what these terms mean. As former Congresswoman Barbara Jordan said here in 1974:

"We, the people." It is a very eloquent beginning. But when that document was completed on the seventeenth of September in 1787, I was not included in that "We, the people." I felt somehow for many years that George Washington and Alexander Hamilton, just left me out by mistake. But through the process of amendment, interpretation and court decision I have finally been included in "We, the people."

H.R. 1, despite all that the Republican Party has chosen to claim, fits within that tradition and does little more than reaffirm our Nation's commitment to equality for racial, sexual, and religious victims of bias. It serves to largely restore the legal status quo that existed for nearly two decades before the 1989 Supreme Court rulings, with no evidence of hiring quotas. We should pass this legislation quickly and move forward as a nation to address other urgent social dilemmas such as: increasing rates of crime and drug abuse, children in poverty, problems with our educational system, unemployment, hunger, the problem of the uninsured, lack of adequate housing and the isolation of the underclass.

Clearly, we as a nation are losing our focus. Rather than pandering to the vision of David Duke, the 1990 Republican candidate for Louisiana senator and former Ku Klux Klan leader, as replacing the name Willie Horton with quota as the code word of the Bush administration, we should be moving toward the vision of Martin Luther King, Jr. As former President Jimmy Carter said in 1976, "I see an America in which Martin Luther King's dream is our national dream."

Sadly, we have stalled in our efforts to move toward that vision. In fact, the discrimination of today is much tougher to stamp out than in the past and we sometimes find ourselves stepping backward. The people like David Duke are tougher to confront these days, as they have shed their robes for pinstripe suits, but the racial intolerance, divisiveness, and sexism remains. By not passing this legislation or having it vetoed by the President, I fear we are sending a subtle message that it is fine to continue discriminatory practices.

Futhermore, I would like to reiterate that H.R. 1 does not allow for quotas—it, in fact, outlaws quotas. H.R. 1 is about equal opportunity and fairness—not equal outcomes. This is the role of Government, to provide equal opportunity, and is something we would be remiss in addressing.

We, the United States of America, are the leader in the world. We, the people of this Nation, must set a firm example to the world that we can all coexist, peacefully and together, regardless of color, race and/or creed. I strongly encourage my colleagues and the President to accept this challenge and approve H.R. 1. Let us move down the road toward racial harmony and equal opportunity—not intolerance.

Mr. FORD of Michigan. Mr. Chairman, I yield back the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield back the balance of my time.

Mr. DORNAN of California. Mr. Chairman, I rise in opposition to H.R. 1.

Mr. Chairman, I rise in strong opposition to the racially divisive and inappropriately-named "Civil Rights Act of 1991."

The liberal sponsors of this legislation are seeking to exploit the emotional response generated when anyone uses the words "civil rights." Appropriately, all decent Americans today are deeply concerned that the civil and constitutional rights of minority groups are guaranteed, and we are extremely sensitive to violations of these rights and outraged when civil rights are abridged. In that regard, I am proud to have been an active supporter of the civil rights movement from the beginning, marching with Martin Luther King in August of 1963 and helping to register black voters in the south in following years. However, H.R. 1 does not represent the ideals for which I and others marched. We marched for a colorblind society. H.R. 1 raises color to the point where it is the only thing that matters. This is not what I and countless others marched for.

We should be equally outraged when the term "civil rights" is used to hide the true meaning of legislation which does nothing to promote equality among racial groups. The sponsors of H.R. 1 have labeled this legislation the "Civil Rights Act" in order to intimidate the members of this body into supporting what is not only a blatant quota bill, but one which would actually hinder the protection of civil rights. The sponsors of H.R. 1 will label those of us who vote against this bill as anticivil rights, or worse. This abuse of the great tradition of the civil rights movement is inexcusable and I, for one, will not play that game.

As if taking advantage of the civil rights movement to mask their quota agenda wasn't enough, the liberals are also exploiting women in their political game. H.R. 1 has been renamed by House Labor Committee Democrats as the "Civil Rights and Women's Equity in Employment Act of 1991." In expanding the bill's label to include the women's movement, liberals are desperately trying to distance themselves from the failed "Civil Rights Act of 1990" because they fear that this quota bill will ultimately share the same fate. Just as this

bill will do nothing positive for minorities, it will do nothing positive for women. Call it what you will, this is clearly, undeniably, a quota bill. It deserves the same fate as the 1990 legislation.

No matter how many times you change the face of this bill, you cannot change the fact that it is fundamentally flawed. In a desperate attempt to hide the fact that this legislation will force employers into adopting quota practices, Chairman BROOKS has recently included a provision stating that the bill prohibits quotas. Well, you can call a lemon an orange and you can even paint it orange so it won't look like a lemon. But you cannot change the fact that a lemon is a lemon is a lemon. And you cannot change the fact that this bill is, indeed, a lemon.

The legislation we are considering proposes that any employer whose work force does not rigidly reflect the racial balance of the local population could be forced to prove that the criteria used for hiring and promotion were directly related to job performance. This makes employers guilty until proven innocent, which turns due process on its head. H.R. 1 is a thinly veiled attempt to force employers to enact hiring and promotion quotas. As Charles Krauthammer recently pointed out.

> Any employer who dares hire people in such a way as to produce a work force that is not a racial reflection of his community knows that he risks being sued. He knows, too, that if he cannot "demonstrably" link his hiring criteria to job performance—say, good high school grades with being a good salesman—he loses. The natural inclination of any employer will simply be to spare risk and expense by imposing on himself a quota system and hiring people according to race.

Of course, the liberals will never admit that this is the true intention of H.R. 1.

In the 1971 Griggs decision, the Supreme Court ruled that in "disparate impact" cases, those in which the composition of an employers work force did not reflect the racial or ethnic makeup of the population, the employer must prove that the hiring practice used was a business necessity. The Griggs case and other Supreme Court decisions resulted in massive numbers of companies enacting self-imposed hiring quotas. Under Griggs, a plaintiff need only point out a statistical disparity in an employer's work force. From there, the burden of proof lay on the defendant, the employer, to prove that his business practices were not discriminatory. The original Griggs decision effectively meant that employers were guilty until proven innocent! The 1989 Wards Cove decision, which put the burden on the plaintiff to provide that the statistical disparity was the result of discrimination, rather than business necessity, was a sound one. It should not be reversed, as H.R. 1 proposes.

One harmful effect of this quota policy will be that, by forcing employers to hire someone because of his or her race, rather than qualifications, other applicants will be discriminated against. H.R. 1 will not promote racial equality, as the sponsors purport. In practice, it will pit race against race, dividing Americans, and fueling the fire of racial strife. It would also result in those minorities who do have qualifications living under a cloud of suspicion. They will always be dogged by doubts as to whether they gained their position on merit. This could have devastating psychological impacts on minority employees and could cripple the spirit of those trying to better themselves through hard work and determination. I urge my colleagues to seriously consider the terrible effect that this could have on millions of minorities who are struggling to raise their status. These tragic results of the enactment of H.R. 1 will ultimately serve to reverse many of the advances achieved by the civil rights movement.

Another major element of this legislation which is detrimental to minority communities is that it allows the continuation of race norming or within group norming in tests given to job applicants. Under this system, all job candidates are given the same aptitude tests. However, for scoring purposes, applicants are divided into racial or ethnic groups and individuals are judged only against others in their racial or ethnic groups. Percentile scores, rather than percent-correct scores, are reported to potential employers. This means that individuals with lower scores may actually have higher percentile scores than others who scored higher. For example, suppose two applicants both answer 75 out of 100 questions correctly. They should both be in the same percentile among all other applicants, right? Wrong. If those two applicants are of different races, one could receive, for example, a 90 percent score while the other receives a 60 percent score because each are judged only against those of the same racial group.

Race norming is not only divisive and inflammatory, it is directly at odds with everything the civil rights movement fought for over the years: a colorblind society in which every American is judged on his abilities, not on his race. Race norming segregates Americans into racial and ethnic groups, dividing them against each other and ethnic groups, dividing them against each other and encouraging racial strife. While those who have advocated this system may have good intentions, race norming is based on the assumption that those in certain racial groups cannot compete with those in other groups and that they must be treated separately. This assumption not only belittles the abilities of minorities, it smacks of racism. Blacks and other minorities, do not need special testing methods, they need equal opportunities. Given an equal shot at proving their abilities, blacks and other minorities have shown again and again that they can be just as productive and talented as anyone else. Like hiring and promotion quotas, race norming cripples the spirit and determination of those trying to better themselves. Democrats have adopted provisions in their substitute for H.R. 1 to curtail the use of race norming. However, this practice must be completely banned, as mandated in the Republican alternative legislation.

The practice of race norming is more widespread than many of my colleagues may know. It is currently being used by State employment agencies in 34 States, and the Department of Labor is actively encouraging states to utilize this system with the General Aptitude Test Battery [GATB]. Congressman HYDE has offered an amendment to prohibit this destructive practice and I strongly support his proposal, although I know that the liberal majority will shoot down this commonsense proposal—if they even allow it to be debated on the floor of the House.

Of course, since most liberals rarely think about the consequences of their actions, the supporters of H.R. 1 will not admit that this legislation will reverse much of the progress we have made in protecting civil rights. And we have made progress. I can tell you as one who has traveled to over 130 countries that there is no place in the world as racially and religiously tolerant as the United States. No where. But we can do better, though not by instituting quotas or dividing the populace in racial and ethnic categories.

Another effect of this bill is perfectly clear. If H.R. 1 becomes law, there will no longer be unemployed lawyers in the United States. Passage of this legislation will mean an unending supply of discrimination cases for trial lawyers throughout the country. The legislation would allow those claiming discrimination to receive punitive and compensatory damages and demand jury trials. The statute of limitations for filing claims would be extended to 2 years. Individuals could take baseless claims to trial and force employers to settle in order to avoid the high cost of prolonged litigation, which is why H.R. 1 would be more aptly named the "Trial Lawyer's Relief Act of 1991." Passage of the so-called Civil Rights Act may be good news for the liberals at the American Bar Association but it spells disaster for America.

I recently received a letter from one of my favorite liberals, Ed Koch, the former mayor of New York, urging me to vote against H.R. 1. Mayor Koch said that:

> I am opposed to H.R. 1 because it will adversely affect everyone in this country: The vast majority of our citizens will suffer reverse discrimination in employment, while others will be provided preferential treatment and, therefore, blamed for the resulting unfairness. Yet, tragically, this bill does nothing to assist those who need training and better education in order to compete in the labor market.

Ed Koch has been one of the staunchest supporters of the civil rights movement over the years and I can only hope that a few of the liberals in the House of Representatives will open their eyes and see what Mayor Koch so clearly sees.

As H.R. 1 has come closer to consideration by the full House, we have seen a so-called compromise proposal offered which would supposedly cap damages at $150,000. Never mind that the compromise did not include Republicans, but was only a compromise among the Democrats. However, the alleged cap would only apply to punitive damages, not to compensatory damages. Furthermore, and this is the most laughable element of the "compromise," punitive damages would be capped at the greater of $150,000 or amount of compensatory damages, plus back-pay. Not the lesser. Again, since there is no cap on compensatory damages, a $150,000 cap is a falsehood. This noncompromise compromise really has no caps, but it sure has a lot of smoke and mirrors.

I'd like to make one last point. It is simply ridiculous to suggest that with all the problems facing minorities, particularly the black community—the breakdown of the family, crime, drugs, joblessness—that this bill is the answer

to what ails black America. This bill would not address one problem confronting America's black underclass. Not one. Instead of passing legislation allowing middle-class blacks the right to sue for compensatory and punitive damages because of some numbers game, we should be passing legislation to establish enterprise zones and tenant ownership of public housing, improving educational performance, dealing seriously with crime, which affects the black underclass more than any other Americans, and keeping black families together. As columnist William Raspberry recently worte, "I think there are issues of far greater significance to our well-being and that to make passage of the bill our No. 1 priority is to divert attention from those more significant issues." In short, H.R. 1 is simply not the answer to the problems of the black community.

I have to wonder whether the liberals who are pushing so hard for the passage of this legislation aren't more interested in the political benefits to be reaped from something, anything, called a civil rights bill rather than in working for legislation which will truly help minorities. For example, the same Judiciary Committee which reported H.R. 1 has for several months refused to take any action on the President's anticrime package, despite the loud cheers from both sides of the aisle when the President called for passage within 100 days after his State of the Union speech. This legislation contains provisions, such as exclusionary rule reform, habeas corpus reform, and the death penalty for certain violent killers, which are absolutely critical to the effort to curtail the violent crime epidemic which is destroying America's inner cities. The war on crime is more crucial to blacks and other minority groups in America, who bear a disproportionately greater burden of the crimes in this country, than this numbers game the liberals are playing in pressing for passage of H.R. 1. Maybe the liberals don't agree with all of the President's anticrime proposals, but they could at least hold hearings on the legislation. Surely, the liberals could at least allow a debate on these issues. Or maybe the liberals are more interested in posturing to minorities than in acting on serious proposals to assist them.

H.R. 1 is an affront to those of us who have always supported meaningful civil rights legislation. Yes; H.R. 1 is bad for business. But it is also for workers, who will suffer the consequences of businesses which are crippled by the implications of this bill. It is bad for minority groups and will cripple the progress we have made on civil rights. In short, H.R. 1 is bad for America and I will not support it.

Mr. MOODY. Mr. Chairman, I rise in support of H.R. 1. I urge my colleagues to vote for this much needed and historic civil rights bill because it is fair. It is needed to help solve what I believe is this Nation's most intractable problem—lack of full economic opportunity for minority Americans. 1989 saw an erosion of then existing civil rights that H.R. 1 would restore and strengthen, reinvigorating the American dream for millions of Americans.

The Civil Rights Act of 1964 was intended to eliminate discrimination in the workplace. Unfortunately, the facts show that substantial and entrenched discrimination still faces women and racial minorities in the workplace. A recent Urban Institute study shows that discrimination for black male jobseekers still exists. Their investigation sent equally qualified white and black male job candidates to apply for the same jobs. This study concluded that in one out of five cases, the white applicant was able to advance farther through the hiring process than his equally qualified black counterpart. The study also found that overall, in 15 percent of the cases, the white was offered a job although his equally qualified black partner was not. This recent, carefully conducted study which clearly demonstrated that blacks were denied equal opportunities cannot be ignored. We must respond to these scholarly findings, and the everyday experience we have all seen.

Studies done on other minority groups, including women, show similar results. Women still earn considerably less than men for the same jobs and are often denied the same career opportunities. These large discrepancies in the workplace cry out for the need to improve civil rights laws here in America in 1991.

Since its introduction early last year, proponents have made many changes, adjustments and compromises in the Civil Rights Act before us today in order to address the concerns of the business community, such as outlawing quotas. This is a carefully crafted piece of legislation that has gone through countless hours of scrutiny from many different people representing many different concerns. But H.R. 1 has two unchanged principal purposes which are at the center of the bill and at the controversy: First, the Act restores the workplace protections enjoyed prior to 1989, and second, the Act strengthens Title VII of the 1964 Civil Rights Act by providing monetary damages for intentional discrimination.

RESTORING EQUAL OPPORTUNITY

Civil rights on the books are meaningless if they don't ensure remedial measures under our court system. Title VII of the Civil Rights Act of 1964 contains a provision which attempts to eliminate the effects of past discrimination and to deter future discrimination but has one serious flaw. It allows no damages remedy. This means that victims of intentional discrimination go uncompensated and employers go undeterred.

Over a hundred years ago, a Reconstruction-era law, section 1981, allowed victims of racial bias both punitive and compensatory damages. H.R. 1 would extend these same benefits to women and religious minorities in 1991. The bill amends title VII to allow women and religious minorities the right to sue for monetary damages for harassment and other forms of international discrimination. This is important because without damages, the deterrent against repeating intentional discrimination would be inadequate.

I oppose placing an artificial cap on monetary damages for intentional discrimination and also support the Towns-Schroeder substitute which removes a cap. We will not have a completely fair and gender-blind bill if we cannot provide the same rights for any group facing intentional discrimination.

The complaints of some small businesses that this expansion in title VII will put them out of business concerns me for two reasons. First of all, businesses have had to comply with this rule for racial minorities since shortly after the Civil War when section 1981 was enacted. This has not bankrupted small businesses. Secondly, damages could be awarded only when an employer is found to discriminate intentionally. Businesses that provide equal opportunities need not be concerned. Hiring practices that simply happen to have disparate impact on women or minority workers cannot result in punitive or compensatory damages. For punitive damages, discrimination must be shown to be intentional.

RESTORING THE BURDEN OF PROOF AND THE QUESTION OF QUOTAS

The allegation that H.R. 1 will create hiring quotas seems to be the biggest misconception about the bill, and is being used as a scare tactic by the bill's opponents. The Act would simply clarify and restore the burden of proof which was established in 1971, and was in place until 1989. Employees would still have to prove discrimination or prove that an employment practice results in the exclusion of qualified women or minorities, before an employer would be required to justify a proven discriminatory practice as a business necessity. The primary and initial burden would fall on the plaintiff, not the employer.

I do not approve of quotas and I don't know any supporters of H.R. 1 that do. In fact, hiring quotas would be illegal under H.R. 1. Specific language was also added to clarify that numerical imbalances alone cannot be used to establish a violation. Section 111 in the substitute specifically says:

> Nothing in the amendments made by this Act shall be construed to require, encourage, or permit an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex or national origin.

H.R. 1 merely codifies the Supreme Court's 1971 Griggs decision which said that employer practices that work to the disadvantage of women and minorities—called "disparate impacts"—violate title VII unless they can be justified by business necessity. Such practices are said to have a disparate impact on minorities. This was the noncontroversial standard used from 1971 until 1989 when the Supreme Court issued the surprising Wards Cove decision which shifted the burden of proof to the plaintiff. Under the Wards Cove decision the plaintiff would have to prove that a discriminatory practice was not required by business necessity. The Wards Cove decision also made it more difficult for employees to prove discrimination and totally eliminated the responsibility of employers to prove business necessity for discriminatory practices.

Sections 101 and 102 of the Act before us includes the language that restores the Griggs standard by clarifying what needs to be proved when job practices are discriminatory because of disparate impact. This bill requires the plaintiff to show how an employment practice has a disparate impact. H.R. 1 states that an employment practice that has a disparate impact can be defended by an employer as required by business necessity which is defined in section 101 of the bill as having "substantial and manifest relationship to the requirements for effective job performance."

My research into how disparate impact cases are dealt with by the Equal Employment Opportunity Commission [EEOC] has further

convinced me that H.R. 1 will not result in quotas. All disparate impact cases have to be investigated by the EEOC which is required to look at hiring and employment records of employers who are accused of discrimination. The EEOC closely examines an employer's records to ensure that only qualified applicants—not just anyone applying—are included when determining if a practice results in disparate impact. The EEOC never looks simply at the numbers of the employees hired, and H.R. 1 would further clarify that they would not be allowed to do so.

The Griggs standard was successfully used for 18 years and was easily understood by employers and employees. This standard did not result in quotas. During the many days of hearings on the civil rights bill there was never any evidence from opponents of the bill showing that it did result in quotas.

I am convinced that H.R. 1 is a fair bill to both employees and employers. It will strengthen our Nation's civil rights laws while ensuring that businesses do not have to impose the use of unfair quotas.

Mr. LEVINE of California. Mr. Chairman. I rise today in support of the Civil Rights Act of 1991 and to dispel some myths that have been flying around since the last election. This bill is about qualified workers who, because of recent Supreme Court decisions, face discrimination on the job that now goes unpunished and uncompensated. Contrary to the claims of its opponents, this bill is not about giving particular groups special protections at the expense of others. In fact, the bill seeks to ensure just the opposite: that all qualified workers have equal opportunity in the workplace. It was carefully crafted to ensure that race, ethnicity, gender, disability, and religion will not be factors in hiring and promotion decisions.

H.R. 1 would restore to the disenfranchised American workers equal opportunity rights lost in Supreme Court decisions in 1989. Not only does the bill not allow quotas, but by statute makes them illegal. Yet in its desperate attempt to politicize the issues of race and gender, the administration and its allies in Congress have labeled this legislation a quota bill.

I oppose quotas. No member of our society should be victimized by artificial quotas as were my parents. If I really believed that this were a quotas bill, even a de facto quota bill, I would oppose it. The language in this bill which forbids quotas is the reason every national Jewish organization in the country supports its passage.

However, quotas are not the real issue at stake. The administration knows that. Instead, the cynical political hacks of the Republican Party have decided that at a time when jobs are tough to come by, they can make political capital out of race-baiting. They used the issue of quotas with incredible success in the recent elections, and they do not want to give it up. They even strong-armed the Business Roundtable into withdrawing from negotiations to find a consensus on H.R. 1 just when those negotiations appeared to be on the brink of success. All this was perpetrated in the name of politics, the politics of fear and cynicism.

This tactic is both absurd and dangerous. It is dangerous because the completely baseless quota allegation has instigated divisiveness at the precise time this country needs unity to deal with such a crucial issue. It is absurd because the bill bans the exact type of quota that the President himself had criticized before the elections.

Beyond the hysterical rhetoric, the facts expose the quota myth. Opponents have asserted that to avoid potential lawsuits, employers would turn to quota hiring. But not one iota of evidence has been produced that shows that the standard the bill seeks to restore, in the 18 years it was in effect, ever led an employer to adopt a quota system. Additionally, under the bill, an employer who resorts to using quotas to comply with the Act will be faced with two lawsuits: one addressing the initial discriminatory practice, and the other addressing the illegal quota. Even without the anti-quota assurances in the bill, this is not a quota bill. Racial preference has always been prohibited under the law. But despite this precedence, the language of the bill makes quotas explicity illegal.

The purpose of this bill is solely to reverse five of the most outrageous Supreme Court decisions of our generation. It will provide women, minorities, and the disabled with a level playing filed to prove that they have been the victims of discrimination. Without this legislation, the cards will be so heavily stacked against discrimination victims they will stand little chance of prevailing in court.

Passage of this bill is critical. It is the most significant civil rights legislation in more than two decades. I urge my colleagues to reject the unfounded, politically based claims of the opponents of the Civil Rights and Women's Equity in Employment Act. It is past time to work toward justice for all Americans. It is time to pass this bill.

Mr. GRADISON. Mr. Chairman, at issue today is how best to address the effects of five decisions handed down by the Supreme Court in 1989 that disturbed settled case law by reinterpreting title VII of the Civil Rights Act of 1964, the principal Federal statute covering discrimination in employment, and section 1981, which bans racial discrimination in the making and enforcing of private contracts, including employment contracts.

In my view, the Court erred in its interpretation of the intent of Congress. I believe the Congress should move to correct the Court's decisions. That is, we should return the law to the status quo ante. However, neither the committee bill, the Towns-Schroeder substitute, or the Brooks-Fish leadership substitute, do that. The Michel substitute, which is very similar to the President's civil rights bill, H.R. 1375, which I cosponsored, is the closest to a strict return to the consensus on employment law that which existed just a short 2 years ago.

There has been a lot of discussion, much of it emotional, about the charges and countercharges about whose bill encourages the use of quotas in the workplace. Politics has dominated this particular discussion much more than dispassionate legal argument. That is unfortunate. In my view, there is ony one way to ensure that quotas will not result from anything we do here. Congress should reinstate the standard, initially set forward in Griggs versus Duke Power Co., concerning business necessity. The Griggs standard was the consensus prior to the Supreme Court's recent decisions.

In addition, the plaintiff in an employment discrimination case should be required to identify the specific practice which causes either an imbalance in the work force or which is the specific cause of discrimination against him. Reliance on merely an abstract statistical numbers game should not be the standard by which discrimination against the individual should be measured.

Only the Michel substitute meets these tests. In fact, one of the most disturbing aspects of the leadership's groping exercise toward constructing a veto-proof majority in this House has been the manner in which the proponents of the Brooks-Fish substitute have altered the definition of business necessity. Three times in the last 4 weeks, definitions in the leadership substitute have been changed to reflect the ever shifting political landscape. The definition currently in the leadership bill has never been the subject of review by the Judiciary Committee. Is this the way discrimination law should be written?

The Michel substitute has been criticized because it does not contain an explicit prohibition against the use of quotas. The Brooks-Fish substitute contains new language, again without being subject to reivew by the Judiciary Committee, that the sponsors claim outlaws quotas. Yet, title VII already prohibits their use. The risk is that the very narrow definition of a quota provided in the Brooks-Fish substitute will, at a minimum, create confusion.

The perverse effect could well be to give plaintiffs, employers, and the courts a guide to the types of quotas that would be permitted. With a narrow definition of a quota, rather than an explicit prohibition as contained in title VII, combined with the definition of business necessity, the Brooks-Fish substitute is an invitation to non-prohibited types of quotas and extensive litigiousness. Towns-Schroeder and the underlying bill are no better.

Beyond the issue of quotas, the Michel substitute is preferable in several other areas. I will mention only two.

The Michel substitute contains language, offered by Mr. Hyde, that prohibits the practice of race-norming. This practice is used by employers and employment agencies to adjust artificially the test scores of job applicants based merely on race and ethnicity. None of the Democratic sponsored options do away with this practice.

I am very concerned that the underlying bill and the Brooks-Fish substitute contain provisions endorsing the concept of comparable worth or pay equity. By requiring the Secretary of Labor to carry out a continuing program of disseminating information critical to organizing a pay equity system, to promote such research, and to provide technical assistance to anyone who requests it, Congress would endorse the underlying concept.

In my view, the economics of pay equity are specious and insupportable. Yet, on a critical issue that could effect millions of Americans there is to be no real debate. These provisions have not been fully debated and no amendment dealing with this issue is permitted on the floor today. What are pay equity provisions doing in this bill anyway? The proponents continue to say they are only interested in restora-

tion of prior law. This section is emblematic of the central problem. This legislation and the Democratic substitutes, are far from mere restoration, which I support.

Mr. Chairman, we have come a long way in this society in eradicating discrimination and building a society that fulfills the promise of the Constitution. Yet, we all know we have a long way to go to realize that promise. We should continue to struggle toward that goal. Congress should do everything necessary to encourage the emergence of a color-blind society in which everyone enjoys equal protection of the law and equal access to justice and the redress of grievances. This was the original mission of the civil rights movement and this is a mission with which all Americans agree.

I am disappointed that the Brooks-Fish substitute, which is likely to pass this body, fails this essential test. I am deeply concerned that this legislation will make our society more color-conscious, rather than less, thereby raising the specter of needless division. I had hoped that the House would rise above the temptation of political posturing to deal with the real problems posed by the decisions of the Supreme Court. Mr. Chairman, this debate is far from the finest hour of the House and this legislation is far from what true civil libertarians should support.

Mr. HANCOCK. Mr. Chairman, today is a sad day for those Americans with good common sense. Today we consider a quota bill which will increase, beyond even what we have already done, the devastation to businessmen in this country. But still we hear from our colleagues on the left that this is the right thing to do.

Ask yourself, is it right to force a business to hire someone less qualified just because their skin is a certain color? Wasn't this race-based mentality the reason for the whole civil rights movement in the 1960's? Didn't Dr. King ask that we judge a man not by the color of his skin but the content of his character?

Liberals are saying that changes in H.R. 1 will make quota illegal. This is equivalent to the Soviet Minister of Finance declaring the Soviet economy will set record profits. Saying so won't make it happen. If H.R. 1 becomes law, businessmen just won't have any other choice than to hire by numbers.

Don't be fooled. This is a quota bill. It is an opportunity for liberals to continue their attack on the very foundations which drive our great Nation. If this bill is passed into law, all American businessmen and women, black, white, red, brown will suffer yet another loss at the hands of those who use race as a weapon.

Mr. DUNCAN. Mr. Chairman, there are so many millions of laws, rules, and regulations on the books today that they haven't even designed a computer that can keep up with them all—much less a human being.

There are thousands of laws, rules, and regulations outlawing every type of discrimination at the Federal, State, and at the local level.

Every form of discrimination is already illegal—regardless of what we do on the so-called civil rights bill today.

This is why it said in USA Today yesterday that Members have heard very little from their constituents on this issue.

What we are really arguing about is lawyers fees ad legal technicalities.

I was a lawyer and judge before coming to Congress and I want to see all lawyers do well.

But lawyers are already making big fees in these cases. Also, we do not need another army of bureaucrats that will become necessary to administer this legislation.

We do not need to place another straitjacket on business. If we really want to help minorities and all people in this country, we will work to allow free enterprise into our system once again.

This would help the economy and would do more to help the working people of this Nation than any law we can pass here on the Congress.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message from the President.

MESSAGE FROM THE PRESIDENT

The SPEAKER pro tempore. (Mr. SKAGGS) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

CIVIL RIGHTS AND WOMEN'S EQUITY IN EMPLOYMENT ACT OF 1991

The Committee resumed its sitting.

The CHAIRMAN. Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on Education and Labor is considered as an original bill for the purpose of amendment and is considered as having been read.

H.R. 1

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 "Civil Rights and Women's Equity in Employment Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in a series of recent decisions addressing employment discrimination claims under Federal law, the Supreme Court cut back dramatically on the scope and effectiveness of civil rights protections; and

(2) existing protections and remedies under Federal law are not adequate to deter unlawful discrimination or to compensate victims of such discrimination.

(b) PURPOSES.—The purposes of this Act are to—

(1) respond to the Supreme Court's recent decisions by restoring the civil rights protections that were dramatically limited by those decisions; and

(2) strengthen existing protections and remedies available under Federal civil rights laws to provide more effective deterrence and adequate compensation for victims of discrimination.

TITLE I

SEC. 101. GLASS CEILING COMMISSION.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in executive, management and senior decisionmaking positions in business;

(B) artificial barriers exist to the advancement of women and minorities in employment;

(C) enforcement of Federal equal employment opportunity laws by Federal agencies has not effectively addressed such underrepresentation or eliminated such artificial barriers;

(D) the "Glass Ceiling Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of—

(i) the underrepresentation of women and minorities at the executive, management and senior decisionmaking levels in the United States work force; and

(ii) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(E) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(i) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to executive, management and senior decisionmaking positions in business; and

(ii) promote work force diversity; and

(F) a comprehensive study that includes analysis of the manner in which executive, management and senior decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions.

(2) PURPOSE.—The purpose of this section is to establish a Glass Ceiling Commission to study—

(A) the manner in which business fills executive, management and senior decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace.

(b) ESTABLISHMENT.—There is established a Glass Ceiling Commission (referred to in this section as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities in employment; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to executive, management and senior decisionmaking positions in business.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 19 members—

(A) 3 individuals appointed by the President;

(B) 4 individuals appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate;

(C) 2 individuals appointed by the majority leader of the House of Representatives;

(D) 1 individual appointed by the minority leader of the House of Representatives;

(E) 2 individuals appointed by the majority leader of the Senate;

(F) 1 individual appointed by the minority leader of the Senate;

(G) 2 Members of the House of Representatives appointed jointly by the majority leader and the minority leader of the House of Representatives;

(H) 2 Members of the Senate appointed jointly by the majority leader and the minority leader of the Senate;

(I) the Secretary of Labor; and

(J) the Chairman of the Equal Employment Opportunity Commission.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold executive, management or senior decisionmaking positions in corporations or other business entities; and

(C) possess academic expertise or other recognized ability regarding employment and discrimination issues.

(d) CO-CHAIRPERSONS.—The Secretary of Labor, and one individual appointed under subsection (c)(1)(B) who is designated jointly by the appointing authority, shall serve as the Co-chairpersons of the Commission.

(e) TERM OF OFFICE.—Members and Co-chairpersons shall be appointed for the life of the Commission.

(f) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(g) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in subsection (j)(2). The Commission shall hold additional meetings if the Co-chairpersons or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in subsection (j)(2). The Commission shall hold additional meetings if the Co-chairpersons or a majority of the members of the Commission request the additional meetings in writing.

(h) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(i) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission and travel.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, as authorized by sections 5702 and 5703 of title 5, United States Code.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code, and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

(j) STUDIES OF ADVANCEMENT OF WOMEN AND MINORITIES TO EXECUTIVE, MANAGEMENT AND SENIOR DECISIONMAKING POSITIONS IN BUSINESS.—

(1) STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions in business. In conducting the study, the Commission shall—

(A) examine the preparedness of women and minorities to advance to executive, management and senior decisionmaking positions in business;

(B) examine the opportunities for women and minorities to advance to executive, management and senior decisionmaking positions in business;

(C) conduct basic research into the practices, policies, and manner in which executive, management and senior decisionmaking positions in business are filled;

(D) conduct comparative research of businesses and industries in which women and minorities are promoted to executive, management and senior decisionmaking positions, and businesses and industries in which women and minorities are not promoted to executive, management and senior decisionmaking positions;

(E) evaluate the efficacy of enforcement (including, but not limited to, such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment;

(F) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to executive, management and senior decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(G) examine any other issues and information relating to the advancement of women and minorities to executive, management and senior decisionmaking positions in business.

(2) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(A) the findings and conclusions of the Commission resulting from the study conducted under paragraph (1); and

(B) recommendations based on the findings and conclusions described in subparagraph (A) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions in business, including recommendations for—

(i) policies and practices to fill vacancies at the executive, management and senior decisionmaking levels;

(ii) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume executive, management and senior decisionmaking positions;

(iii) compensation programs and reward structures utilized to reward and retain key employees; and

(iv) strategies for enforcement of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(3) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to executive, management and senior decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

(k) POWERS OF THE COMMISSION.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements in any fiscal year only to such extent or in such amounts as are provided in appropriations Acts;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(l) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(m) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(n) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Co-chairpersons of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(o) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(p) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(q) CONFIDENTIALITY OF INFORMATION.—

(1) INDIVIDUAL BUSINESS INFORMATION.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in subsection (j), the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(3) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(A) information about the aggregate employment practices or procedures of a class or group of businesses; and

(B) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

(r) STAFF AND CONSULTANTS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(B) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chap-

ter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(s) EXPERTS AND CONSULTANTS.—The Co-chairpersons of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(t) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Co-chairpersons of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(u) TECHNICAL ASSISTANCE.—On the request of the Co-chairpersons of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section. Such sums shall remain available until expended, without fiscal year limitation.

(w) TERMINATION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

SEC. 102. PAY EQUITY TECHNICAL ASSISTANCE.

(a) STATEMENT OF PURPOSE.—Recognizing that the identification and elimination of discriminatory wage-setting practices and discriminatory wage disparities is in the public interest, the purpose of this section is to help eliminate such practices and disparities by—

(1) providing for the development and utilization of techniques that will promote the establishment of wage rates based on the work performed and other appropriate factors, rather than the sex, race, national origin, or ethnicity of the employee; and

(2) providing for the public dissemination of information relating to the techniques described in paragraph (1), thereby encouraging and stimulating public and private employers, through the use of such techniques, to correct wage-setting practices and eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors.

(b) PROGRAM SPECIFICATIONS.—In order to carry out the purpose of this section, the Secretary of Labor shall develop and carry out a continuing program relating to pay equity. Such program shall include—

(1) the dissemination of information on efforts being made in the private and public sectors to reduce or eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors;

(2) the undertaking and promotion of research into the development of techniques to reduce or eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors; and

(3) the provision of appropriate technical assistance to any public or private entity requesting such assistance to correct wage-setting practices or to eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors.

(c) DEFINITION.—For the purpose of this section, the term "other appropriate factors" includes factors such as—

(1) the skill, effort, responsibilities, and qualification requirements for the work involved, taken in their totality;

(2) geographic location and working conditions; and

(3) seniority, merit, productivity, education, and work experience.

SEC. 103. SUBMISSION OF EEOC SUMMARY AND ANALYSIS OF EQUAL EMPLOYMENT OPPORTUNITY DATA.

Section 705(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(e)) is amended by inserting after the first sentence the following: "The Commission shall include in each such report a summary and analysis of data submitted by employers concerning employment opportunities by sex, race, national origin, or ethnicity occurring among and within industries and occupational groups.".

SEC. 104. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following:

"(2) In exercising its powers under this title, the Commission may make grants to State or local governmental entities or public or nonprofit private organizations to carry out educational and outreach activities (including dissemination of information in languages other than English) designed to inform the public (especially individuals who historically have been victims of employment discrimination) concerning rights and obligations under this title.".

SEC. 105. ANNUAL REPORT BY OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS.

Section 718 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–17) is amended—

(1) by inserting "Programs" after "Compliance"; and

(2) by adding at the end the following:

"At the close of each fiscal year, the Office of Federal Contract Compliance Programs shall submit to the Congress and to the President a report that includes—

"(1) a summary and analysis of affirmative action reports submitted to such Office by employers who enter into Government contracts; and

"(2) an analysis of employment opportunities and wage differentials by sex, race, national origin, or ethnicity occurring among and within industries, occupations, job groups, and job titles.".

TITLE II

SEC. 201. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end thereof the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'group of employment practices' means a combination of employment practices that produces one or more decisions with respect to employment, employment referral, or admission to a labor organization, apprenticeship or other training or retraining program.

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in Griggs v. Duke Power Co. (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in Wards Cove Packing Co., Inc. v. Atonio (109 S. Ct. 2115 (1989)).

"(p) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof).".

SEC. 202. RESTORING THE BURDEN OF PROOF IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end thereof the following new subsection:

"(k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—(1) An unlawful employment practice based on disparate impact is established under this section when—

"(A) a complaining party demonstrates that an employment practice results in a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is required by business necessity; or

"(B) a complaining party demonstrates that a group of employment practices results in a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such group of employment practices is required by business necessity, except that—

"(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact;

"(ii) if the respondent demonstrates that a specific employment practice within such group of employment practices does not contribute to the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity; and

"(iii) if the court finds that the complaining party can identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact—

"(I) the complaining party shall be required to demonstrate which specific practice or practices contributed to the disparate impact; and

"(II) the respondent shall be required to demonstrate business necessity only as to the specific practice or practices demonstrated by the complaining party to have contributed to the disparate impact;

except that an employment practice or group of employment practices demonstrated to be required by business necessity shall be unlawful where a complaining party demonstrates that a

different employment practice or group of employment practices with less disparate impact would serve the respondent as well.

"(2) A demonstration that an employment practice is required by business necessity may be used as a defense only against a claim under this subsection.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses an illegal drug as defined in Schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

"(4) The mere existence of a statistical imbalance in an employer's workforce on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.".

SEC. 203. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 202) is further amended by adding at the end thereof the following new subsection:

"(l) DISCRIMINATORY PRACTICE NEED NOT BE SOLE CONTRIBUTING FACTOR.—Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a contributing factor for any employment practice, even though other factors also contributed to such practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended by inserting before the period in the last sentence the following: "or, in a case where a violation is established under section 703(l), if the respondent demonstrates that it would have taken the same action in the absence of any discrimination. In any case in which a violation is established under section 703(l), damages may be awarded only for injury that is attributable to the unlawful employment practice".

SEC. 204. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 202 and 203) is further amended by adding at the end thereof the following new subsection:

"(m) FINALITY OF LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—(1) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order resolving a claim of employment discrimination under the United States Constitution or Federal civil rights laws may not be challenged in a claim under the United States Constitution or Federal civil rights laws—

"(A) by a person who, prior to the entry of such judgment or order, had—

"(i) actual notice from any source of the proposed judgment or order sufficient to apprise such person that such judgment or order might affect the interests of such person and that an opportunity was available to present objections to such judgment or order; and

"(ii) a reasonable opportunity to present objections to such judgment or order;

"(B) by a person with respect to whom the requirements of subparagraph (A) are not satisfied, if the court determines that the interests of such person were adequately represented by another person who challenged such judgment or order prior to or after the entry of such judgment or order; or

"(C) if the court that entered the judgment or order determines that reasonable efforts were made to provide notice to interested persons.

A determination under subparagraph (C) shall be made prior to the entry of the judgment or order, except that if the judgment or order was entered prior to the date of the enactment of this subsection, the determination may be made at any reasonable time.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which they intervened;

"(B) apply to the rights of parties to the action in which the litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the United States Constitution.

"(3) Any action, not precluded under this subsection, that challenges an employment practice that implements and is within the scope of a litigated or consent judgment or order of the type referred to in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 205. STATUTE OF LIMITATIONS; APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.

(a) STATUTE OF LIMITATIONS.—Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by striking out "one hundred and eighty days" and inserting in lieu thereof "2 years";

(2) by inserting after "occurred" the first time it appears "or has been applied to affect adversely the person aggrieved, whichever is later,";

(3) by striking out ", except that in" and inserting in lieu thereof ". In"; and

(4) by striking out "such charge shall be filed" and all that follows through "whichever is earlier, and".

(b) APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.—Section 703(h) of such Act (42 U.S.C. 2000e-2) is amended by inserting after the first sentence the following new sentence: "Where a seniority system or seniority practice is part of a collective bargaining agreement and such system or practice was included in such agreement with the intent to discriminate on the basis of race, color, religion, sex, or national origin, the application of such system or practice during the period that such collective bargaining agreement is in effect shall be an unlawful employment practice.".

SEC. 206. PROVIDING FOR DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) is amended by inserting before the last sentence the following new sentences: "With respect to an unlawful employment practice (other than an unlawful employment practice established in accordance with section 703(k)) or in the case of an unlawful employment practice under the Americans with Disabilities Act of 1990 (other than an unlawful employment practice established in accordance with paragraph (3)(A) or paragraph (6) of section 102 of that Act) as it relates to standards and criteria that tend to screen out individuals with disabilities)—

"(A) compensatory damages may be awarded; and

"(B) if the respondent (other than a government, government agency, or a political subdivision) engaged in the unlawful employment practice with malice, or with reckless or callous indifference to the federally protected rights of others, punitive damages may be awarded against such respondent;

in addition to the relief authorized by the preceding sentences of this subsection, except that compensatory damages shall not include backpay or any interest thereon. Compensatory and punitive damages and jury trials shall be available only for claims of intentional discrimination. If compensatory or punitive damages are sought with respect to a claim of intentional discrimination arising under this title, any party may demand a trial by jury.".

SEC. 207. CLARIFYING ATTORNEYS' FEES PROVISION.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended—

(1) by inserting "(1)" after "(k)";

(2) by inserting "(including expert fees and other litigation expenses) and" after "attorney's fee";

(3) by striking out "as part of the"; and

(4) by adding at the end thereof the following:

"(2) No consent order or judgment settling a claim under this title shall be entered, and no stipulation of dismissal of a claim under this title shall be effective, unless the parties or their counsel attest to the court that a waiver of all or substantially all attorneys' fees was not compelled as a condition of the settlement.

"(3) In any action or proceeding in which any judgment or order granting relief under this title is challenged, the court, in its discretion and in order to promote fairness, may allow the prevailing party in the original action (other than the Commission or the United States) to recover from either an unsuccessful party challenging such relief or a party against whom relief was granted in the original action or from more than one such party under an equitable allocation determined by the court, a reasonable attorney's fee (including expert fees and other litigation expenses) and costs reasonably incurred in defending (as a party, intervenor or otherwise) such judgment or order. In determining whether to allow recovery of fees from the party challenging the initial judgment or order, the court should consider not only whether such challenge was unsuccessful, but also whether the award of fees against the challenging party promotes fairness, taking into consideration such factors as the reasonableness of the challenging party's legal and factual position and whether other special circumstances make an award unjust.".

SEC. 208. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in

cases involving non-public parties, except that prejudgment interest may not be awarded on compensatory damages".

SEC. 209. CONSTRUCTION.

Title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1107. RULES OF CONSTRUCTION FOR CIVIL RIGHTS LAWS.

"(a) EFFECTUATION OF PURPOSE.—All Federal laws protecting the civil rights of persons shall be interpreted consistent with the intent of such laws, and shall be broadly construed to effectuate the purpose of such laws to provide equal opportunity and provide effective remedies.

"(b) NONLIMITATION.—Except as expressly provided, no Federal law protecting the civil rights of persons shall be construed to repeal or amend by implication any other Federal law protecting such civil rights.

"(c) INTERPRETATION.—In interpreting Federal civil rights laws, including laws protecting against discrimination on the basis of race, color, national origin, sex, religion, age, and disability, courts and administrative agencies shall not rely on the amendments made by the Civil Rights and Women's Equity in Employment Act of 1991 as a basis for limiting the theories of liability, rights, and remedies available under civil rights laws not expressly amended by such Act.".

SEC. 210. RESTORING PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end thereof the following new subsections:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of State law.".

SEC. 211. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this Act shall be construed to require or encourage an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex or national origin: Provided, however, That nothing in the amendments made by this Act shall be construed to affect otherwise lawful affirmative action, conciliation agreements, or court-ordered remedies.

SEC. 212. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

SEC. 213. APPLICATION OF AMENDMENTS AND TRANSITION RULES.

(a) APPLICATION OF AMENDMENTS.—The amendments made by—

(1) section 202 shall apply to all proceedings pending on or commenced after June 5, 1989;

(2) section 203 shall apply to all proceedings pending on or commenced after May 1, 1989;

(3) section 204 shall apply to all proceedings pending on or commenced after June 12, 1989;

(4) sections 205(a)(1), 205(a)(3), 205(a)(4), 205(b), 206, 207, 208, and 209 shall apply to all proceedings pending on or commenced after the date of enactment of this Act;

(5) section 205(a)(2) shall apply to all proceedings pending on or commenced after June 12, 1989; and

(6) section 210 shall apply to all proceedings pending on or commenced after June 15, 1989.

(b) TRANSITION RULES.—

(1) IN GENERAL.—Any orders entered by a court between the effective dates described in subsection (a) and the date of enactment of this Act that are inconsistent with the amendments made by sections 202, 203, 205(a)(2), or 210, shall be vacated if, not later than 1 year after such date of enactment, a request for such relief is made.

(2) SECTION 204.—Any orders entered between June 12, 1989, and the date of enactment of this Act, that permit a challenge to an employment practice that implements a litigated or consent judgment or order and that is inconsistent with the amendment made by section 204, shall be vacated if, not later than 6 months after the date of enactment of this Act, a request for such relief is made. For the 1-year period beginning on the date of enactment of this Act, an individual whose challenge to an employment practice that implements a litigated or consent judgment or order is denied under the amendment made by section 204, or whose order or relief obtained under such challenge is vacated under such section, shall have the same right of intervention in the case in which the challenged litigated or consent judgment or order was entered as that individual had on June 12, 1989.

(c) PERIOD OF LIMITATIONS.—The period of limitations for the filing of a claim or charge shall be tolled from the applicable effective date described in subsection (a) until the date of enactment of this Act, on a showing that the claim or charge was not filed because of a rule or decision altered by the amendments made by sections 202, 203, 205(a)(2), or 210.

SEC. 214. CONGRESSIONAL COVERAGE.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"SEC. 719. CONGRESSIONAL COVERAGE.

"Notwithstanding any other provision of this title, the provisions of this title shall apply to the Congress of the United States, and the means for enforcing this title as such applies to each House of Congress shall be as determined by such House of Congress.".

SEC. 215. STATUTE OF LIMITATIONS; NOTICE OF RIGHT TO SUE.

(a) STATUTE OF LIMITATIONS.—Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) in paragraph (1)—

(A) by striking out "180 days" and inserting in lieu thereof "2 years"; and

(B) by inserting "or has been applied to affect adversely the person aggrieved, whichever is later" after "occurred"; and

(2) in paragraph (2), by striking out "within 300 days" and all that follows through "whichever is earlier" and inserting in lieu thereof "a copy of such charge shall be filed by the Commission with the State agency".

(b) NOTICE OF RIGHT TO SUE.—Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking out paragraph (2);

(2) by striking out the paragraph designation in paragraph (1);

(3) by striking out "Sections 6 and" and inserting "Section"; and

(4) by adding at the end thereof the following: "If a charge filed with the Commission is dismissed by the Commission, the Commission shall so notify the person aggrieved and within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge by a person defined in section 11.".

SEC. 216. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts amended by this Act.

The text of the committee amendment in the nature of a substitute is as follows:

The CHAIRMAN. No amendment to said substitute shall be in order except those amendments printed in House Report 102–83. Said amendments shall be considered in the order and manner specified in said report, shall be considered as read, and shall not be subject to amendment. Debate time specified for each amendment shall be equally divided and controlled by the proponent of the amendment and a member opposed thereto. If more than one amendment is adopted, only the last amendment which is adopted shall be considered as finally adopted.

It is now in order to consider amendment No. 1 printed in House Report 102–83.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. TOWNS

Mr. TOWNS. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. TOWNS: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in a series of recent decisions addressing employment discrimination claims under Federal law, the Supreme Court cut back dramatically on the scope and effectiveness of civil rights protections; and

(2) existing protections and remedies under Federal law are not adequate to deter unlawful discrimination or to compensate victims of such discrimination.

(b) PURPOSES.—The purposes of this Act are—

(1) to respond to the Supreme Court's recent decisions by restoring the civil rights protections that were dramatically limited by those decisions; and

(2) to strengthen existing protections and remedies available under Federal civil rights laws to provide more effective deterrence and adequate compensation for victims of discrimination.

SEC. 3. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end thereof the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'group of employment practices' means a combination of employment practices that produces one or more decisions with respect to employment, employment referral, or admission to a labor organization, apprenticeship or other training or retraining program.

"(o) The term 'required by business necessity' means that the challenged practice or group of practices bears a substantial and demonstrable relationship to effective job performance.

"(p) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof).".

SEC. 4. RESTORING THE BURDEN OF PROOF IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end thereof the following new subsection:

"(k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—

"(1) An unlawful employment practice based on disparate impact is established under this section when—

"(A) a complaining party demonstrates that an employment practice results in a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate by objective evidence that such practice is required by business necessity; or

"(B) a complaining party demonstrates that a group of employment practices results in a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate by objective evidence that such group of employment practices is required by business necessity, except that—

"(i) if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; and

"(ii) if the respondent demonstrates that a specific employment practice within such group of employment practices does not contribute to the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(2) A demonstration that an employment practice is required by business necessity may be used as a defense only against a claim under this subsection.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who is currently and knowingly uses or possesses an illegal drug as defined in Schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

SEC. 5. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by section 4) is further amended by adding at the end thereof the following new subsection:

"(l) DISCRIMINATORY PRACTICE NEED NOT BE SOLE MOTIVATING FACTOR.—Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though such practice was also motivated by other factors.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e–5(g)) is amended by inserting before the period in the last sentence the following: "or, in a case where a violation is established under section 703(l), if the respondent establishes that it would have taken the same action in the absence of any discrimination".

SEC. 6. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 4 and 5) is further amended by adding at the end thereof the following new subsection:

"(m) FINALITY OF LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—

"(1) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements a litigated or consent judgment or order resolving a claim of employment discrimination under the United States Constitution or Federal civil rights laws may not be challenged in a claim under the United States Constitution or Federal civil rights laws—

"(A) by a person who, prior to the entry of such judgment or order, had—

"(i) notice from any source of the proposed judgment or order sufficient to apprise such person that such judgment or order might affect the interests of such person; and

"(ii) a reasonable opportunity to present objections to such judgment or order;

"(B) by a person with respect to whom the requirements of subparagraph (A) are not satisfied, if the court determines that the interests of such person were adequately represented by another person who challenged such judgment or order prior to or after the entry of such judgment or order; or

"(C) if the court that entered the judgment or order determines that reasonable efforts were made to provide notice to interested persons, consistent with the constitutional requirements of due process of law.

A determination under subparagraph (C) shall be made prior to the entry of the judgment or order, except that if the judgment or order was entered prior to the date of the enactment of this subsection, the determination may be made at any reasonable time.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure;

"(B) apply to the rights of parties to the action in which the litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal government; or

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction.

"(3) Any action, not precluded under this subsection, that challenges an employment practice that implements a litigated or consent judgment or order of the type referred to in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 7. STATUTE OF LIMITATIONS; APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.

(a) STATUTE OF LIMITATIONS.—Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended—

(1) by striking out "one hundred and eighty days" and inserting in lieu thereof "2 years";

(2) by inserting after "occurred" the first time it appears "or has been applied to affect adversely the person aggrieved, whichever is later,";

(3) by striking out ", except that in" and inserting in lieu thereof ". In"; and

(4) by striking out "such charge shall be filed" and all that follows through "whichever is earlier, and".

(b) APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.—Section 703(h) of such Act (42 U.S.C. 2000e–2) is amended by inserting after the first sentence the following new sentence: "Where a seniority system or seniority practice is part of a collective bargaining agreement and such system or practice was included in such agreement with the intent to discriminate on the basis of race, color, religion, sex, or national origin, the application of such system or practice during the period that such collective bargaining agreement is in effect shall be an unlawful employment practice.".

SEC. 8. PROVIDING FOR DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–59(g)) is amended by inserting before the last sentence the following new sentences: "With respect to an unlawful employment practice (other than an unlawful employment practice established in accordance with section 703(k))—

"(A) compensatory damages may be awarded; and

"(B) if the respondent (other than a government, government agency, or a political subdivision) engaged in the unlawful employment practice with malice, or with reckless or callous indifference to the Federally protected rights of others, punitive damages may be awarded against such respondent;

in addition to the relief authorized by the preceding sentences of this subsection, except that compensatory damages shall not include backpay or any interest thereon. If compensatory or punitive damages are sought with respect to a claim arising under this title, any party may demand a trial by jury.".

SEC. 9. CLARIFYING ATTORNEYS' FEES PROVISION.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)) is amended—

(1) by inserting "(1)" after "(k)";

(2) by inserting "(including expert fees and other litigation expenses) and" after "attorney's fee";

(3) by striking out "as part of the"; and

(4) by adding at the end thereof the following new paragraphs;

"(2) No consent order or judgment settling a claim under this title shall be entered, and no stipulation of dismissal of a claim under this title shall be effective, unless the parties and their counsel attest to the court that a waiver of all or substantially all attorneys' fees was not compelled as a condition of the settlement.

"(3) In any action or proceeding in which any judgment or order granting relief under this title is challenged, the court, in its discretion, may allow the prevailing party in the original action (other than the Commission or the United States) to recover from the party against whom relief was granted in the original action a reasonable attorney's fee (including expert fees and other litigation expenses) and costs reasonably incurred in defending (as a party, intervenor or otherwise) such judgment or order.".

SEC. 10. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties.".

SEC. 11. CONSTRUCTION.

Title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1107. RULES OF CONSTRUCTION FOR CIVIL RIGHTS LAWS.

"(a) EFFECTUATION OF PURPOSE.—All Federal laws protecting the civil rights of persons shall be interpreted consistent with the intent of such laws, and shall be broadly construed to effectuate the purpose of such laws to provide equal opportunity and provide effective remedies.

"(b) NONLIMITATION.—Except as expressly provided, no Federal law protecting the civil rights of persons shall be construed to repeal or amend by implication any other Federal law protecting such civil rights.

"(c) INTERPRETATION.—In interpreting Federal civil rights law, including, but not limited to laws protecting against discrimination on the basis of race, color, national origin, sex, religion, age, and disability, courts and administrative agencies shall not rely upon the amendments made by the Civil Rights Act of 1991 as a basis for limiting the theories of liability, rights, and remedies available under civil rights statutes not expressly amended by such Act.".

SEC. 12. RESTORING PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end thereof the following new subsection:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.".

SEC. 13. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law.

SEC. 14. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

SEC. 15. APPLICATION OF AMENDMENTS AND TRANSITION RULES.

(a) APPLICATION OF AMENDMENTS.—The amendments made by—

(1) section 4 shall apply to all proceedings pending on or commenced after June 5, 1989;

(2) section 5 shall apply to all proceedings pending on or commenced after May 1, 1989;

(3) section 6 shall apply to all proceedings pending on or commenced after June 12, 1989;

(4) sections 7(a)(1), 7(a)(3), 7(a)(4), 7(b), 8, 9, 10, and 11 shall apply to all proceedings pending on or commenced after the date of enactment of this Act;

(5) section 7(a)(2) shall apply to all proceedings pending on or commenced after June 12, 1989; and

(6) section 12 shall apply to all proceedings pending on or commenced after June 15, 1989.

(b) TRANSITION RULES.—

(1) IN GENERAL.—Any orders entered by a court between the effective dates described in subsection (a) and the date of enactment of this Act that are inconsistent with the amendments made by sections 4, 5, 7(a)(2), or 12, shall be vacated if, not later than 1 year after such date of enactment, a request for such relief is made.

(2) SECTION 6.—Any orders entered between June 12, 1989 and the date of enactment of this Act, that permit a challenge to an employment practice that implements a litigated or consent judgment or order and that is inconsistent with the amendment made by section 6, shall be vacated if, not later than 6 months after the date of enactment of this Act, a request for such relief is made. For the 1-year period beginning on the date of enactment of this Act, an individual whose challenge to an employment practice that implements a litigated or consent judgment or order is denied under the amendment made by section 6, or whose order or relief obtained under such challenge is vacated under such section, shall have the same right of intervention in the case in which the challenged litigated or consent judgment or order was entered as that individual had on June 12, 1989.

(c) PERIOD OF LIMITATIONS.—The period of limitations for the filing of a claim or charge shall be tolled from the applicable effective date described in subsection (a) until the date of enactment of this Act, on a showing that the claim or charge was not filed because of a rule or decision altered by the amendments made by section 4, 5, 7(a)(2), or 12.

SEC. 16. REPORTS ON IMPACT OF EMPLOYMENT DISCRIMINATION CASES ON CASELOAD AND OPERATIONS OF FEDERAL COURTS.

(a) REPORT REQUIRED.—One year after the date of enactment of this Act the Administrative Office of the United States Courts shall submit to the Committee on Education and Labor of the House of Representatives, the Committee on Labor and Human Resources of the Senate, the Committee on the Judiciary of the House of Representatives, and the Committee on the Judiciary of the Senate a report containing a detailed and objective analysis of the impact of employment discrimination cases on the caseload and operations of the Federal courts, prior to enactment of this Act. The report shall include, but not be limited to, an assessment of—

(1) the number and type of charges of employment discrimination filed with the Equal Employment Opportunity Commission each year since 1964 under title VII of Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(2) the disposition of charges referred to in paragraph (1), including the number of charges resulting in the filing of a civil action in Federal court by either the Commission or the charging party;

(3) the number of civil actions filed in the Federal courts alleging employment discrimination in violation of section 1981 or section 1983 of the Revised Statutes (42 U.S.C. 1981 and 1983);

(4) an estimate of the costs to the Federal judiciary of civil actions referred to in paragraphs (2) and (3), including a distinction between the costs of jury trials and nonjury trials conducted pursuant to such actions and a comparison of those costs with other categories of civil actions; and

(5) the disposition of the civil actions referred to in paragraphs (2) and (3) including the time consumed in such disposition, the proportion of those dismissed without trial, the proportion of those where the plaintiff prevailed, and the proportion of those where the defendant prevailed. This analysis shall also compare these dispositions with dispositions of other categories of civil actions.

The report shall also include a survery of current literature analyzing the nature and levels of employment discrimination in the United States and the efficacy of Federal statutes prohibiting such discrimination.

(b) ANALYSIS REQUIRED.—Two years after the date of enactment of this Act, the Administrative Office of the United States Court shall submit to the Committee on Education and Labor, the Committee on Labor and Human Resources, and the Committee on the Judiciary of both the House and Senate a report containing a detailed and objective analysis of the impact of this Act on the caseload and operations of the Federal courts. The report shall include, but not be limited to, an assessment of the additional impact of this Act upon the factors listed in paragraphs (1) through (5) of subsection (a).

SEC. 17. EQUAL CONTRACT RIGHTS FOR WOMEN.

The Revised Statutes of the United States are amended by inserting after section 1977 the following:

"SEC. 1977A. (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by male citizens, and shall be subject to like punishment, pains, penalties, taxes licenses, and exactions of every kind, and no other.

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment

of all benefits, privileges, terms and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of State law.".

SEC. 18. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) is amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(1) by inserting "(a)" after "SEC. 702.", and

(2) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer) labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Section 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control;

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. TOWNS] will be recognized for 30 minutes and a Member opposed will be recognized for 30 minutes.

Ms. MOLINARI. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute.

The CHAIRMAN. The gentlewoman from New York [Ms. MOLINARI] will be recognized for 30 minutes in opposition.

The Chair recognizes the gentleman from New York [Mr. TOWNS]

Mr. TOWNS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we offer this amendment as the people's alternative—a substitute to H.R. 1 which is based upon the premise that all women and men are created equal and endowed with rights of freedom, justice, and human dignity. We come to this moment, fulfilling our responsibility to those who have entrusted us with this high office. We believe it is our absolute duty to demand and engage those whose vision of governance is exclusive—and not inclusive. It is a nonnegotiable imperative—that we the people should not mean merely male people—but all people.

Minorities and female members of this body have historically confronted major challenges. And thus, today we stand before the people's house demanding first truth, then equity and equality for all.

We bring this substitute for debate because we know that justice is not advanced by retreat from those basic tenets of law which have protected the rights of the few against the prerogatives of the many. We come as male and female supporters of this measure because there is a Constitution that is our birthright. Together, we have fought to protect its precepts at all costs—whether in the deserts of the Persian Gulf, the jungles of Vietnam, on the beaches of Normandy, or the cotton plantations in the Confederacy. We, as African-Americans have inherited a special legacy, born—if you will—of the substantial and manifest relationship of slave to slave master. An era now past, we must not preserve its 21st century manifestations. For our wives, our daughters, our sisters—even our mothers, there is no tomorrow.

On last evening, Mr. Chairman, Mr. WASHINGTON, Mrs. COLLINS, Mr. MFUME, and other colleagues in this House gave America a special moment in history where, in support of the Towns-Schroeder substitute, they appealed to everything that is right and just in this country. They demonstrated by their words and actions the very reason we are sent to this place, to represent the dreams and visions of the people. It is my most fervent desire that we, by our support of this substitute, live out the covenant which you so eloquently articulated—a social order where justice is the supreme ruler and law is but its instrument—where freedom is the dominant creed and order—where equity is the common practice and fraternity the common human condition.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from Colorado [Mrs. SCHROEDER], the cosponsor of this substitute.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in very proud support of this bill. I think for those who are proud of the red, white, and blue tradition of America's civil rights past, this is the bill to back.

This bill you are going to hear a lot about, and there is going to be a lot of misinformation about it, but let me tell you very clearly what this bill is. This bill is the bill that has come out of the Committee on Education and Labor before. It is the pure bill. It deals with the five cases, and only the five cases, plus it deals with women in the workplace, and it does not put caps on damages. That is what it does.

There will be others who say it does not say anything about congressional coverage. Right. Because the Congress dealt with congressional coverage last year when Lynn Martin and myself and many others in this body worked very hard to put in the House fair employment practices. We are covered. We are under it. Why have a system, and it goes. The other bills only say the House can then put together its system. It already did. So that has absolutely no relevance to the debate.

We are going to hear numbers about, well, it does not have the quota language of H.R. 1 in it. That is right, we have the same quota language as the Michel bill, because there were not any quotas ever to begin with. Remember, we are talking about a civil rights bill that is 27 years old. There has never been any quota, and this whole quota issue is a big, big bugaboo that is being used as a new codeword. So ours is the same as the Michel bill on quotas if that is what you want. I think it is the proper one.

Now, in a prior and in general debate, I talked about Congresswoman Katharine St. George, a Republican from New York, who in 1964 during the civil rights debate rose up and said how important it was that we add sex to the 1964 act. Indeed, she was right. If you think of the world as it was in 1964 and the world as it is in 1991, many women have been able to walk in through new doors, new employment doors, because of those doors opened by title VII in that act, and today we are now getting ready to carry it to the next level, and that deals with sexual harassment.

Let us talk about this rampant, rampant new phase that is going on in America. The EEOC has now got over 100,000 cases of sexual harassment that has been filed within the last 3 years. When DOD polled women in the Defense Department, they found that 64 percent said they have been sexually harassed. Sexual harassment in the workplace is still very prevalent.

I think that it is very important that we shut the door on that, and we do that by treating women equally and by allowing them equal damages for this horrendous kind of discrimination. It also allows the disabled and religious groups not to have caps on discrimination.

I must say that I am shocked at the Michel substitute putting caps on other people and not on all people. It seems to me the very basis of civil rights is treating everyone fairly, and I am very surprised that they want to put categories in.

I am even surprised that we have some of those categories in H.R. 1. It is better than the Michel substitute, but it still does not go to the heart of civil rights.

We have heard speech after speech after speech about how civil rights means treating people equally, treating them fairly, treating them squarely and saying that your damages can only be worth so much is not treating them equally; it is not treating them fairly, it is not treating them squarely, and basically we are talking about women, the disabled and we are talking about religious groups.

I rise in very proud support of the bill that returns us to our roots, the bill that deals with the absolute core of what we should be dealing with, and I hope Members in this body rise to support it, because I think that is what America really needs.

Ms. MOLINARI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to inquire of the two sponsors on the Democratic side if they know of any members of their political party that will be speaking in opposition so that I can coordinate a portion of my time period?

Mr. TOWNS. No. I am not aware of any.

Ms. MOLINARI. The gentleman is not aware of any?

Mr. Chairman, let me state that I would be happy to yield some time if beforehand members of the gentleman's political party would like to share in some of our time to speak in opposition.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GOODLING], the ranking member of the Committee on Education and Labor.

Mr. GOODLING. Mr. Chairman, I am not going to spend a lot of time on this proposal. We all know what this substitute is all about and why the Rules Committee has gone through this tortured process of allowing three substitutes. This bill is simply being offered up to provide some cover for a few of my colleagues who feel they need to vote for a bill which would provide unlimited punitive and compensatory damages for women. They will justify their vote by saying that equity demands this result because minorities can receive these damages under section 1981 of the 1866 Civil Rights Act while women cannot under title VII. Only through permitting punitive and compensatory damages can parity be achieved, it will be argued.

Well, we will be hearing this argument many times today, so let's address it head on. First of all, its clear that concern for equity, or parity, is not driving this position at all. An equal level of damages for women could be achieved through amending both title VII of the 1964 Civil Rights Act and section 1981 and setting available damages at the same level. What level would be appropriate is difficult to say but certainly the fact no labor statute contains punitive and compensatory damages suggests that some other level would be appropriate. But proponents of H.R. 1 will not even consider this approach. An amendment was offered at Rules which would have done exactly this and set damages for all discrimination cases at $150,000 in addition to back pay. What happened? The Rules Committee refused to allow the amendment.

No—concern for differences in damages awardable under title VII and section 1981 is not driving this debate. What is driving it is a desire for punitive and compensatory damages; the cry for parity is an argument being used to support that position, not viceversa. Let us quit kidding each other.

Of course, there is another reason the Rules committee has allowed this substitute. When the Brooks substitute comes up, its proponents will no doubt claim that they have compromised on many issues and that the Brooks bill is much more limited than the Schroeder substitute. Well, there are a few differences but all the major problems remain. Indeed, the Brooks Substitute raises new ones, including new noquota language which appears so limited that it, in effect, appears to endorse all other forms of workplace preferences. But I will leave that debate for later.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, the Towns-Schroeder substitute is a strong civil rights bill. It includes language of H.R. 4000 as it was reported by the Education and Labor Committee last Congress, before many changes were made to meet concerns expressed by the business community. It also addresses a recent Supreme Court decision that restricted implementation of the Civil Rights Act only within the United States, and amends section 1981 of title 42 to provide equal contract rights for women.

Mr. Chairman, I have supported from the beginning the right of women to equal treatment under the Law with respect to damages for intentional discrimination under the Civil Rights Act of 1964. This bill would accomplish that purpose with respect to contracting rights for women. I believe strongly that, in principle, this is the right course. Unfortunately, we are forced to face reality. A provision that provides unlimited damages for women in a bill would mean that that bill could not garner enough votes to carry the day * * * and all the other important provisions contained in the legislation would go down along with the damages provision.

It is important to pass a civil rights bill that we can send to the White House and hope for the President's signature or, at least, to achieve a veto override. I am convinced that unlimited damages in the bill would jeopardize this effort overall. That is why the Brooks-Fish substitute, which will be offered later, caps damages at not to exceed $150,000, or the amount of punitive damages, whichever is greater.

Nevertheless, I commend the sponsors of this substitute for bringing this issue to the floor and for highlighting the issue of equity and equal treatment.

□ 1820

Ms. MOLINARI. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Chairman, in our vote today to strengthen civil rights protections for American workers, we have a choice between two competing bills. H.R. 1, the Democratic bill, is the same bill President Bush vetoed last year. By comparison, H.R. 1375 is similar to the bill President Bush introduced last year, although he has strengthened it substantially this year.

SIMILARITIES BETWEEN THE TWO BILLS

First, let's look at just how similar those two bills are:

Both overturn the Supreme Court decision in Wards Cove, allowing the burden of proof to shift to employers when a plaintiff alleges the employer's hiring practices have a "disparate impact" against minorities. H.R. 1 shifts the burden if a plaintiff merely shows that an employer's work force is not exactly matched to the racial makeup of the available work force pool. The President's bill shifts the burden immediately after a plaintiff identifies a specific employment practice that causes the disparate impact.

Both overturn the Supreme Court in Lorance, extending the statute of limitations allowed for challenging discrimination under seniority systems.

Both overturn the Supreme Court in Patterson, restoring the expansive reading of protections against discrimination in all aspects of contracts.

Both contain a new provision allowing damages up to $150,000 for sexual harassment.

Both allow recovery of expert witness fees.

And both prohibit race-norming, the practice of boosting scores for minority applicants based solely on race.

Of the five main Supreme Court decisions overturned by H.R. 1, Martin versus Wilks, which allows victims to challenge consent decrees if the decrees discriminate against them, and if they were not a party to the decree. H.R. 1 prevents victims the right to challenge this discrimination. Neither does the President's bill overturn Price-Waterhouse, regarding cases where discrimination was evident in hiring, but was not the main factor for denying employment. Why not overturn this decision? Because, since the decision, plaintiffs have won every case decided.

Second, if the two bills are so close, why can't we get an agreement? Two issues are driving this debate: Quotas and damages.

QUOTAS UNDER H.R. 1

I'll be the first to admit that H.R. 1 does not mandate quotas. But H.R. 1 results in quotas in this way:

First, where both bills reverse Wards Cove, the Democratic bill forces employers to defend every aspect of their hiring and promoting practices when their work force makeup does not exactly duplicate the available qualified work force pool. In other words, if a community's qualified work force pool is made up of 30 percent whites, 45 percent blacks, and 25 percent Hispanics for example, all businesses in that community are subject to lawsuits if their work force makeup is not racially exactly the same.

Second, if an employer in this community hired 30 percent whites, 30 percent blacks, and 40 percent Hispanics, he or she could be sued for discrimination—based on disparate impact against blacks. Plaintiffs would not need to show where in the employer's practices he or she was discriminating—only that the disparate impact exists. Then, the employer would be forced to defend every aspect of the hiring policies. Even the most sensitive and well-intentioned employer would be subject to a lawsuit if hiring alternative practices were available which cause less of a disparate impact, even if the employer was unaware of the alternative practices.

Third, employers would be forced to defend each practice as a "business necessity". Under the President's bill, this is defined as "having a manifest relationship to the employment in question", consistent with the 20 year old standard under Griggs proponents of H.R. 1 say they want to restore. Under H.R. 1, a completely new standard is set, defined as, "bear(ing) a significant and manifest relationship to the requirements for effective job performance." This language has no legal precedent.

DAMAGES

These problems with H.R. 1 leave employers with such a difficult task that they will be inclined to "keep their numbers right" rather than face lawsuits. The massive expansion of remedies under H.R. 1, to include jury trials, and punitive and compensatory damages, will guarantee employers will do whatever they can to avoid lawsuits.

As an example of what employers might face, a 1988 Rand study of jury trial awards in California found the average total award of wrongful discharge cases in California between 1980 and 1988 was $646,855. Though these awards were typically reduced on appeal, the average total final judgments was $307,628; average compensatory damages were $388,500; average punitive damages were $523,170.

The intent of our civil rights protections under title VII of the 1964 Civil Rights Act has always been to make whole victims of workplace discrimination. This means providing immediate injunctive relief for victims and award of lost wages. The concept was based on the desire to promote conciliation over litigation. H.R. 1 dismisses this historic act in favor of civil penalties against employers. The concept of conciliation turns to confrontation.

BACKLOG IN THE COURTS

If it is true that justice delayed is justice denied, then victims of discrimination will be the biggest losers under H.R. 1. By changing the focus of title VII to promote litigation, victims will be forced to wait years for their cases to be resolved. Consider the following:

In 1989, 39,975 new discrimination charges were filed with the EEOC.

A 1990 "Report of the Federal Courts Study Committee" termed the current delays and congestion in Federal courts a "crisis". According to the report, the number of civil and criminal cases tripled between 1958 and 1988, following decades of slow caseload growth; the number of cases filed in appeals courts increased by 10 times; and since 1969, the number of discrimination suits increased by more than 2,000 percent, from under 400 cases in 1970 to almost 7,500 in 1989.

The 1988 Rand study found wrongful discharge cases under the California system taking an average of 28 months to finalize, ranging from 10 months to 5½ years—not including appeals.

Even under the current system, consider how long it has taken victims of the very cases H.R. 1 proposes to reverse:

Wards Cove: 1974 to 89—15 years.
Price-Waterhouse: 83 to 89—6 years.
Martin v. Wilks: 74 to 89—15 years.
Patterson: 82 to 89—7 years.
Lorance: 83 to 89—6 years.

A LAWYERS DREAM

Finally, H.R. 1 includes an outrageous section, dedicated solely to the Trial Lawyers Association. One provision would prevent out of court settlements between plaintiffs and defendants until the court determines the respetive lawyers' fees have not been waived as part of the settlement. Another would allow lawyers to charge fees to work done after turning down an out of court settlement, even if the final judgment was less than the offer. H.R. 1 overturns three Supreme Court decisions which expressly prevented this kind of money grab by attorneys—but no one has mentioned these cases.

How can these provisions help discrimination victims? They can't. But, they would the Democrats put such outlandish language in a civil rights bill? Because the Trial Laywers PAC has paid them—through PAC contributions—to do it. In the last election cycle, Democrats on the Education and Labor Committee—which passed this bill—were paid over $106,000, or over $4,600 per Democratic member. By comparison, Republicans on the committee received $900, or an average of $64 per member. I simply cannot find any other reason for allowing such special interest provisions to be added to civil rights legislation.

The President's bill completely eliminates the increases for lawyers. Its focus is solely on the victim, and in equitable relief—getting victims back to work—over litigation and punitive damages.

An honest and careful reading of each of these bills must lead to the conclusion that H.R. 1 goes too far, causes too many new problems, pads the pockets of trial lawyers, and denies quick justice to those we are trying to help. Based on this, my vote will not be for huge jury awards, but for immediate relief; not for litigation, but for justice; not for lawyers, but for victims. After spending 2 years working on this issue, I am convinced the President's bill is the best choice we face today.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GUNDERSON. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Wisconsin for yielding. I appreciate the gentleman's argument, and I do not think anyone here wants more litigation. That is absolutely right.

However, one of the problems we have is the other alternative. The EEOC is totally clogged and backlogged also. So the other way to go has not been funded adequately enough to keep up with the caseload. I think we get into a real bind that way.

Therefore, I appreciate the gentleman saying that he wishes there was some way to work this out. I would be very willing to, but we have not seen it happen, and we only see the backlog getting bigger and bigger and bigger, so that does not become a very happy alternative.

Mr. GUNDERSON. Reclaiming my time, I agree with the gentlewoman, and I will pledge to the gentlewoman to both work with the gentlewoman to increase funding for EEOC, because I am sincerely looking for alternatives, and I think actually if every Member of this Congress would put half of the emotion and commitment into designing an alternative dispute resolution system that we have put into creating this polarized issue over the last few weeks, we would be successful. I think we all ought to pursue that course.

Mrs. SCHROEDER. I thank the gentleman.

Mr. TOWNS. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman from New York for yielding me this time. I have had the privilege and honor of being the chairman of the Subcommittee on Civil and Constitutional Rights for more than 15 years. During the entire time we have had one issue after another affecting women.

I am very proud that in all the votes we have had, the Democratic side has always been unanimous for the legislation. Very little of which, however, has ever become law.

We have voted ERA out of our committee on several occasions. Indeed, 20 years ago we were able to get the two-thirds vote in the House of Representatives. Unfortunately, we were not able to get the vote in all of the three-quarters of the States to make it a part of the Constitution. That should have been the next step, to include women in the Constitution. Equal protection under the laws in the 14th amendment. We used to be able to get that vote in this body.

I am reluctant to point my finger at one particular party for abandoning

these issues, because it happens to be my friends here on the left, the Republican Party. We no longer can count on our friends in the Republican Party or on the Republican National Platform to support the ERA. They used to support it, but not anymore.

I want to say amen to what the gentlewoman from Colorado [Mrs. SCHROEDER] said. There is an unforgivable amount of sexual harassment in this country. There has been sexual harassment in the House of Representatives by Members who have been hauled before the Committee on Ethics. It is in the FBI. The Subcommittee chair has been conducting inquiries into that. It is epidemic in our society, and victims should get full damages. It should be the law.

After all, we are Americans. We have a legal system. We are supposed to use it especially for something as egregious as sexual harassment. I am supporting the Towns-Schroeder proposal. I think it is the right proposal. I would like to see an overwhelming vote for the Towns-Schroeder proposal.

Ms. MOLINARI. Mr. Chairman, I yield 30 seconds to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Chairman, I just wanted to take the time to point out to our distinguished chairman of the subcommittee that the gentlewoman from New York [Ms. MOLINARI] and Mr. GUNDERSON are both supporters and have been cosponsors of the Equal Rights Amendment.

Mr. EDWARDS of California. Mr. Chairman, if the gentleman will yield, I appreciate that observation, and I would like to consult with the gentleman from Wisconsin and the gentlewoman from New York in the next few days and bring ERA out on the floor, and let Members be proud of the House of Representatives. Bring the votes, we will bring it up.

Ms. MOLINARI. Mr. Chairman, I yield 4 minutes to the gentleman from New York [Mr. FISH], the distinguished ranking minority member of the Committee on the Judiciary.

□ 1830

Mr. FISH. Mr. Chairman, although I view with pride my original sponsorship of this legislation in the 101st Congress, I also derive personal satisfaction from my participation in efforts—at different stages of congressional consideration—to fashion improvements. The Civil Rights Act of 1990, as it emerged from the second House-Senate Conference in October of last year, incorporated a number of helpful provisions designed in response to problems identified by the administration, members of the business community, and others.

This year, a number of my colleagues and I have sought to carry forward the process of reconciling diverse points of view. The Brooks-Fish substitute, which we will consider at a later point, further accommodates employer concerns and provides new assurances to the public that this not a quota bill—and in fact is anti-quota legislation.

I must oppose the Towns-Schroeder substitute because I view it as an unfinished product—one that overlooks efforts to broaden the consensus in favor of this important remedial legislation. The quota issue, in my view, cannot be sidestepped but rather must be addressed head on:

Both H.R. 1 and the Brooks-Fish substitute state in no uncertain terms: "The mere existence of a statistical imbalance in an employer's workforce on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation."

This reassurance relating to statistics, however, is not incorporated in the substitute we now consider.

H.R. 1 provides that "[n]othing in the amendments made by this Act shall be construed to require or encourage an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex, or national origin * * *." The Brooks-Fish substitute will broaden this language—which already incorporates a 1990 expansion of the formulation—to state unequivocally that the legislation also does not "permit" quotas. The Towns-Schroeder substitute, however, does not include any comparable provision. Explicit language of the Brooks-Fish substitute making the use of quotas an unlawful employment practice also is missing from the substitute we now consider.

The difference between the Towns-Schroeder substitute and the Brooks-Fish substitute that is the subject of the greatest public attention relates to punitive damages. The Towns-Schroeder substitute includes no cap on such damages. The Brooks-Fish substitute, by contrast, caps punitive damages at $150,000 or the sum of compensatory damages and backpay, whichever is greater—a provision identical to last year's final formulation. The inclusion of a cap reflects a general recognition that fears in the business community of excessive punitive damage awards must be addressed if we hope to gain broad support for this legislation.

The essential point is that Brooks-Fish provides damages where none are available under current law. Women and members of certain minority groups who are limited today to equitable relief will have an important new remedy to protect their rights—a remedy currently limited to cases of racial discrimination under 1866 legislation. I submit, Mr. Chairman that limited remedy that can command enough support to become law is better for the victims of discrimination that an unlimited remedy that can precipitate this legislation's defeat.

I intend, Mr. Chairman, to vote against the Towns-Schroeder substitute for the reasons I have indicated.

Mr. TOWNS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. WASHINGTON].

Mr. WASHINGTON. Mr. Chairman, I am going to use 30 seconds and yield back a minute-and-a-half, with the hope that the chairman will yield me the minute-and-a-half back before the end of the debate.

I am going to sit right down here in this chair and I would like for any Member of Congress who wants to just talk about quotas in an intelligent fashion to come and join me on the floor. I hope that is someone who thinks there is a quota in this bill.

In Texas we call that a snipe hunt, when you send people looking for something that does not exist, and quotas is a snipe. I am going to be sitting right here waiting on anybody who thinks this is a quota bill to come down here on the floor and we can spend my minute-and-a-half talking about it.

Ms. MOLINARI. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Chairman, I thank the gentlewoman for yielding me this time.

I might add that I have been a cosponsor in the ERA amendment also.

I certainly do not want anyone to believe that because I would oppose this legislation that therefore I am antiwomen, as has been alleged I think all afternoon, that somehow I am anti civil rights because I do indeed, I say to the gentleman from Texas [Mr. WASHINGTON], believe there are quotas in "them thar bills." The gentleman from Texas and I have discussed this on numerous occasions. I will be glad to discuss the question more.

I am amazed at how able and capable a Member of Congress the gentlewoman from Colorado [Mrs. SCHROEDER] is. She was before the Rules Committee. She wanted simply to present an amendment that would be attached to the Brooks-Fish bill. That was not allowed for some reason, and so she has given us a whole new bill, I mean, a whole substitute simply so that she can get her point across that she believes that there ought to be unlimited damages.

I find that to be amazing treatment of a preferential nature that I do not think many people could command.

We are all in favor I think of a provision in regard to sexual harassment, but when you look at this particular Towns bill, it already has—I am not sure if I am interrupting conversations over there or not, Mr. Chairman; but when one looks at what is already in the Towns bill, unlimited damages where everyone is treated the same, reference is made to the fact that section 1981 treats certain groups differently, but section 1981 pertains to

racial discrimination and the entering into of any contracts, buying a house or whatever it may be, or employment contracts, and it is not very analogous whatsoever to the broad damage sections in this particular bill. In fact, it is so very broad, as I earlier said today, you do not even have to show a discriminatory intent either in terms of sex, race, national origin, or religion.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Ms. MOLINARI. Mr. Chairman, I yield 1 additional minute to the gentleman from Illinois.

Mr. FAWELL. What I am trying to say, Mr. Chairman, is that in the Towns bill is the most liberal possible grant of wholesale damages, uncapped, punitive, compensatory, and it appears that even that is not enough.

Now in this bill, as I understand it, they create another section 1981 bill, go outside of the civil rights bill altogether and create a new 1981 section that pertains only to discrimination on the gender, when they have everything that their hearts might desire in regard to this bill.

So I do not see much difference between the damages here and the so-called cap damages that are in Brooks-Fish.

I think all in all it would not matter to me which way it went so far as the damages are concerned, but we have plenty of damages right within the Civil Rights Act if this bill were to pass without having to go off and create another Federal statute, especially for gender discrimination, and harassment is treated in the Michel amendment.

Ms. MOLINARI. Mr. Chairman, I reserve about 7 minutes for my personal speaking time, but I yield 10 minutes of my time to the supporters of the Towns bill.

The CHAIRMAN. Without objection, the gentlewoman yields 10 minutes of her time to the gentleman from New York [Mr. TOWNS].

There was no objection.

Mr. TOWNS. Mr. Chairman, I would like to thank my colleague, the gentlewoman from New York, for yielding 10 minutes of her time, because we do have a good many speakers on this side, and I thank the gentlewoman very much.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Hawaii [Mrs. MINK].

Mrs. MINK. Mr. Chairman, I appreciate the time to speak in support of the Towns-Schroeder substitute. I think that it affords the House an opportunity to vote for a bill that makes no internal discrepancies to the principle of equity that we are seeking when we talk about civil rights in America.

□ 1840

I cry out to the membership of this body to consider supporting this bill. If they understand what the principles or equity mean, they certainly do not mean a dual system of justice. We had hoped to be able to offer an amendment to strike the cap from the Brooks-Fish substitute so that we could have a clear up or down vote with respect to this issue. But, barring that opportunity, this is the only clear moment that the Members of this House will have to choose what kind of internal integrity we want to preserve with respect to civil rights.

Times have changed since title VII was first enacted. Millions and millions of women have gone into the workplace. The whole nature or our work environment has changed.

But what has not changed is the concept of inequity that people in the workplace have with regard to women. They are harassed, they are not given job opportunities, they are not given promotions, they are not considered equal at the job site.

So, title VII, no matter how difficult it has been for women to go to court to try to seek equity, all that title VII has been able to give them in terms of recognition of the indignities that they have had to suffer at the workplace is reinstatement to a job they do not want because they cannot tolerate it, or they get the back wages which they lost which they should not have lost in the first place.

All we are saying is: If a worker can go today to court and recover unlimited damages which they have personally suffered and punitive damages against their employer for having perpetrated those injustices, if they come in under race discrimination, why should they not be able to do this under gender discrimination? This substitute would allow us to do that.

Mr. TOWNS. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Mr. Chairman, I rise, my colleagues, in support of H.R. 1. I hear a lot of talk about unlimited damages and this being an employment program for lawyers.

Well, where I was raised, we have a lot of disputes in the streets, in back alleys. And I have been trained that if you have a legitimate complaint, that you are supposed to take it to the court system. We are not talking about unlimited damages unless what we were saying is that we do not have any confidence in juries, in jurors, we do not have confidence in the system.

Now, we have a lot of people who are warehoused in our jails today who really do not believe that they got a fair shake from society. But those of us who are here in the Congress making 125,000 a year, we return home to them each weekend to tell them that there is oppourtunity in this country and that if you have a legitimate grievance against anyone, whether it is because of sex or color, take that matter to court and you will be given an opportunity.

Soon a lot of our veterans will be returning home, and the President has always spoken in glowing terms of our fighting men and women, very glowing terms.

Now, I do not know how much they have been trained about litigation, but one thing is abundantly clear: Our job is to tell them that the system really works.

So let us not start bashing up on the system and saying that lawyers are seeking employment because of the civil rights bill or that our courts are going to be so overburdened because people who have legitimate grievances are going to take them up under a system that has made our country proud.

Another issue that concerns me is that the President seems to believe that the word quota is a word that he should be using as a dagger to kind of separate people who have emotional feelings about quotas.

Now, coming from New York and being as candid as we New Yorkers try to be, when you use quotas you really are trying to scare the heck out of the Jewish community. It is not hardly a code word anymore, it is a word that you are using really to frighten people. And that is because our Jewish friends and constitutents have seen this word quota not used in terms to protect them but used in terms of hurting them.

Now, I believe the President is either kinder and more gentle and unknowingly is being used by racists in the White House, or the President knows exactly what he is doing when he says this bill is a pig and not a horse and it is a quota bill.

But I would like the President to know that at least in New York City and throughout the Nation, our Jewish friends can separate a pig from a horse and a quota from a nonquota and that the Anti-Defamation League, the American Jewish Congress, the Union of American Hebrew Congregations, the National Council of Jewish Women, the Agudath Israel, the Union of Orthodox Jewish Organizations would want the President to know that they are experts on quotas and this bill "ain't no quota bill."

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. OWENS].

Mr. OWENS of New York. Mr. Chairman, in August of 1980 when Ronald Reagan launched his campaign for the presidency from Neshoba County, MI, which is famous for only one thing and that is for the killing, the murder of three civil rights workers, Ronald Reagan was sending a message. The first time he was introducing racial politics into a national campaign.

Well, Ronald Reagan used the term "States' rights," and that was a code word for "stop the blacks." In 1988, in that campaign, it was Willie Horton. Willie Horton was used, and that was a code word for protection from the blacks. Crime suddenly got translated into protecting people from blacks.

Now we are using the word "quota," the code word this time is quotas. Very elegant arguments are being offered by very intelligent people from the White House in terms of this is a quota bill. That translated means that blacks have taken all the jobs. Never mind the fact that the S&L's are stealing money from the Treasury, there is no money to build the economy, nothing due to the fact that we are in a recession, it is the blacks that are taking all the jobs. This is the politics of race-baiting and has no place in our Nation. I hope that the Members of Congress will return to the track, the right track, and do what this bill is trying to do, get the Supreme Court back to protecting the rights of all our citizens.

Mr. Speaker, I rise in strong support of the Towns-Schroeder substitute for H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991, and against the other killer substitutes which will be offered today.

This substitute does the necessary job.

We have spent a great deal of time in this and the preceding Congress trying to clean up the messes Ronald Reagan left behind. It has not been easy. From the environment to the S&L scandal to the budget deficit, it's been our misfortune to discover that the Reagan legacy is all too enduring and will be something that we, our children, our grandchildren, and perhaps even their children will have to struggle with for many years to come.

Today, however, we have the opportunity to push aside relatively cleanly and quickly at least one of Reagan's burdensome legacies: By enacting the Towns-Schroeder substitute we can prevent the poisonous civil rights policies of the Reagan administration from being permanently embedded in the laws of our Nation.

For African-Americans and other minorities, the reign of Reagan was catastrophic. The enormity of the changes that Reagan and the neanderthal right succeeded in effecting in the status of minorities in this country over the last decade is frightening to contemplate. Years of steady progress lurched to a halt; the clock did not just stop—it started ticking backward. Here again in America, racism has been made socially acceptable. There are lynchings in the streets of Bensonhurst and Howard Beach. Here again in America, racism has been made politically viable. No less than the Imperial Wizard of the Ku Klux Klan now feels safe to take off his hood and run for political office. And now, thanks to Ronald Reagan's appointments to the Supreme Court, here again in America, racism in the workplace has been made legally tenable.

In its 1989 civil rights decision, the Reagan Supreme Court declared open season on affirmative action and equal employment opportunity in America. Years of consensus and consistent precedent were swept aside. In the Wards Cove decision, in particular, the Court attacked what has been one of the driving forces behind the economic advancement of minorities in this country—the 1971 unanimous Burger court decision in Griggs versus Duke Power Co. that title VII of the Civil Rights Act prohibits "not only overt discrimination but also practices that are fair in form, but discriminatory in operation." Critical protection against systematic racial and sexual discrimination in the workplace has been dramatically scaled back. In essence what the Court has said to employers in Wards Cove is that while you still can't commit blatant, obvious acts of discrimination against minorities and women, if you are sophisticated and discreet about it, we will look the other way. You cannot hang a "No Blacks Allowed" sign on your door, but if you're clever and come up with a standardized test or some other superficially neutral ruse that achieves exactly the same result, no one will stand in your way. You can be a bigot, in other words, so long as you are a kind and gentle one.

The Towns-Schroeder substitute would restore the protections afforded by the 1971 Griggs decision against systematic discrimination. It would put the burden back on the employer to try to justify discriminatory practices. Once a person proves that a practice has a disparate, discriminatory impact, the employer would be required to try to justify the practice by showing that it is necessary to the operation of its business. If it could not, the practice must cease.

In addition, the Towns-Schroeder substitute also strengthens title VII of the Civil Rights Act by permitting victims of intentional discrimination on the basis of sex, religion, or disability to collect monetary compensatory and punitive damages from offending employers. Victims of racial discrimination can currently collect such damages under 42 U.S.C. 1981; victims of sex, disability, and religious discrimination, however, today are limited only to back pay. This is an inexcusable inequity which demands resolution. One form of discrimination is no more odious or reprehensible; the penalties for all employment discrimination, whatever its kind, must each be comparable and they must all be strong.

The leadership-backed substitute does not meet this essential test because it imposes an artificial cap of $150,000 on the punitive damages victims of intentional sex, religious, and disability discrimination could collect. It puts a maximum price tag on human misery and humiliation; no matter how vicious, how disgusting, how damaging the discrimination, the offender's liability for punitive damages is capped at $150,000. The proponents of capping damages or eliminating them altogether profess to be worried about employers having to pay massive, near-bankrupting damages if there is no limit in the law. Well, yes, it will cost them a lot if they intentionally discriminate. And that is the point—to make intentional discrimination prohibitively expensive in this country. Destroying people's lives and ruining their careers should never be cheap. It should cost so much no sane employer will ever be tempted to try it again.

Opponents of H.R. 1 have declined to debate these issues on their merits, choosing instead to mount a race-baiting smear campaign against the legislation. Over and over, without foundation, without evidence, they have loudly insisted that this bill will somehow require, authorize, or encourage employers to adopt quotas in hiring and promotions. In reality, this legislation would prohibit such quotas and the sponsors of the bill have repeatedly amended it to make this absolutely clear. But still the shouting, the nasty smears have continued. Still the White House and others insist that this is somehow a quota bill.

What really seems to be behind all this phony talk about quotas is no high-minded commitment to principle but a small-minded peevishness. The Chamber of Commerce and the radical right do not like this bill and the Griggs decision it would codify because they consider it a hassle, an inconvenience to have to scrutinize their hiring and promotion policies to assure that they do not cause discrimination. As with the Fair Labor Standards Act, the Occupational Safety and Health Act, and every other law we have on the books to try to assure some measure of dignity and equity in the workplace, big business just couldn't be bothered with civil rights. Equal opportunity is a nuisance.

It is conceivable, I suppose, that some of the opponents of this bill are not quite so small-minded and that some of them are actually sincere in their misty-eyed paeans to a colorblind society and their appeals to put the past behind us. But sincere or not, they couldn't be more wrong. After two centuries of genocide, slavery, and oppression, you cannot, in 1991, build a colorblind society by being blind to people of color and you cannot put the past behind you by denying it. We can move forward toward a colorblind society only if and to the extent that we confront our ugly history and begin to act to fulfill this Nation's obligation to try to repair the horrors that have been inflicted upon African-Americans in the past. It isn't easy; it isn't convenient; it isn't cheap. As Martin Luther King put it,

> When millions of people have been cheated for centuries, restitution is a costly process * * * Justice so long deferred has accumulated interest and its cost for this society will be substantial in financial as well as human terms.

In 1991, the debt still to be repaid is large; the gulf between black and white America is wide. The black poverty rate is three times that of whites. The black unemployment rate is two times that of whites. Black per capita income is half that of whites. And the median net worth of black households is one-tenth that of whites.

To make matters worse, this vast gulf has been widening, thanks in large part to the civil rights and economic policies of the Reagan and now Bush administrations. We are moving backward. In its recent report, "A Common Destiny," the National Research Council of the National Academy of Sciences concluded that if we continue down this regressive path laid down during the Reagan era, if current trends in the economic situation of African-Americans continue unchanged, by the year 2000 the economic status of African-Americans relative to that of whites will be the same as what it was in 1960—4 years before the original Civil Rights Act was enacted.

This doesn't have to be. We have the opportunity today to help stop the backward slide, to repudiate the Supreme Court's attack on equal employment opportunity and restore the vitality of our civil rights laws. The Hyde substitute, in contrast, would lock us into the disastrously regressive course set by Ronald Reagan. Represented as a compromise, the substitute is in fact nothing of the kind. It does not overturn most of the destructive civil rights decisions made by the Court in 1989; it does not modify them; and it does not clarify them. Instead, it codifies them as law. This is not a compromise; it is a retreat.

I urge my colleagues to defeat the killer substitute and enact the Towns-Schroeder substitute. Defy the race-baiters; repudiate the liars. Let us put at least one of Ronald Reagan's burdensome legacies behind us this year. Let us get the clock moving forward again on civil rights in America.

Mr. TOWNS. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Illinois, Mrs. CARDISS COLLINS, an outstanding Member of Congress.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of the Towns-Schroeder substitute to H.R. 1. This substitute is the closest thing we have to legislation to restore the full employment rights to all Americans, regardless of race, sex, or religious belief. The Towns-Schroeder substitute is the only one that completely reverses the recent Supreme Court decisions and puts us back where we were when the Court, in 1989, took judicial activism to new extremes.

If the Towns-Schroeder substitute is successful, it means that we will go back to having laws on the books that are there to ensure that minorities and women have an equal shot at fair employment practices. It will once again be illegal to make an employment decision, harass, fire, demote, or refuse to hire anyone based on specious grounds of race, sex, or religious beliefs.

The Towns-Schroeder substitute makes it clear that we as a Nation are serious about providing equal rights to all our citizens in all employment situations. Not almost equal, but equal. Not sort of equal, but equal. Not equal with conditions, but equal. Not equal sometimes, but equal always. Not equal up to a certain amount, but equal. And certainly not equal unless an employer can find some crafty significant and manifest reason to discriminate.

This legislation is neither designed to nor intended to take anything from anyone, or deny anyone any right or opportunity. All we want is to ensure for everyone an equal opportunity to succeed, or fail, in the workplace based on their merit.

The Towns-Schroeder substitute has been endorsed by religious, civic, social, political and educational organizations nationwide. And there is a reason for this broad base of support: this is the right thing to do.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentleman from Mississippi [Mr. ESPY].

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Mr. ESPY. Mr. Chairman, I thank the gentleman from New York [Mr. TOWNS] for yielding to me, and I rise in support of the Towns-Schroeder amendment.

Mr. Chairman, I rise today as a proud son of an emerging new South, where at least things are getting better. Thirty years ago I would never have had this opportunity, and I say to Members of this body, and particularly to my southern colleagues, that I am not going back. The Old South was a land divided. It was a land of bitterness and hatred. In the Old South there were whites-only public facilities, whites-only neighborhoods and whites-only jobs. But the Old South is fading away, giving rise to the new South because of concerted actions of blacks and whites, men and women, Mr. Chairman, who believe that each of us are indeed created equal and that sacrificed their lives, and their limbs, and their property for their principle, the principle which is embodied in the Towns-Schroeder amendment.

Mr. Chairman, it is a principle which reaffirms unalienable rights of every American citizen, and that Old South is behind us because Congress had the courage to reject the arguments that civil rights is bad for business, bad for schools, and bad for our communities. Mr. Chairman, the Towns-Schroeder substitute gives us a chance to vote against sacrificing the rights of women, religious and ethnic minorities to political expendiency, and it gives us a chance to do the right thing, rather than the political thing.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Chairman, the Towns-Schroeder substitute is the only civil rights measure, under consideration today, which allows all victims of intentional job discrimination to receive fair and adequate remedies for the injuries they have suffered. Only by allowing punitive and compensatory damages in title VII lawsuits, without the placement of an arbitrary cap on punitive damages, can we correct and deter the most egregious forms of discrimination and ensure equal treatment for all victims of discrimination. To do otherwise will provide unequal remedies for women, the disabled, and certain religious minorities.

All victims of discrimination should be treated fairly and equitably. Currently, victims of intentional racial discrimination already have the benefit of punitive and compensatory damages—without a cap—under section 1981, title 42 of the United States Code. Women who prove that they have suffered gender-based employment discrimination should have that same right to recover compensatory and punitive damages, instead of being subject to a limit on their remedy, as those who prove racial discrimination.

At a time when women continue to comprise an increasing proportion of our workforce and the number of formal EEOC complaints of sexual harassment in the past year reached an all-time high, it is clear that women need equal civil rights protections. Such a cap on damages, for title VII claims, represents a lack of logic and fairness for not only the rights of women, but also the disabled and members of certain religious groups. True equal rights should be simply too important to be compromised.

Mr. TOWNS. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Chairman, I rise in support of the Towns-Schroeder amendment.

Mr. Chairman, I have listened to the public debate over passage of the civil rights bill with a great deal of dismay. President Bush and his cohorts have attempted to paint this bill as a quota bill that would force employers to conform to hiring practices that would amount to preferential treatment for minorities.

As I address this issue, I wonder what Fannie Lou Hamer, Medgar Evers, Viola Liuzzo, and hundreds of others would think about this time in American history when we are once again debating civil rights legislation.

Mr. Speaker, if discrimination were not present, why are we still waiting for an African-American CEO of a Fortune 500 Company, or an African-American President?

Mr. Speaker, there is a quota system already in place that says the glass ceiling is easily reached for women and minorities while the sky is the limit for those who happen to be white and male.

During the sixties, protesters at the Democratic National Convention in Chicago were chanting "the whole world is watching." This time the world is watching to see if kinder and gentler is a wish or a campaign slogan.

The Towns-Schroeder substitute deserves immediate passage.

Mr. TOWNS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California [Ms. WATERS].

Ms. WATERS. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute amendment. I know there are those out there wondering what this is all about. We have a Brooks-Fish bill, and why do we have this amendment.

Mr. Chairman, this bill is closer to the 1990 original civil rights bill. It removes the caps on damages for women, it gives some measure of protection to foreign workers, and in general it says that women should have the same equal rights as anybody else in this society.

Mr. Chairman and Members, I have a difficult time explaining to the children in my district why we are at this

point in time fighting for rights we thought we already had. I have been attempting to explain to them that the Supreme Court was misguided in its recent decisions of five cases that effectively eroded rights that we thought we already had. The Supreme Court was either misinformed or grossly incompetent in the work that they did, and I can only say to them, "They know not what they do, for they are removing hope from people who thought that this was a fair America."

Today in this Nation black males are languishing on America's corners, jobless, seeking opportunity, wanting the opportunity to buy a house, to raise their families, to participate in the American dream. Hispanics right here in Washington, DC reacted recently because they were tired of being without jobs, no opportunity. And women, and their children. Women are single parents in this country and emerging as a No. 1 poverty category in this country. Yet we have a Supreme Court that has taken away hope and opportunity from all of these categories.

Mr. Chairman, I rise in support of this bill because in an attempt to do away with what the Supreme Court has done we are moving with legislation that is not clean enough, that is not good enough. We .nay end up with that legislation, Mr. Chairman, but that legislation is not fair to all. It has caps on the damages for women, and this legislation would remove those caps. We need a strong civil rights bill.

Again, I do not know what is going to happen, but I was taught in America's schools that one must fight for what they believe in, and I do believe. I was taught that, yes, this country has been unfair, but we can, by way of amendment and other actions, get some fairness. I believe, Mr. Chairman. I believe as Harriet Tubman believed, I believe as Fanny Lou Hamer believed, I believe as Malcolm, Edgar, and Martin believed. I believe that all of those black and white Americans who marched, and prayed and died for civil rights for this country did not do that in vain.

This is not a quota bill. The President of the United States of America should be ashamed of himself, going before young impressionable minds at graduations, trying to destroy the dream for many Americans. He should be ashamed of himself. He knows this is not a quota bill. He is fanning the flames of fear and intimidation. We should not let him get away with that. We should vote for good clean civil rights legislation and send the message around the world that this is an America of opportunity.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute. There is no disputing that whether Brooks-Fish, the leadership substitute or the Towns-Schroeder substitute is passed today, men and women in the workplace will be better off. All American workers will have greater protection against discrimination on the job.

However, today we are called upon to cast a vote on three alternatives. And given the choice, mine is clear. My vote will be cast for the Towns-Schroeder substitute and I urge you to join me.

We vote in this Chamber often. However, some votes take on certain significance because the result will effect our country as a whole. Today we are casting a significant vote. We are voting to restore one of America's most basic tenants—the civil rights of all American workers.

This substitute does the job purely and cleanly. It goes to the heart of what we intended the Civil Rights Act of 1964 to accomplish: to ensure equal employment protection for all Americans—men and women—all Americans. This substitute does not compromise on that commitment. It does not include a cap on damages for proven intentional discrimination. It is a civil rights bill proudly worthy of its name.

The game of politics involves much in the way of compromise. But today we must stand firm in our principles that cannot be compromised. I urge my colleagues to join me in supporting this substitute.

Mr. TOWNS. Mr. Chairman, I yield 1½ minutes to the gentleman from Oregon [Mr. KOPETSKI].

Mr. KOPETSKI. Mr. Chairman, I rise in support of the Towns-Schroeder substitute and in opposition to the Michel substitute.

If I were a Chinese citizen living in Beijing and the Government passed the Michel substitute to H.R. 1, we would all celebrate in Tiananmen Square, for it would be a significant piece of civil rights legislation for a nation that has none.

We are not in China, however, Mr. Chairman. We are in the United States, and by American standards the Michel substitute is a third-rate proposal.

If we are to pass the bipartisan Brooks-Fish substitute to H.R. 1, we can celebrate because it improves existing law and takes a few steps forward on our march to equality. It is a compromise, no doubt, but it is still second best.

I think we can do better. Third rate and second best should not be acceptable to Americans, especially when it comes to civil rights. Let us let the world celebrate today because the world can say, along with every single American, that the good old U.S.A. is still setting the standard for civil rights in this world. It is not third rate or second best. It is the best. We are not a third-rate country, and I am not going to support a third-rate proposal. I am going to support Towns-Schroeder which does not discriminate against women in this country. Towns-Schroeder is a pure civil rights bill which sets the standard for this Nation into the 21st century.

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Mr. TOWNS. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. DIXON].

Mr. DIXON. Mr. Chairman, I rise in strong support of the Towns-Schroeder amendment.

Mr. Chairman, today the House has an opportunity to say loudly and clearly to the American people that any form of employment discrimination is illegal. And that second-class citizenship in the work place is intolerable. And that in instances of job discrimination against women, women should have the right to sue for damages without any limits on compensation. Members can right these wrongs by approving the Towns-Schroeder substitute amendment to H.R. 1, the Civil Rights and Women's Equity in Employment Act.

We fought these battles over 25 years ago. Congress must act again because the five 1989 Supreme Court anti-affirmative action decisions have had a significant and negative impact on equal employment opportunity in this Nation.

In plain English, these Court decisions: Allow a worker to be racially or ethnically harassed on the job; allow employers to show that a discriminatory employment practice is a "business necessity," and would hurt business if the practice was legally denied; allow a decision based on racial, ethnic or gender prejudice not to hire a person, to be justified if the employer could show that the same decision would have been made for non-discriminatory reasons; allow a previous court consent decree settling a job discriminatory suit to be reopened by someone who had previously sat on the sidelines when the decree was approved by a court; and allow the challenging of a company's seniority plans by an employee to be prevented by the Court's interpretation of when the plan begins to run—when the plan was adopted, rather than when its harmful impact was felt.

We have the power to overturn these decisions by voting for the Towns-Schroeder substitute. Our vote will not only strengthen existing civil rights protection for all of the victims of intentional employment discrimination, but would also provide adequate remedies and more effective deterrence in job bias cases.

I strongly believe that women should be able to sue for damages in cases of gender discrimination in the work place. Under current law, only victims of racial discrimination have that right. This is not fair nor just. The second-class citizen aspect of this inconsistency leveled against women needs to be addressed and corrected now.

The Towns-Schroeder substitute would end this inconsistency, and authorize compensatory and punitive damages in gender discrimination suits—without caps, without limits. This is what we need to be concerned about; this is what we need to be for, and vote for.

I prefer no cap on damages, even though I know that a cap will provide a broader vote in the House. The essence of the Towns-Schroe-

der substitute protects the rights of all victims of intentional discrimination to equal treatment under the law. In effect it would allow women and religious minorities to obtain the same compensatory remedies for employment discrimination as is available to racial minorities, as mandated in current law. The substitute especially has the kind of broad equal employment opportunity protection that this Nation should have had as law long ago.

Attempting to protect the civil rights of those most liable to be discriminated against in the work place is not easy. The highest Court in the land has committed serious damage to civil rights laws designed to protect equal employment opportunity at the jobsite for all Americans. But the work of the Congress is clear whenever fair employment opportunities are stifled by employers or by the courts.

As a cosponsor of H.R. 1 and a cosponsor of H.R. 4000 last year, I am hopeful that Members will do the right thing and support the Towns-Schroeder substitute, which strengthens and clarifies the legal issues brought on by the Supreme Court in its attempts to nullify long-standing interpretations of employment discrimination statutes. As a former colleague Barbara Jordan said, "What that people want is very simple. They want an America as good as its promise."

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY of New York. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute to the Civil Rights Act of 1991.

There is nothing more fundamental to our Nation and to our way of life than freedom and equality of opportunity for all citizens. These are the principles upon which our Nation was founded, and these are the principles which keep our Nation strong.

One of our most important tasks as Members of Congress is to preserve and protect these fundamental principles for all Americans. The Towns-Schroeder substitute calls for strong and equal remedies for all Americans who are victims of intentional discrimination.

This Congress has heard tragic testimony from women who were victims of the most horrible kinds of abuse, and even today in modern America they found that they had nowhere to turn and no way to be made whole for the terrible losses they suffered.

It is essential that we have strong remedies for these victims of intentional discrimination. We need to fight back against the crime of discrimination, not for some Americans but for all Americans. That is what this bill is designed to do, and I urge my colleagues to support the Schroeder-Towns amendment.

Mr. TOWNS. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. KILDEE].

Mr. KILDEE. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute. This is the bill that America needs and the bill that America deserves.

Mr. TOWNS. Mr. Chairman, I yield such time as he may consume to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I rise in very strong support of the Towns-Schroeder amendment.

Mr. TOWNS. Mr. Chairman, I yield one minute to the gentleman from New Jersey [Mr. PAYNE].

Mr. PAYNE of New Jersey. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute. I believe it represents the fairest approach to equality in the workforce. This substitute does not contain a cap on punitive damages under title VII. As Americans, we pride ourselves in being the land of liberty and justice for all. It is simply un-American that women, religious minorities, disabled persons, or those of different national origins should be subject to a cap on the amount of punitive and compensatory damages.

It is not true that the expansion of title VII would open the floodgates to frivolous lawsuits. There have been very few cases where damages have been awarded under section 1981, which provides compensatory and punitive damages to victims of intentional racial descrimination. In 42 cases, the combined compensatory and puntive award per case was $50,000 or less. In four cases, plaintiffs received less than $500. In only 69 cases nationwide over the last 10 years, were compensatory or punitive damages awarded.

Let us also take a moment to remember the contributions that women recently made during Operation Desert Shield/Desert Storm. Over 30,000 women willingly and courageously headed for service in a foreign land, leaving their homes and families because duty called. They deserve more than hollow words now—they deserve full protection in the American workforce.

Mr. Chairman, I urge my colleagues to vote in favor of the Towns-Schroeder substitute.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I rise in strong support of the Towns-Schroeder amendment.

The very premise of this civil rights bill is that all victims of discrimination should be equally and fairly compensated. What signal does it send when we say there is a cap on damages for the majority of the American people, females, who constitute 45 percent of the labor force? What signal do we send to the 37 million disabled individuals, our disabled veterans, for example, when we say we are going to put a cap on discrimination with respect to employment?

What about religious minorities? Let us just translate this. A cap on damages protects an employer who sexually harasses his female employees and protects an employer who de facto refuses to hire a veteran because he is disabled, even though he is totally qualified, or an employer who would deny a promotion to a worker because he or she may be Catholic or Protestant. What signal does that send?

Finally, Mr. Chairman, what about the case that is well-publicized of the Stanford University neurosurgeon who quit because of discrimination in the workforce? Does she not deserve compensation of more than $150,000? Is her worth that much less? I think not, and I believe that is unfair treatment.

Mr. TOWNS. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute.

This bill will overturn the five key 1989 Supreme Court decisions narrowing the reach of job discrimination laws and authorizing for the first time unlimited compensatory and punitive damages for the victims of intentional job discrimination on the basis of sex, religion or disability (as well as allowing for jury trials in those cases.)

This substitute does not contain the cap on punitive damages for women, religious minorities, and the disabled included in the Brooks-Fish substitute. The substitute does not contain any of the other "compromise" provisions of the Brooks-Fish substitute, including the language explicitly prohibiting the use of quotas, banning "race-norming" of employment test scores, and changing retroactivity provisions.

Mr. Chairman, it is unfortunate that President Bush has abandoned the moral obligation of his office to lead. Instead he has chosen to use the code word "quota" to divide black and white Americans. To politicize the employment rights of minorities and women is wrong. But this President was wrong when he politicized our Nation with "Willie Horton." Once again he has chosen not to give this Nation the moral leadership that it would have gotten from a John F. Kennedy, a Lyndon B. Johnson, or a Franklin D. Roosevelt. I urge the passage of the Towns-Schroeder substitute.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I rise in strong support of the Towns-Schroeder substitute.

Of all the civil rights bills on which we will vote today, the Towns-Schroeder bill provides the strongest civil rights protection to the greatest number of American workers.

Under this bill, all Americans who are victims of international job discrimination would be entitled to the same protections. Discrimination is discrimination, whether it is based on sex, religion, disability, or race. The same remedies should be available under section 1981 of title VII to any

American worker whose career or job is threatened by any type of unfair employment discrimination.

By allowing women for the first time to sue for punitive damages in gender discrimination cases, we are making progress. But capping damages only for gender-based discrimination suits is not illustrative of the equitable, just democracy we are trying today to preserve. Let us reaffirm to the American people what all of us here should be sure of: Women have the right to be protected from sexual discrimination in the workplace.

Discrimination and harassment emotionally and economically scar so many American men and women, be they Latino, white, African-American, Asian-American, or Native American. Let us address the real issues that affect all Americans today. We should not allow ourselves to get bogged down in the political rhetoric about quotas that dominates the administration's discussion of civil rights. Civil rights is not about quotas; civil rights is about equality under the law, and opportunity for American citizens.

Let us uphold equality under the law by passing the Towns-Schroeder substitute.

Mr. TOWNS. Mr. Chairman, I yield 3 minutes to the gentlewoman from the District of Columbia [Ms. NORTON].

Ms. NORTON. Mr. Chairman, the medical malpractice debate, foreign as it is to civil rights, has found its way into the proceedings of this bill. Women are the big losers, and this is not the first time.

Last year, mammography was included under Medicare for the first time but capped. It is about time that we stopped experimenting with caps, making women the guinea pigs.

This debate on limiting damages, Mr. Chairman, is a case of much ado about nothing. Under permission to insert material into the RECORD, I will include a study that demonstrates that never has so much energy and rhetoric been used and abused in the name of so little. A major law firm, Shea & Gardner, conducted a study of all cases of damages in civil rights reported in the 1980's—594 cases.

□ 1910

The results reveal excessive damages, indeed any damages at all, to be a nonproblem.

Mr. Chairman, the great majority of cases had no damages of any kind, so difficult are damages to prove. There were seven cases per year on average where anything other than back pay was awarded. There were three cases, three cases in the whole decade, of awards of $200,000, and those had truly disgusting facts. The average award in the few cases with damage awards was $50,000 for compensatory and punitive damages combined.

Mr. Chairman, these are reported cases, but they are a reliable indicator, because reported cases tend to be most egregious, which is why they get all the way to trial in the first place.

Mr. Chairman, I hope that Members will not compound the error in spending so much time and energy on damages by despoiling this bill with a discriminatory limit on damages for women, members of religious groups, and disabled people.

Mr. Chairman, I include for the RECORD the report referred to earlier.

MONETARY AWARDS IN TITLE VII AND SECTION 1981 CASES

The average monetary benefits in EEOC administrative cases: $6,221 per case for FY 90; $5,705 per case for FY 89.

Analysis of reported Section 1981 cases between 1980 and 1990; 594 total cases were found:

325 cases were dismissed or plaintiff lost;

148 cases had unknown dispositions; and

121 cases of proven intentional discrimination.

Of the 121 cases of proven intentional discrimination:

52 cases received only equitable relief (e.g. backpay); and

69 cases where plaintiff received compensatory or punitive damages:

40 of these cases had combined compenstory and punitive damage awards of less than $50,000;

2 were appealed with no reported disposition; and

5 had no reported amount.

DAMAGE AWARDS OVER $50,000—COMBINED COMPENSATORY AND PUNITIVE

[Dollars in thousands]

Case name	Compensatory	Punitive
Holland	$20	$501
Jackson	70	70
Gillespie	50	60
Flanagan	50	20
Carter	100	10
Erebia	75	55
Zaklama	85	50
Rowlett	123	300
Marsh	15	50
Williamson	20	100
Johnson	45	150
Walters	150	2
Stallworth	100	1
Anderson	[1] 100	.....
Moffett	66	15
Ramsey	35	20
Alston	90	0
Muldrew	52	0
Mitchell	20	500
Block	12	60
Reese	[2] 240	.....
Fisher	50	10

[1] Includes back pay.
[2] Includes loss of earnings.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Chiarman, I rise in support of the Towns-Schroeder substitute to H.R. 1, the Civil Rights and Women's Equity and Employment Act of 1991. I commend Congressman Towns, chairman of the Congressional Black Caucus, and Congresswoman SCHROEDER, chairwoman of the Congressional Caucus for Women's Issues, for offering this important substitute. What is fundamentally at issue today are national values of equal opportunity and mutual respect.

Today, the House is considering civil rights legislation to overturn five damaging 1989 Supreme Court decisions. In 1 year, the Reagan-Bush Supreme Court overturned 25 years of civil rights legislation and case law and made clear its intentions to impose a conservative agenda through its legal decisions. In order to maintain our Nation's commitment to principles of freedom, equality, fairness, and equity, passage of a strong civil rights bill is imperative.

The administration has turned the effort to pass civil rights legislation into an opportunity to inflame racial tensions. They have characterized equality in the workplace for women and minorities as a source of inequality for others. They have gone to tremendous lengths to disrupt negotiations to fashion workable compromises. These efforts cannot and must not deter us from understanding the true importance of a civil rights bill for America today and tomorrow.

Consider who the civil rights bill is designed to benefit. When we add up women, minorities, and the disabled, we are talking about two-thirds of the American population. Denying equal opportunity to two-thirds of the population is short-sighted as well as unfair. Equality and economic growth are inextricably linked. If we allow discrimination to poison our labor markets, we deprive the country of some of its most valuable and productive members. Equal opportunity helps to unlease economic growth.

The Towns-Schroeder substitute is the best of the three equal opportunity measures before us today and will help us tap the tremendous potential of women and minorities. It will ensure that women and the disabled, for the first time since the birth of our Nation, will have the opportunity to sue for damages. Damages are crucial to the enforcement of civil rights because they put a price tag on discrimination. Damages tell employers that if you discriminate you will pay: The worse the discrimination, the bigger the price tag.

The Towns-Schroeder substitute would not include a cap on damages as provided by the other two measures before the House today. Because victims of racial discrimination were already granted the right to sue for damages 124 years ago, a cap on damages for women and the disabled would undermine the principle of equal opportunity which civil rights legislation is supposed to guarantee.

Mr. Chairman, this substitute is about fairness and equality. The Supreme Court has forced us to answer the question, "Do we as a Nation want to treat all workers, regardless of race, sex, color, religion, or physical handicap, with equality, respect, and human decency?" The Towns-Schroeder substitute allows us to answer an un-

equivocal "Yes." I urge my colleagues to support it.

Ms. MOLINARI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to say something first of all about the debate that just took place with regard to damages and the fact that a lot of Members that are going to be called together in this Chamber very shortly will be voting against this bill. Some will be voting for very real reasons. Some will be voting because they believe, as I do, that one is not antifemale to stand here and vote on limiting damages. One is in fact strengthening a female hand in the workplace by allowing for damages, but capping damages through a judge for immediate relief.

Mr. Chairman, if anyone in this Chamber believes $150,000 is not enough to deter discrimination, then I think they are very, very wrong. I believe that that is why the American public and the President's bill put a cap on damages.

Mr. Chairman, I happen to believe that not all that women want is to make a multitude of money. They want to make sure that there is enough discouragement from the ability to discriminate so we are not made victims. I happen to believe $150,000 and immediate remedies will do that, and that is included in the President's bill.

Mr. Chairman, I was very happy to yield to my opponents some of my time. They, obviously, feel very strongly about the Towns-Schroeder substitute, and they spoke in a very impassioned way. Some of them talked about their prejudice experiences, and a lot of Members attacked the President.

But let us be truthful here. We know it is not going to be the President that kills the Towns-Schroeder bill, it is going to be the Democratic leadership that kills the Towns-Schroeder bill. Mr. Chairman, you know it, and this side of the aisle knows it. It is the Democratic leadership who felt so strongly against this bill that they delayed a vote on this bill by several weeks and remade this bill.

Mr. Chairman, why? I have not heard one Democrat speak out against the Towns-Schroeder substitute.

The only one who supports the Fish-Brooks substitute was on the Republican side, the gentleman from New York [Mr. FISH]. He told us why he preferred that. Not one Democrat stood up to say why this will not be the bill that is presented to the American people.

Mr. Chairman, apparently no one on the Democratic side has a problem with the Towns-Schroeder bill. I hope, in the spirit of fairness and honesty, that this is the final bill that the Democrats present to the American people, for all the reasons that we just heard, for over half an hour, close to 45 minutes when the time is done. I hope the American public and the supporters of Towns-Schroeder have a problem with this procedure, that will disallow this to be the bill that is brought to the American public. I hope you have a problem with the fact that not one of your fellow Members told you why they disagree with the amendments and the implications of your bill.

Mr. Chairman, we all know this is not the bill that the Democratic leadership will present to the public, and the American public will never know why. They will never know why this is not the bill that will finally see the light of day from this U.S. Congress.

Mr. Chairman, we know why. Because the Democratic leadership wants a bill, any bill. The American public has come forth over the last few weeks and told us they are confused and concerned over civil rights, over the true intentions of the U.S. Congress with regard to this bill. The lack of debate on the Democratic side in this instance truly shows why the American public is confused.

Mr. Chairman, I am confused, and I hope supporters of this bill, the Towns-Schroeder substitute, are just as confused. I hope they demand an explanation for why this is not the bill that the Democratic leadership will bring to the American public and why this is the bill that the Democratic leadership will kill.

Mr. Chairman, it is not the President of the United States that is going to stand between you and the American public. It is in fact your leadership.

Mr. TOWNS. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. SAVAGE].

Mr. SAVAGE. Mr. Chairman, I rise in support of the Towns-Schroeder bill, because it is the only one of the bills that is really a civil rights bill. One of the substitutes is so ridiculous that it allows white males to intimidate employers from hiring fairly by threatening with a suit.

Mr. Chairman, I am not surprised there is so much confusion, because when you live in a practically lily white suburb, and are married in a practically lily white church, you have parents in a lily white cemetery, going to school mainly white, reading newspapers that are white, viewing television that is white, listening to radio stations all owned by whites, you really do not understand what you are doing to America.

But if you understand blacks suffering unemployment two and one-half times yours, earning less than 60 cents for every dollar that you earn, having less than one dollar's net worth for every $10 of a white family, you are apt to make up your mind that you either think blacks are inferior, or we are suffering from a social condition that can be described as racism.

□ 1920

We do not have racism without racists. Nobody is a racist but racism is prevalent. Unless you think blacks are not equal.

I tell you some of you may think that because some of your parents may not have been here when my parents were here, when it was against the law to educate a black, when marriage between blacks was disregarded, when blacks were forced to work to compile wealth for whites but could not get paid, I tell you that unless you understand that we are equal, just as 22 percent of those you praised for heroism over in the Desert Storm, I tell you unless you recognize that we are equal and treat us that way, you are going to create a revolt in this country.

You are going to have to build up your defense budget because you are going to have to kill 1 million of us because young blacks are tired and are not going to tolerate any more of your ignorance.

All we ask is that you deny that this bill does not make blacks equal. The bill 25 years ago did not do it, obviously, since we are not equal now. It simply says you should not have special privilege for white males particularly to end white supremacy. It just says try to make all equal without special privileges for any. This is the bill to deny that special privilege to a sector or our population.

Mr. TOWNS. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I rise today in support of the Towns-Schroeder amendment because I am not confused. I have drunk at the colored fountain. I have gone to the colored restroom. I have gone to the back of the restaurant. I am not confused because this very day I read in the New York Times that the RTC, an agency we created to bail out the S&Ls, gave out 126 contracts, two of them to blacks, three of them to Hispanics. I am not confused because on Saturday night, Alfred Jermaine Ewell, in Long Island, NY, was beaten into a coma simply because he happened to be walking along the beachfront with a white woman.

I am not confused because I know that as far as America proclaims it has come, it has not come far enough. Therefore, Mr. Speaker, I rise today in support of this amendment saying that America must become the Nation of equality. It must become the Nation of equal opportunity. It must become the Nation that moves us further beyond the days of the colored times, further beyond the days when there was no equality to the place where there is some, to the place where there is equality for all.

I include for the RECORD an article from the New York Newsday, dated June 4, 1991, entitled "LI Teen in Coma After Racial Attack."

LI TEEN IN COMA AFTER RACIAL ATTACK

(By Susan Forrest)

A black high school football star was severely beaten on Long Island early Sunday, shortly after a white youth objected to his socializing with a white girl at a party, Nassau County police said.

As police sought the attackers, Alfred Jermaine Ewell, 17, of Inwood, L.I., remained comatose at a Far Rockaway hospital. Ewell was struck over the head with bats and sticks by up to seven young white men after a house party attended by up to 150 youths.

"Is he going to be all right? His life is over, unless you have an 'in' with God and know how to wake him up," Ewell's mother, Ernestine, said yesterday. "There has to be justice, right? His life is gone because of the color of his skin. Why?"

Ernestine Ewell, a widow who also has a 13-year-old daughter, said her son is on life support and may have brain damage.

Police said that two white teens—Anthony Franzese, 19, and Stephen Lieberman, 18—and the 16-year-old girl Ewell has been talking to came to his aid during the attack on the Atlantic Beach boardwalk. The three rescuers suffered minor injuries. Franzese and Lieberman were treated at a hospital and released. The girl did not seek treatment.

Police said that at the party, a young man asked the girl what she was doing with Ewell, using a racial epithet, according to Deputy Police Chief Kenneth Carey.

"We're calling it racial because of the verbal epithet," Carey said. "It appears that the person making the statement was ridiculing the girl for being with a black friend."

Ewell is a starting defensive linebacker and offensive fullback for the Lawrence High School football team and a track team sprinter who is called "Streak" because of his speed. Ewell was named "all league" player in Conference One in Nassau County last year, an honor usually reserved for seniors. Police said Ewell was at the party with several football teammates.

The party began to break up about midnight and many of the partygoers walked to the boardwalk. Ewell was sitting on a railing on the boardwalk talking to the girl when he was attacked.

Mr. TOWNS. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas [Mr. WASHINGTON].

Mr. WASHINGTON. Mr. Chairman, approximately an hour ago I made a challenge to anyone who really believed that this was a quota bill to come out behind that thin veil. I will let my time run down.

I will let my time run down.

We are waiting. We are still waiting.

Is there one today? Is this a quota bill? Somebody have the courage to stand up and debate me.

I went to a black high school and black college and a black law school. I am not the smartest person here. You can beat me in a debate, if your heart is pure. If you have something to say, give me one example how this is a quota bill. I am waiting.

Mr. HYDE. Mr. Chairman, I will be happy to tell the gentleman why this is a quota bill.

Mr. WASHINGTON. Mr. Chairman, is the gentleman asking me to yield?

Mr. HYDE. Yes, sir.

Mr. WASHINGTON. Mr. Chairman, I yield to the gentleman from Illinois [Mr. HYDE] if he will give me an example of how it is a quota bill.

Mr. HYDE. Mr. Chairman, if a person files a complaint with the Federal court on the grounds that the work force at a certain factory does not truly and correctly mirror the ethnic, gender, and racial composition of the available labor force, now, the employer confronted with that complaint knows that he has a jury trial ahead of him. He knows that they may well, through discovery, find enough to charge intentional discrimination. And then he is subject to unlimited damages.

He, therefore, is very concerned about that. And he wants to know, "How can I avoid this?"

The answer he will get is, hire by the numbers. And so inevitably the threat of expensive, costly and uncertain jury trials and unlimited damages compels an employer to do the prudential thing and hire by the numbers.

That is why it is a quota bill.

Mr. WASHINGTON. Mr. Chairman, in law that is called res ipsa loquitur, which means the thing speaks for itself. Nothing from nothing leaves nothing. He said nothing; there is nothing.

Mr. TOWNS. Mr. Chairman, I yield one-half minute to the gentlewoman from Colorado [Mrs. SCHROEDER], the cosponsor of this bill.

Mrs. SCHROEDER. Mr. Chairman, I want to answer just a few things that were brought out. First of all, in the Republican substitute, there is a cap on any kind of damages for sexual harassment. There are no damages allowed for sexual discrimination. That is really antiwoman in the workplace. I find it shocking.

Others say, well, what about the $150,000 cap? It will be OK for women. Are they kidding?

The young neurosurgeon quitting at Stanford University, I think her career is worth more than $150,000. Let us not put a class ceiling on half the population. Let us treat everyone equally and let us vote for the Towns-Schroeder substitute.

Mr. TOWNS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have afforded America an opportunity to place justice as the highest common denominator for its people. We place America, now, on notice. Threatened Presidential vetos to the contrary, we shall not deface Martin Luther King's dream. We will not permit the denigration of the legacy of Medgar Evers, Schwerner, Goodman, and Chaney. Abraham Lincoln, surveying the battlefield at Gettysburg challenged: "that we here highly resolve that these dead shall not have died in vain. That this Nation shall have a new birth of freedom. And that this Government of the people, by the people, for the people, shall not perish from this Earth." Do the right thing. Move America ahead. Vote for the Towns-Schroeder amendment.

Mr. ROYBAL. Mr. Chairman, I would like to rise in support of the Towns-Schroeder substitute to H.R. 1, the Civil Rights and Women's Equity in Employment Act.

This substitute is very similar to the civil rights bill which we approved by a large margin last year, only to see it vetoed by President Bush. The Towns-Schroeder substitute is the only version which does not contain a cap on damages for women who are victims of intentional job discrimination. Allowing this cap on damages makes a statement that intentional discrimination against women is less serious than racial discrimination. A cap which affects only some members of our society is in itself a form of inequality and discrimination.

While the Towns-Schroeder substitute does not mention quotas, President Bush has continued to attack every responsible civil rights proposal as a quota bill, and is doing everything he can to create a climate of fear and racial tension by insinuating that any civil rights bill, other than his own, is designed to take jobs from white people and give them to minorities. This rhetoric, which exploits people's racial fears, reminiscent of the President's election campaign and his constant references to Willie Horton.

I urge my colleagues to support the Towns-Schroeder substitute.

Mr. TOWNS. Mr. Chairman, the Towns-Schroeder substitute for the Civil Rights Act of 1991 is a highly technical bill, but its objective is simple—to protect workers from sexual and racial harassment and discrimination in the workplace. The Towns-Schroeder substitute gives workers this protection in its purest form—with no caps on damages, with no limits on remedies for women, and with equal protections for U.S. workers in U.S. companies abroad.

Despite our tireless efforts to dispel the myth of the quota bill, despite an attempt to say in so many words "thou shalt not impose quotas," and despite the fact that the Republican substitute does not even address quotas, the Bush administration continues to fight the Civil Rights Act of 1991 with a campaign of race baiting and misinformation. The Bush administration has accused advocates of the bill of practicing the politics of racial division. But this administration, with its blatant, recurring appeals to underlying racial prejudice in this Nation, has become a master of the game of race politics.

Like all other civil rights bills before Congress, the Towns/Schroeder bill does not mandate or encourage employers to resort to hiring, firing or promoting premised upon race-based or gender-based quotas. The entire quota issue has been a Republican attempt to use inflammatory and divisive racial politics to prevent the majority of Americans from having a fair shot at getting and keeping a job.

Admittedly, the Supreme Court decisions we are seeking to overturn may be difficult for the layman to understand. One of our biggest obstacles in fighting for a civil rights bill has been the difficulty in explaining how a bill that is not well understood by the average American can have any impact on our working constituents.

Nevertheless, the effects of these Supreme Court decisions are real and potentially devastating for the emerging 21st century workforce. So long as Congress fails to make its intent clear, women and minorities will have no recourse but to return to jobs in which they have been racially or sexually harassed. The Supreme Court has stripped workers of any protection against racial or sexual harassment at work. Discriminatory seniority plans cannot be challenged if the discriminatory effect is found more than a few months after the plan goes into effect. Consent decrees for remedying past discrimination can be challenged regardless of whether parties had an opportunity to join the original lawsuit. In cases where business practices have a discriminatory effect on the workforce, employees bear the burden of proof even when the employer controls all the relevant evidence.

Only Congress can fully restore the protections and remedies stripped from American workers by the 1989 Supreme Court decisions. The Towns-Schroeder substitute restores the application of long-standing case law by prohibiting intentional discrimination and employment practices which have a discriminatory effect. The Towns-Schroeder bill provides a broader spectrum of protection for workers faced with employment discrimination, and strengthens remedies available to victims of intentional discrimination.

Mr. WEISS. Mr. Chairman, I rise in support of the Towns-Schroeder substitute to the Civil Rights Act of 1991. This is the only version of the civil rights bill that embodies the true principles of equality and fairness.

Assertions that current civil rights legislation already ensures a level playing field are unfounded and irresponsible. If simple observation does not sufficiently convince my colleagues statistics and studies should. For example, according to data provided by the Congressional Caucus for Women's Issues, an estimated 40 percent of women experience sexual harassment on the job, including sexual teasing, deliberate touching, pressure for dates, and even assault. Women in nontraditional jobs and women of color experience even higher rates of sexual harassment. Women continue to earn only 68 cents for every dollar that men earn. About half of this difference, the Caucus reports, is directly attributable to sex discrimination. Women with a college degree still earn, on average, less than a man with only a high school diploma.

In addition, too many employers still discriminate against qualified, well-trained, and hard-working minorities. A recent Urban Institute study measuring the extent of job discrimination against black job-seekers found that whites advanced further in the hiring process than their qualification-matched black counterparts 20 percent of the time. The study concludes that job discrimination against blacks is entrenched and widespread.

Clearly, we need strong civil rights legislation. The Towns-Schroeder substitute most adequately restores worker protections seriously weakened by a series of 1989 Supreme Court decisions.

First, the Towns-Schroeder substitute is the only legislative option before us today that treats all victims of intentional job discrimination equally. It would provide victims of racial, gender, religious and disability discrimination equal ability to collect compensatory and punitive damages for intentional job discrimination. The Brooks-Fish substitute, while allowing all the aforementioned groups to collect for damages, allows racial minorities to collect unlimited damages while capping the amount of money that women, religious minorities and individuals with disabilities can collect. Most unfair, the Michel substitute allows racial minorities to collect for unlimited damages, but prohibits women, religious minorities, and individuals with disabilities from collecting at all.

Second, by overturning the Wards Cove standard of business necessity, and codifying the Griggs standard, the Towns-Schroeder substitute provides the fairest criterion for judging if workplace discrimination has occurred. Reasonably, it requires that employers prove that their employment practice in question bears a significant relationship of successful performance of the job. The Brooks-Fish substitute waters down this criterion, while the Michel substitute codifies the nearly impossible to prove definition of business necessity included in Wards Cove, one of the Supreme Court decisions that the Civil Rights Act is intended to overturn.

Further, the Towns-Schroeder substitute most fairly deals with retroactive cases. Civil rights legislation is intended to overturn a series of wrongheaded 1989 Supreme Court decisions. The Schroeder-Towns measure justly allows plaintiffs to apply the principles of this civil rights legislation to cases decided after the pertinent 1989 Supreme Court decision. The Brooks-Fish substitute would only allow plaintiffs to apply the principles of this legislation to cases currently pending, and the Michel substitute allows plaintiffs whose claims were dismissed as a result of the Supreme Court's 1989 decisions absolutely no legal recourse.

The Towns-Schroeder substitute will provide women and minorities with the most appropriate means to address the rampant gender, racial and other discrimination that now exist without establishing a quota system. As we all know, quotas are illegal under current law, except if the court has ordered one for employers who have discriminated in the past. The Schroeder-Towns substitute will not change this law. It merely mirrors the decision reached in Griggs versus Duke Power. In congressional hearings for civil rights legislation, not one witness testified that Griggs forced employers to resort to quotas.

It may be painful to admit that America, the home of the free and the brave, is plagued with discrimination. But it is, and I urge my colleagues to vote to give those that have suffered and will suffer under the ugly hand of prejudice real protection under the law. I urge my colleagues to vote for the Towns-Schroeder substitute.

Mr. CLAY. Mr. Chairman, as we take up the Civil Rights Act we will have to remember our American history. In 1776 the framers of the Constitution cited "That all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." We the representatives of the American people swore to uphold those words. Racism and prejudice does not fulfil those words. Racism is alive and well, in every facet of our lives and most importantly the workplace. Some say that segregation is not apparent in today's society. That it died in the 1960's. But when women, minorities and the disabled must fight to prove through legal action as to why they were not allowed to grab hold of opportunity, the American dream, and a better life for themselves then I must say that segregation and prejudice is not only back, but it never left us.

Mr. Chairman, I rise in support of the Towns-Schroeder amendment to the Civil Rights Act of 1991. This substitute will overturn the adverse decisions made by the Supreme Court and strengthen this Nation's fight against efforts to take away citizen's rights. I support this amendment because it removes quotas from the workplace and requires that the employer documents reasons for refusing to hire someone for a position. However, simply because an employer unintentionally hires many people of a specific ethnic, religious, or economical background, it does not follow that the employer is practicing discrimination.

For the past 20 years, Mr. Chairman, I have seen organizations such as affirmative action, rainbow coalition, and the ERA protect those that were looked down upon by employers in a discriminatory manner without placing pressure on the employers to hire minorities. These organizations must stay in place, not to enforce our actions but to educate Americans on becoming more race conscious in everything they do.

We stand on the forefront of a decision that could change how Americans view one another. That is why I support the Towns-Schroeder amendment. It is the moral, right, and fair decision for all Americans black or white, male or female.

Mrs. COLLINS of Michigan. Mr. Chairman, I come before you to express my support of the Towns-Schroeder substitute. I support this substitute for a variety of reasons, but there is one reason that stands out most of all.

Any so-called civil rights bill that places a ceiling cap on, or doesn't allow for compensatory or punitive damage claims is an unequal rights bill.

This sends a message to women, religious and ethnic minorities, and disabled persons that their plight isn't worth more than $150,000 and creates a new form of economic discrimination. The message is someone must be at the bottom rung of the opportunity ladder, so it might as well be them.

By adopting a claims cap, we tell them that no matter how much, and in what ways, they have suffered from the discriminatory practices of an employer, it's only worth so much.

To disallow compensatory and punitive damages is to say to them that in these times of current economic uncertainty, we can't afford to penalize businesses, regardless of how unfair they treat you. As a woman and an African-American, I am dually insulted by this notion.

A cap or disallowance will allow employers who habitually engage in discriminatory practices to develop the attitude that the claims they will possibly have to pay are merely acceptable business expenses. It will again become an accepted business practice to discriminate, because it won't cost them a whole lot. Employers who run the risk of having to

pay through the nose are very careful of the toes they step on.

Mr Speaker, I applaud my distinguished colleagues for crafting a substitute that does not create second class citizenship in the workplace. This substitute sends a message to employers that no one group is better than another. It also gives effective remedies to all people who suffer from discrimination.

I support the Towns-Schroeder substitute because it is the only substitute that adequately presents the definition of business necessity.

If an employer denies positions and promotional opportunities to women and disabled persons for any reason under the guise of business necessity, then that employer should be out of business.

For these reasons, and many others, I urge my colleagues to support and vote yes for the Towns-Schroeder substitute.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from New York [Mr. TOWNS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. TOWNS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 152, noes 277, not voting 2, as follows:

[Roll No. 127]

AYES—152

Abercrombie
Ackerman
Anderson
Andrews (ME)
Andrews (NJ)
Aspin
Atkins
AuCoin
Barton
Berman
Bonior
Boxer
Brooks
Brown
Bruce
Bryant
Bustamante
Campbell (CA)
Campbell (CO)
Cardin
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dixon
Donnelly
Durbin
Dwyer
Dymally
Early
Edwards (CA)
Espy
Evans
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Gibbons
Gonzalez
Gray
Green
Hayes (IL)
Hayes (LA)
Hertel
Horn
Hoyer
Jefferson
Johnson (SD)
Johnston
Jontz
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
Lantos
Levin (MI)
Levine (CA)
Lewis (GA)
Lowey (NY)
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McDermott
McHugh
Mfume
Miller (CA)
Mineta
Mink
Moakley
Moody
Moran
Morella
Mrazek
Murtha
Nagle
Neal (MA)
Nowak
Oakar
Oberstar
Owens (NY)
Pallone
Panetta
Payne (NJ)
Pelosi
Perkins
Peterson (FL)
Rahall
Rangel
Reed
Richardson
Roe
Rose
Roybal
Sabo
Sanders
Savage
Sawyer
Scheuer
Schiff
Schroeder
Serrano
Sharp
Sikorski
Slaughter (NY)
Smith (FL)
Staggers
Stark
Stokes
Studds
Swift
Synar
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Vento
Washington
Waters
Waxman
Weiss
Wheat
Williams
Wolpe
Wyden
Yates
Young (FL)

NOES—277

Alexander
Allard
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Armey
Bacchus
Baker
Ballenger
Barnard
Barrett
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Borski
Boucher
Brewster
Broomfield
Browder
Bunning
Burton
Byron
Callahan
Camp
Carper
Carr
Chandler
Chapman
Clement
Clinger
Coble
Coleman (MO)
Combest
Cooper
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Dannemeyer
Darden
Davis
DeLay
Derrick
Dickinson
Dingell
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Eckart
Edwards (OK)
Edwards (TX)
Emerson
Engel
English
Erdreich
Fawell
Fields
Fish
Franks (CT)
Gallegly
Gallo
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (TX)
Jones (GA)
Jones (NC)
Kanjorski
Kasich
Klug
Kolbe
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Luken
Machtley
Marlenee
Martin
Mazzoli
McCandless
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
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Morrison
Murphy
Myers
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Neal (NC)
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Orton
Owens (UT)
Oxley
Packard
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Ramstad
Ravenel
Ray
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rostenkowski
Roth
Roukema
Rowland
Russo
Sangmeister
Santorum
Sarpalius
Saxton
Schaefer
Schulze
Schumer
Sensenbrenner
Shaw
Shays
Shuster
Skaggs
Skeen
Skelton
Slattery
Slaughter (VA)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Stallings
Stearns
Stenholm
Stump
Sundquist
Swett
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Whitten
Wilson
Wise
Wolf
Wylie
Yatron
Young (AK)
Zeliff
Zimmer

NOT VOTING—2

Lehman (FL)
Sisisky

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Mr. LEWIS of California and Mr. CUNNINGHAM changed their vote from "aye" to "no."

Messrs. KOLTER, GAYDOS, and FRANK of Massachusetts changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

□ 1950

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MICHEL

Mr. MICHEL. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. MICHEL: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that additional protections and remedies under Federal law are needed to deter unlawful discrimination.

(b) PURPOSE.—The purpose of this Act is to strengthen existing protections and remedies available under Federal civil rights laws.

SEC. 3. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'justified by business necessity' means that the challenged practice has a manifest relationship to the employment in question or that the respondent's legitimate employment goals are significantly served by, even if they do not require, the challenged practice.

"(o) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof).

"(p)(1) The term 'harass' means, in cases involving discrimination because of race, color, religion, sex, or national origin, the subjection of an individual to conduct that creates a working environment that would be found intimidating, hostile or offensive by a reasonable person.

"(2) The term 'harass' also means, in cases involving discrimination because of sex, (i)

making the submission to unwelcome sexual advances by an employer a term or condition of employment of the individual; or (ii) using the rejection of such advances as a basis for employment decisions adversely affecting the individual; or (iii) making unwelcome sexual advances that create a working environment that would be found intimidating, hostile or offensive by a reasonable person.".

SEC. 4. DISPARATE IMPACT CLAIMS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following new subsection:

"(k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—Under this title, an unlawful employment practice based on disparate impact is established only when a complaining party demonstrates that a particular employment practice caused a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is justified by business necessity: *Provided, however*, That an unlawful employment practice shall nonetheless be established if the complaining party demonstrates the availability of an alternative employment practice, comparable in cost and equally effective in predicting job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and the respondent refuses to adopt such alternative.".

SEC. 5. FINALITY OF JUDGMENTS OR ORDERS.

For purposes of determining whether a litigated or consent judgment or order resolving a claim of employment discrimination because of race, color, religion, sex, national origin, or disability shall bind only those individuals who were parties to the judgment or order, the Federal Rules of Civil Procedure shall apply in the same manner as they apply with respect to other civil causes of action.

SEC. 6. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of State law.".

SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended by adding at the end the following sentence: "For purposes of this section, an alleged unlawful employment practice occurs when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system, or provision thereof, that is alleged to have been adopted for an intentionally discriminatory purpose, in violation of this title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.".

SEC. 8. PROVIDING FOR ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

(a) Subsection 703(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(a)) is amended by deleting the period at the end and inserting in lieu thereof "; or" and by adding at the end the following new paragraph:

"(3) to harass any employee or applicant for employment because of that individual's race, color, religion, sex, or national origin: *Provided, however*, That no such unlawful employment practice shall be found to have occurred if the complaining party failed to avail himself or herself of a procedure, of which the complaining party was or should have been aware, established by the employer for resolving complaints of harassment in an effective fashion within a period not exceeding ninety days.".

(b) Section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended by adding at the end the following new subsections:

"(l) EMERGENCY RELIEF IN HARASSMENT CASES.—An employee or other complaining party alleging a violation of section 703(a)(3) of this title may petition the court for temporary or preliminary relief. If the complaining party establishes a substantial probability of success on the merits of such harassment claim, the continued submission to the harassment shall be deemed injury sufficiently irreparable to warrant the entry of temporary or preliminary relief. A court having jurisdiction over a request for temporary or preliminary relief pursuant to this paragraph shall assign the case for hearing at the earliest practicable date and cause such case to be expedited in every way practicable.

"(m) EQUITABLE MONETARY AWARDS IN HARASSMENT CASES.—

"(1) In ordering relief for a violation of section 703(a)(3) of this title, the court may, in addition to ordering appropriate equitable relief under subsection (g) of this section, exercise its equitable discretion to require the employer to pay the complaining party an amount up to but not exceeding a total of $150,000.00, if the court finds that an additional equitable remedy beyond those available under subsection (g) of this section is justified by the equities, is consistent with the purposes of this title, and is in the public interest. In weighing the equities and fixing the amount of any award under this paragraph, the court shall give due consideration, along with any other relevant equitable factors, to (i) the nature of compliance programs, if any, established by the employer to ensure that unlawful harassment does not occur in the workplace; (ii) the nature of procedures, if any, established by the employer for resolving complaints of harassment in an effective fashion; (iii) whether the employer took prompt and reasonable corrective action upon becoming aware of the conduct complained of; (iv) the employer's size and the effect of the award on its economic viability; (v) whether the harassment was willful or egregious; and (vi) the need, if any, to provide restitution for the complaining party.

"(2) All issues in cases arising under this title, including cases arising under section 703(a)(3) of this title shall be heard and determined by a judge, as provided in subsection (f) of this section. If, however, the court holds that a monetary award pursuant to paragraph (1) of this subsection is sought by the complaining party and that such an award cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which such award is sought, a jury may be empaneled to hear and determine such liability issues and no others. In no case arising under this title shall a jury consider, recommend, or determine the amount of any monetary award sought pursuant to paragraph (1) of this subsection.".

(c) Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) (as amended by section 7 of this Act) is further amended by adding at the end the following sentence: "For purposes of actions involving harassment under section 703(a)(3) of this title, the period of limitations established under this subsection shall be tolled during the time (not exceeding ninety days) that an employee avails himself or herself of a procedure established by the employer for resolving complaints of harassment.".

SEC. 9. ALLOWING THE AWARD OF EXPERT FEES.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–6(k)) is amended by inserting "(including reasonable expert fees up to but not exceeding $300 per day)" after "attorney's fee".

SEC. 10. PROVIDNG FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000c–16) is amended—

(1) in subsection 717(c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

(2) in subsection 717(d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties".

SEC. 11. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) (as amended by section 10 of this Act) is further amended—

(1) in subsection 717(a), by striking "legislative and judicial branches" and inserting in lieu thereof "judicial branch".

(2) in subsection 717(a), by striking "in the Library of Congress" and inserting in lieu thereof: "in the Congress of the United States, or its Houses, committees, offices or instrumentalities, or the offices of any of its Members".

(3) in subsection 717(b), by striking the last sentence and inserting in lieu thereof: "With respect to the Congress of the United States, its Houses, committees, offices, and instrumentalities, and the offices of its Members, authorities granted in this subsection to the Commission shall be exercised in each House of Congress as determined by that House of Congress, and in offices and instrumentalities not within a House of Congress as determined by the Congress.".

(4) in subsection 717(c), by inserting, after "Equal Employment Opportunity Commission" each time it appears, ", or a congressional entity exercising the authorities of the Commission pursuant to subsection (b) of this section,".

SEC. 12. PROHIBITION AGAINST THE DISCRIMINATORY USE OF TEST SCORES

Section 703(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in inserting "(1)" after "(b)", and

(2) by adding the following:

"(2) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) in connection with the selection or referral of applicants or

candidates for employment or promotion, to adjust test scores, use different cut-off scores, or otherwise alter the results of employment-related tests on the basis of race, color, religion, sex or national origin."

SEC. 13. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where knowingly and voluntarily agreed to by the parties, reasonable alternative means of dispute resolution, including binding arbitration, shall be encouraged in place of the judicial resolution of disputes arising under this Act and the Acts amended by this Act.

SEC. 14. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provisions of this Act to other persons and circumstances, shall not be affected thereby.

SEC. 15. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon enactment. The amendments made by this Act shall not apply to any claim arising before the effective date of this Act.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. MICHEL] will be recognized for 30 minutes, and a Member opposed will be recognized for 30 minutes.

Mr. EDWARDS of California. Mr. Chairman, I am in opposition.

The CHAIRMAN. The gentleman from California [Mr. EDWARDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, our substitute embodies the language of H.R. 1375, which for all practical purposes is the President's civil rights bill.

The bill stresses fairness over quotas, conciliation over litigation, and unity over divisiveness.

As a Representative who voted for the civil rights bills of 1957, 1960, 1964, and 1965, I am proud to once again support a fair and effective civil rights bill.

I remind my colleagues of a courageous freshman legislator from Texas who in 1967 and 1968 bucked the prevailing sentiment of his region and voted for extending the Civil Rights Commission and for the Fair Housing Act. It was not a popular thing to do in his district or his region, but it was the right thing to do, and he did it.

I was proud to join young Representative George Bush in his votes then, and I am proud to support the position of President George Bush on this substitute now.

The President's bill will significantly strengthen current anti-discrimination law. It will provide a new monetary remedy for victims of on-the-job harassment with equitable damages of up to $150,000.

The President's bill will modify Wards Cove, placing the burden of proof on employers to demonstrate a business necessity for their actions, in cases of unintentional discrimination, and the President's bill will encourage alternatives to endless litigation, including the use of voluntary arbitration.

The President's bill does require the plaintiff to identify the specific hiring practice seen as discriminatory, but what in heaven's name is wrong with that?

It expands title VII to allow a new equitable remedy in cases of harassment, and in all other circumstances applies current legal remedies, including back pay and injunctive relief.

Where the President calls for conciliation, the majority urges more litigation. Their bill makes it far easier for plantiffs to sue, even for the most obscure reasons. That is just about what this country needs now, a new plague of lawsuits.

The President's bill penalizes those who discriminate, no question about it, exactly what a civil rights bill should do.

Whether your name is Kowalski, O'Brien, or Dinardo, whether you are black, a Hispanic, or a woman, whoever you are, you deserve to be treated fairly. That is what the President's bill does. It is good, solid civil rights legislation that rests firmly in the great civil rights tradition of fairness, conciliation, and unity.

The President has demonstrated commitment to civil rights. He showed courage here in the House as a legislator, and he is now showing courageous leadership as President of the United States.

I would urge my colleagues to support the President's position as embodied in the substitute.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. EDWARDS].

The Chair would advise and request of the gentleman that he restate his intention with regard to the allocation and control of his time.

Mr. EDWARDS of California. Mr. Chairman, I yield 15 minutes of my time to the distinguished gentleman from Missouri [Mr. CLAY], representing the Education and Labor Committee, and I ask unanimous consent that he may designate his time in segments.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. EDWARDS of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am sure that it is no surprise to the gentleman from Illinois [Mr. MICHEL] and the folks on the other side of the aisle that over here we do not think very much of the President's bill. I am not going to go into great detail about our objections to it. I am going to put that into the RECORD in the interests of time, but I think I should point out that the Bill of Rights and generally the equal protection clauses in the Constitution are procedural. Most of our liberties in this country rest on procedure. If we are guaranteed due process and procedure and our day in court, our time to dispute the adversaries, we are protected quite generally.

What the Supreme Court did in these five cases is to chip away at the procedures, in the burden of proof, in the other area, and actually what they did would be so easy to reverse, which we tried to do, I should really think this bill could have been brought up on suspension and passed, however, it was not the wish of the President and the others to go ahead and simply reverse these cases, so we have to defeat the proposal offered by the gentleman from Illinois [Mr. MICHEL].

If the committee will forgive me, I will very briefly be a little technical because this is a laywer's bill. We are talking about procedures generally in court where rights were chipped away, were made less by the Supreme Court in a way that seriously damaged people who had rights in employment and they are weaker today because of these Supreme Court decisions.

Although this substitute professes to respond to the five major Supreme Court cases decided in 1989, it fully responds to only one. Both H.R. 1 and the Michel substitute overturn the Patterson case. We agree that discrimination should be prohibited during the life of a contract.

But that is where the similarity ends. The Michel substitute addresses only two other cases in a partial manner, Wards Cove and Lorance, and does not address the other issues raised by the Brooks-Fish substitute.

For the Wards Cove case, the Michel substitute shifts the burden of proof, like H.R. 1, but codifies the low standard of business necessity of Wards Cove—legitimate employment goals are significantly served by, even if they do not require, the challenged practice.

Although the Michel substitute shifts the burden of proof, it makes it very easy for employers to justify practices with discriminatory effects. The Brooks-Fish substitute overturns the Wards Cove definition of business necessity.

The Michel substitute also partially overturns the Lorance case. The Lorance case held that a discriminatory seniority system must be challenged when it is adopted, not when it adversely affects a person.

The Brooks-Fish substitute provides that a person should be able to challenge discriminatory practices when they are adopted or when they adversely affect persons, whichever is later. The Michel substitute agrees, but limits its application to seniority systems.

Lorance has already been applied in cases other than seniority, such as promotions and fringe benefit cases, and the problem should be addressed across the board.

The Michel substitute explicitly affirms the Supreme Court's holding in Martin versus Wilks. In Martin, the Court allowed continuing challenges to settlements of discrimination cases, as long as the challenger was not a party to the original case, even if they had notice of the litigation or their rights were adequately represented. By affirming Martin, the Michel substitute would allow challenges to go on forever, and cases would never become settled. H.R. 1 overturns Martin and keeps most settled cases settled and not subject to constant attack.

The Michel substitute does not address the Price Waterhouse case concerning mixed motive discrimination. In Price Waterhouse, the court held that employers may be able to intentionally discriminate so long as the employer can cite another, nondiscriminatory reason for the employment practice. The Michel substitute would allow proven intentional discrimination, as long as there was another legitimate motive. The Brooks-Fish substitute would prohibit intentional discrimination that was a motivating factor for the employment decision.

The Michel substitute also addresses other key issues of H.R. 1.

On the issue of providing a remedy for victims of intentional discrimination under title VII, the Michel substitute allows courts to award up to $150,000 in "equitable" monetary relief for harassment cases if certain conditions are met.

The Michel substitute is limited on its face to harassment cases, not all types of intentional discrimination. In addition, conditions must be met, including a shorter statute of limitations—90 days—and complaining through the employer's grievance system. Under the Michel substitute, if a victims's actual damages exceed $150,000, the victim could not receive any more than that and the perpetrator would not have to pay any punitive damages.

By placing these further conditions, the Michel substitute would cut back on existing law, incredibly legalizing harassment if the victim does not file a complaint with her employer's grievance system within 90 days of the harassment. Harassment is already illegal under title VII, without these conditions, but without an adequate remedy. The Brooks-Fish substitute provides an adequate remedy.

The Michel substitute prohibits the adjustment of employment test scores, as does the Brooks-Fish substitute. But the Michel substitute does not prohibit the use of discriminatory tests that do not measure job performance and do not fairly predict the ability to do the job. The Michel substitute would lock in the use of discriminatory tests.

The Civil Rights Act of 1991 is designed to make our civil rights laws effective once again. The Michel substitute is a hollow promise of making them effective again. Vote no on the Michel substitute.

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Mr. Chairman, I reserve the balance of my time.

Mr. MICHEL. Mr. Chairman, I yield myself such time as I may consume.

Before yielding to the distinguished gentleman from Pennsylvania, may I inquire of the distinguished gentleman from California, [Mr. EDWARDS], did he say that our substitute overturned one decision or two? The gentleman's remarks should be corrected to two decisions that were completely overturned in our substitute. Of course, in Wards Cove, the significance there is shifting the burden of proof on the employer as distinguished from what it was before. So we have made significant changes in our substitute.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. EDWARDS of California. I thank the gentleman for yielding.

Mr. Chairman, certainly changes were made in the Michel substitute in the Ward's Cove decision. However, the standard established and codified was the Ward's Cove standard, which is a very low standard, and it will allow employers to discriminate much more easily. The gentleman's bill overturns one of the decisions completely, and partially overturns two, and leaves two of them untouched.

Mr. MICHEL. We are dealing somewhat in semantics, but there are significant changes.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from California a question. He just said that if you do not file your complaint within 90 days you lose your cause of action. Is that what the gentleman was saying?

Mr. EDWARDS of California. If the victim, Mr. HYDE, say there is a victim in a sexual harassment case, under the Michel-President's substitute, the victim must file within 90 days with the employer's procedural setups. But if the victim fails to file, then it is too late and the harassment becomes legal. That is my point.

Mr. HYDE. I might say to the gentleman that is exactly what he said in the New York Times today. He said the bill would even legalize harassment, if the worker did not file a complaint with the employer's in-house grievance system within 90 days. Actually the law provides a 90-day tolling of the statute of limitations. It is for the benefit of the employee that they have 180 days. That is in current law now; 180 days to file a complaint under title 7. And this provision in the Michel bill tolls the statute; it gives the employee another 90 days to file the complaint.

Mr. EDWARDS of California. If the gentleman would yield further, referring to page 5, line 20, of the Michel proposal, where it is very specific that the 90 days, if it is not taken advantage of and if the complaint is not made within that time, it becomes legal and it is too late for the complaint to be filed and, therefore, the victim can have no recourse. I refer you to page 5, line 20, through line 2 on page 6.

Mr. HYDE. Well, there is immediate injunctive relief available, immediately.

So I just think the gentleman, when he said it is legalizing harassment, it is not true. On page 8, lines 17 through 20, the statute of 180 days is tolled for an additional 90 days, if necessary, so the employee can avail himself or herself of the procedure established by the employer.

Mr. MICHEL. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. I thank the gentleman for yielding.

Mr. Chairman, I too want to correct what the chairman on the other side just said because he interpreted the bill totally incorrectly. All of the Patterson cases reversed, part of Ward's Cove is reversed, all of Crawford is reversed, all of Lorance is reversed.

So if you count those up, you are totally incorrect in what you said the President's bill or the Michel substitute does.

Probably the most important of all is the Patterson case, which is totally reversed by the President's program.

Mr. Chairman, I rise in strong support of the Michel substitute which is the text of the President's civil rights bill plus a provision banning the race norming of employment tests. The Michel substitute is a significant piece of civil rights legislation which provides meaningful relief to victims of workplace discrimination and which addresses many of the same issues as H.R. 1 and the Democrat substitutes that we are considering today.

Like H.R. 1 and the Democrat substitutes, the Michel substitute codifies the disparate impact theory of discrimination by providing that a violation of title VII is established whenever a complaining party demonstrates that an employment practice has a disparate impact on the basis of race, color, religion, sex, or national origin, and the employer fails to demonstrate that the practice is justified by business necessity. Again, consistent with

the language offered by my colleagues on the other side of the aisle, the disparate impact provision in the Michel substitute places the burden of proving business necessity on the employer and thus overrules the aspect of Wards Cove that many have agreed was the most significant departure from past case law.

Recognizing the gap in title VII's remedial scheme with respect to on-the-job-harassment, the Michel substitute specifically provides that harassment on the basis of race, color, religion, sex, or national origin is an unlawful employment practice in violation of title VII and it provides a new $150,000 equitable remedy and a right to directly petition a court for immediate injunctive relief. Mr. Chairman, we listened to the testimony of witnesses during our committee hearings that title VII did not provide real relief for victims of workplace harassment and we have tried to close that gap with these new remedies.

The Michel substitute parallels both of the Democrat substitutes in that it reverses both the Patterson case and the Lorance case contrary to what the chairman has said. With respect to the former, the Michel substitute restores the expansive reading of section 1981 that racial discrimination is prohibited in all aspects of the making and enforcement of contracts. As to the latter, the Michel substitute specifies that the statute of limitations for challenging a discriminatory seniority system begins to run when it is adopted or when the individual becomes subject to or is injured by the application of the seniority system. As did my colleagues on the other side of the aisle, we recognized that, in both of these areas, the Supreme Court restricted Federal civil rights protections in a manner that was not consistent with the intent of Congress.

The Michel substitute contains several other provisions which cover much the same ground as H.R. 1 and the Democrat substitute.

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The Michel substitute contains provisions extending title VII protections to congressional employees and allowing that protection to be enforced by Federal court, increasing by ten-fold the amount of expert witness fees that may be collected as part of an attorney's fee award, extending the time period for filing title VII claims applicable to Federal employees and encouraging the use of alternative means of dispute resolution.

Mr. Chairman, I say, "If you go point-for-point through the Michel substitute and through H.R. 1 and the Democrat substitutes, there are many areas of similarity and overlap. The defining difference, however, is that the Michel substitute remains true to title VII's goals of conciliation of discrimination disputes and repair of employment relationships, and true to our Nation's ideals of equal opportunity and achievement based on merit and hard work."

Again I repeat that it was misquoted completely by the chairman when he said that only one is reversed. There are two completely reserved, two that are partially reversed, and of course we did not touch the Brennan decision because Brennan one cannot blame on Reagan, so we did not touch Brennan's decision. We did touch the others, contrary to what my colleagues heard.

Mr. CLAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me say in regard to those who are supporting the Michel amendment that they are either intentionally or unintentionally misreading section 8 on page 11 of the rule for consideration of H.R. 1. Section 8, subsection (a) says in section (3),

> (3) to harass any employee or applicant for employment because of that individual's race, color, religion, sex, or national origin: *Provided, however*, That no such unlawful employment practice shall be found to have occurred if the complaining party failed to avail himself or herself of a procedure, of which the complaining party was or should have been aware, established by the employer for resolving complaints of harassment in an effective fashion within a period not exceeding ninety days.

Mr. Chairman, they have created a harassment procedure, but they may say to the person who has been harassed that if he or she, himself or herself, have that procedure within 90 days, then they lose all possibilities of rendering any justice in that case. I say they are either misreading it intentionally or otherwise, and I think the record ought to clearly show it.

Mr. Chairman, I yield 4½ minutes to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Chairman, I thank the distinguished chairman for yielding time to me, and let me say at the outset that I may have some harsh things to say, and I want the distinguished gentleman from Illinois [Mr. MICHEL] to know that I am not directing those harsh remarks at him, but the handiwork before us that the administration has proposed and which is presented to us in his name.

Let me start out at the beginning by trying to correct some history. The gentleman from Illinois tried to suggest in his comments that the President has always supported civil rights legislation. It is true that he supported the Fair Housing Act. But he has opposed affirmative action in the workplace proposals going back to 1964. There is just no question about that history, and, when the President gets on television and gets very angry and self-righteous about how he has always been for civil rights, people ought to recognize that he always used to be for family planning, too. When he was in this body, he used to sponsor the family planning legislation. Mr. Chairman, I say, "Baby, look at you now."

Mr. Chairman, the legislation before the House today has little to do with civil rights.

Mr. Chairman, under any analysis, the Michel substitute is the administration's attempt to capture the fairness issue by exploiting racial politics. Nothing could be more sinister.

Compared to the other substitutes, the Michel substitute provides for a lower standard of "business necessity;" that which is used in the *Wards Cove* decision. It allows for no compensatory or punitive damages for women. It also sanctions intentional discrimination in employment practices so long as the discrimination was not a primary motivating factor.

Anything beyond these provisions, the administration claims the result will be unfair reverse discrimination, quotas and undue litigation. Why is the administration so interested in frightening middle-class whites and exaggerating the concerns of the business community on civil rights?

In short, Bush believes the political stakes of civil rights are more important than the political substance of racial equality. Thus, the Michel bill emphasizes the cost—both economic and social—of civil rights to whites by insinuating that whites stand to lose their jobs or businesses will face high compensatory damages. Once again, the Republican strategists want to put race high on the national agenda. This is an old tactic.

During Reconstruction, Republicans—fearful of losing political power—split an alliance between white and black Populists by playing on whites' fears of black domination, politically, economically, and socially. In the same tradition, George Wallace, Richard Nixon, Ronald Reagan, and George Bush have all run campaigns that are intended to divide and conquer. From Nixon's campaign against busing to Bush's Willie Horton ad, the message is loud and clear: whites are the losers in the battle for civil rights.

Nothing could be more false or more tragic. It is undeniable that racial discrimination still lives and breathes today in the United States.

Look at residential housing patterns, home mortgage lending, funding for traditionally-black schools and universities, and the race of CEO's of the major U.S. corporations. Despite the discrimination that exists in these areas and the job market, the advancement of minorities and women have been exceptional—but spotty—in the last 30 years. Yet today, it is more the rule than the exception that women and minorities will receive lower pay and will be passed over for promotions than their white male counterparts.

There is also substantial evidence that minorities and women suffer dis-

crimination in the job interviewing process, as a recent Urban Institute report confirms. These are the ills the Towns-Schroeder substitute tried to cure.

But the real tragedy of the administration's proposal is that it carves a racial chasm between whites and minorities. The Michel substitute would have America believe that well-qualified whites stand to lose their jobs to minorities if a meaningful civil rights bill is passed. That outlook is not only wrong, but it misses an important point.

On strictly a macroeconomic level, if the United States is to become competitive in the global economy, then its work force must overcome significant educational and health care barriers. I would argue to my colleagues that discrimination in the job market is a barrier that must be brought down too.

Demographics show that the United States will be more and more dependent on racial minorities and women to make the American work force productive and competitive. But these people must be given a clear signal that this county recognizes the disadvantages they face, given them recourse when they suffer from discrimination and help them overcome educational and skill-related obstacles. This is not preferential treatment for these groups, but trying to bring a degree of fairness and equality to the marketplace.

The Michel substitute simply fails to address these issues. It fails to recognize that the fate of whites and minorities are wrapped into one, in both social and economic terms. Finally, it chooses to divide the races rather than unify. Congress must do, not what is politically expedient, but what is politically right. Vote against the Michel substitute.

□ 2020

Mr. MICHEL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Florida [Mr. McCOLLUM].

Mr. McCOLLUM. Mr. Chairman, I rise tonight in support of the Michel substitute, the President's bill on civil rights, because I think it provides the tough measures against discrimination in the employment place without the negative aspects of the Democrat alternative.

I think we ought to direct our attention for a minute to the remedies area because I am going to hear a lot more about the quotas I talked about earlier today in general debate, in the aftermath. But in the remedies area we ought to talk for a minute about what is really wrong with the Brooks Democratic substitute that is going to be out here tomorrow and what is basically wrong with H.R. 1.

In the area of remedies, it is very simple. Under present law, the kind of remedies we have under title VII are reinstatement for your job and back pay for what you have lost. There are no rights under present law for compensatory or punitive damages. Compensatory damages are pain and suffering and things like that that we read about all the time in the newspapers. That is the type of thing where you have to have a jury trial. That is the type of thing that is in a lawyers' relief bill. That is the type of thing that the Democratic alternative puts into the law for the first time under title VII, and that is a no-no. That is not in the Michel substitute. There are no compensatory or punitive damages in the President's bill, the Michel substitute, but now that the Democrats have put in theirs, they try to say, "Well, we are going to cap punitive damages so it won't be so bad."

But that is a false cap they put in. They put a $150,000 cap on punitive damages or the amount of compensatory damages so you could double the amount of compensatory. Let us say, for example, that you had $500,000 of normal compensatory damages and $200,000 in backpay; you could have another $700,000 in punitive damages and wind up with a $1.4 million jury verdict under the Democrat alternative, the Brooks substitute, and I think that is gross. That is why the small businessman in this country is so concerned about that.

What does the Michel substitute do? It leaves the law basically the way it is, except that it addresses the one problem that is not addressed currently, and that is harassment in the workplace. It provides for a judge to give equitable relief, with no jury, if he finds harassment, and it provides for up to $150,000 in equitable relief, and it provides for an injunctive relief process in the court if one is really being harassed. And it provides the opportunity which should be availed of by anybody to go in, in an in-house procedure, and try to resolve this within the 90 days it is being debated. And, sure, you have got to avail yourself of that if you are aware of it, like you do most things in the law, but it does not do anything to your time to go in and file a suit because the statute of limitations is tolled during the time you go in and try to resolve this matter in-house. But, yes, you are required to try to resolve the matter in-house, and you do not lose any time by doing that. You gain the opportunity, and everybody gains from the fact that this can be resolved without litigation and without even going before the judge if you can get it done in-house through an effective means.

So, Mr. Chairman, I urge my colleagues, just on the remedy issue alone, to see the difference between these two bills. The Michel substitute, the President's bill, is a sound civil rights, antidiscrimination-in-the-employment-place piece of legislation that we ought to adopt, and the Democrat alternative is a lawyers' relief bill on damages.

Mr. EDWARDS of California. Mr. Chariman, I am pleased to yield 4 minutes to the gentleman from California [Mr. PANETTA], the former director of the Office of Civil Rights of HEW, under a Republican President.

Mr. PANETTA. Mr. Chairman, during this debate all of us have said that we adhere to the fundamental principle this Nation was founded upon, that we are all created equal. But there is also a fundamental reality in this Nation that we do not always do what we say. Indeed the history of civil rights is really the history of that double standard.

Our forefathers declared in the founding of this Nation that we were all equal under God, but accepted slavery. This Nation bled in a civil rights way, the Civil War, to basically free the slaves, but yet a few years later reinstituted slavery under the guise of "separate but equal" in the Plessy versus Ferguson decision. And when the Supreme Court in the *Brown* decision declared that "separate" is inherently unequal, it took almost 25 years to end the dual school system in this country.

When I was Director of the Office for Civil Rights, I never met anyone who did not say that they were opposed to discrimination against blacks, against women, against Hispanics, or against minorities except when it affected their school district, their business, or their politics, and then there was a big difference between what they said and what they did.

John Mitchell, who was Attorney General at the time I was Director of the Office for Civil Rights, gave that principle official status when he said to the American people, "Watch not what we say but what we do." The spirit of John Mitchell unfortunately still lives today, and it lives in the substitute that is presented to us, because the test of this substitute, just like the test of any civil rights bill, is whether or not it provides an effective remedy to a violation of rights, because in this country there is no right unless there is an effective remedy.

The Republican substitute says it is for civil rights, but it fails to provide an effective remedy. It fails to restore the law as it was before all of the Supreme Court decisions that we are concerned about impacted on the remedies. It fails to provide any effective compensation. Yes, it talks about equitable compensation, but it does not deal with real compensation to the victims. And, thirdly, it fails to provide full due process to those who are affected by discrimination.

The tragedy of today, the great frustration of this vote today, is that if the President were truly serious about his commitment to civil rights, there would be no need for separate civil rights bills presented in this House of

Representatives. If he were willing to exercise leadership to resolve these issues, there would be no need for separate civil rights bills being presented to the House of Representatives. If he were to exercise the same kind of leadership that he was willing to exercise on the clean air bill, on the minimum wage bill, on trade legislation, or on the budget agreement, then there would be only one civil rights bill presented to all of us. Unfortunately, there is a difference between what is said and what is done.

Civil rights have advanced in this Nation not because it was popular but because it was right and because there were those who were willing to provide leadership and to make the tough decisions.

Mr. Chairman, I say to my colleagues that the time has come for all of us to do what is right. Let us reject the substitute and adopt a truly effective civil rights law.

Mr. MICHEL. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Florida [Mr. IRELAND].

Mr. IRELAND. Mr. Chairman, I say to my colleagues, before you cast your vote for the Brooks substitute to H.R. 1, I ask you to think about how you are going to explain that vote to the 20 million small business owners around the country.

What will you tell them when these hard working men and women ask you how they are supposed to comply with this law?

This proposal may claim to protect the civil rights of our Nation's workers, but in fact, it could end up actually costing workers their jobs when their small employer is forced into bankruptcy over a civil rights dispute.

The Brooks substitute even with its so-called cap—will expose smaller firms to huge damage awards if the makeup of their work force does not reflect their community in terms of race, ethnic background, religious affiliation and gender.

If their numbers do not match up, small business owners can be challenged by an employee or applicant who believes that he or she has been unfairly discriminated against. The resulting litigation process alone could put many small firms out of business.

Small businesses can't afford to hire attorneys, personnel directors, and employee-relations consultants in order to assure that they are in compliance with this complicated law.

Many small business owners understandably contend that quotas would be their only defense against the costly lawsuits engendered by the Brooks substitute.

Instead of addressing the very real problems with H.R. 1 and the Brooks substitute that would drive our Nation's smaller firms to adopt quotas, proponents of these bills have taken the glib and easy way out.

Just declare that quotas are illegal, and they will cease to exist, they claim. So they put that in their substitute—this is either magic or deception.

But, where does that leave the small business owner? The answer is between a rock and a hard place. It all adds up to a reckless disregard for the one sector of our economy that creates the jobs and keeps our economy moving.

Mr. Chairman, I say to my colleagues, our Nation's small businesses deserve better. We can protect the civil rights of our Nation's workers and protect the economic viability of our Nation's smaller firms.

How? By voting for the Michel substitute, and against the Brooks substitute to H.R. 1.

Mr. Chairman, let me say to my colleagues, it is easy to say you are all for small businesses. But, I remind Members, it is how you vote that counts.

□ 2030

Mr. CLAY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I rise in opposition to the Michel-administration substitute, and will now support the Brooks and others substitute.

One of the things that I found very regretful in the press and in the commencement addresses and all the speeches that the President has given throughout this country is the use of the word "quota." Somehow that is supposed to have a lot of ramifications with respect to language. So, because the gentleman from California [Mr. EDWARDS], and others in the Democratic leadership, said over and over again that this is not a quota bill, what they did was, to make it very, very specific, put in language that is implicit.

Mr. Chairman, I used to teach English. I do not know how you could get more specific than the language of the Democratic substitute.

By the way, the Michel substitute does not have that language in it, so that could be construed as a quota bill.

Mr. Chairman, let me read the language. It says:

Nothing in the amendments made by this act shall be construed to require an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex, or national origin.

It then goes on.

Mr. Chairman, there is nothing to do with quotas in this bill. It specifically is in the language of the bill, in the Democratic substitute, but that language is not in the Michel bill whatsoever. So perhaps there is something to do with quotas in that bill, but I know that is not part of this bill.

Mr. Chairman, one other thing that I think is so wrong is that the Michel measure authorizes monetary relief in certain harassment cases, but it will not in any way really be part of the law and the spirit of the law.

Mr. Chairman, I wanted to give a few anecdotal that are actual cases under title VII where women did not receive any kind of compensation.

Mr. Chairman, Nancy Phillips suffered severe financial difficulty and emotional stress after her employer fired her because she was pregnant. Her injuries were exacerbated by the fact that she lost her health insurance, which she had counted on to cover her pregnancy and delivery. But she received no compensation for many of these injuries, even though the court found that her employer violated her rights.

Mr. Chairman, I include other examples for the RECORD.

TITLE VII'S FAILED PROMISE: THE IMPACT OF THE LACK OF A DAMAGES REMEDY

(A Report by the National Women's Law Center)

Individuals who suffer medical, psychological, and other financial harm as a direct result of unlawful discrimination are not compensated for those injuries:

Betty Sowers suffered a psychological breakdown after she was discriminatorily denied a promotion and also sexually harassed. She received nothing for the loss of her health, her emotional distress or for the lost employment opportunities. [Sowers v. Kemira, Inc. (1988)].

Helen Brooms was severely sexually and racially harassed on the job until she finally quit after her supervisor showed her sexually explicit photographs and threatened her life. She fell down a flight of stairs trying to escape him and subsequently suffered a severe depression. The court found that her rights had been violated, but because of the limitations of Title VII she received no compensation at all for her medical injuries. [Brooms v. Regal Tube Co. (1989)].

Ramona Arnold, a police officer, suffered severe anxiety, depression, and stroke-level high blood pressure as a result of a campaign of sexual discrimination by her fellow officers and supervising officers. Although the Court held that she had been severely discriminated against, she received nothing for these injuries. [Arnold v. City of Seminole, Okl. (1985)].

Because of Title VII's limitations, many victims receive no compensation of any type, even when they prove they have suffered severe discrimination:

Gail Derr quit her job after she was unfairly demoted by her supervisor. He told her that it was "dangerous" for women to get too much education and scolded her for having career ambitions when she had two children. Despite the fact that the court found she had been unlawfully discriminated against, Ms. Derr received no compensation because of Title VII's limitations. [Derr v. Gulf Oil Corp. (1986)].

The court found that Hortencia Bohen, a fire dispatcher, had "endured extreme and ongoing sexual harassment", including unwanted sexual touching by her co-workers and being told by her supervisor that what she really needed was to be raped in the bushes. Nonetheless, she received no relief under Title VII. [Bohen, v. City of East Chicago, Indiana (1986)].

Discrimination Victims Who Suffer Professional Injuries Which Are Not Directly Wage

Related Are Not Compensated Under Title VII:

Nancy Ezold bumped against a glass ceiling and suffered permanent damage to her career after being discriminatorily denied a promotion to a pretigious law partnership. However, there are no available remedies under Title VII to compensate her fully for the injury she suffered. [Ezold v. Wolf Block (1990)].

Dr. Jean Jew's scientific career suffered a major setback when she was discriminatorily denied a promotion and harassed by her coworkers. In addition to confronting a glass ceiling, her reputation in the national scientific community was seriously damaged, impeding career mobility and her competitiveness for research grants. Although she was eventually granted her promotion and back pay, the court had no power to award Dr. Jew any remedy under Title VII to address the permanent damage done to her career. [Jew. v. Univ. of Iowa (1990)].

Curtis Cowan received nothing under Title VII after he had been passed up for promotion to a managerial position three times because he was black. The court denied Mr. Cowan back pay because he would not have earned more as a manager during the relevant, short-term period, and Title VII provided no remedy for the humiliation he suffered or the long-term prospects he lost. [Cowan v. Prudential Insurance Co. of America (1988)].

State Law Does Not Provide A Sufficient Alternative; State Tort Laws Typically Include Requirements Which Are Extremely Difficult To Satisfy, And Many Victims Are Barred By State Worker's Compensation Laws From Suing Their Employers In Tort Altogether:

Tamara Class proved that her supervisor made sexually explicit statements and invitations which were "inconsiderate, rude, vulgar, uncooperative, unprofessional and unfair." The court found, however, that this did not constitute the infliction of emotional distress under state law. The only reason her case was not thrown out was that she also alleged retaliation. [Class v. New Jersey Life Insurance Co. (1990)].

Helen Brooms, the nurse whose case is discussed above, was prevented altogether from suing her employer in tort because the court ruled that state worker's compensation law barred such suits. [Brooms v. Regal Tube Co. (1989)].

With Its Compensatory and Punitive Damages Remedy 42 U.S.C. §1981, The Post-Civil War Statute Which Prohibits Racial Discrimination In Employment, Affords Significantly More Meaningful Remedies Than Are Available Under Title VII:

A comparison of decisions awarding damages under §1981 with judgments in similar cases limited to the much narrower relief available under Title VII, makes this point clear.

Christine Townsend was discriminatorily denied a promotion on the basis of her sex. Because she was limited to a claim under Title VII she had no claim to damages. Her relief consisted solely of reinstatement and back pay. [Townsend v. Washington Metropolitan Area Transit Authority (1990)]. Alice Brice, on the other hand, was repeatedly passed over for promotion and otherwise discriminatorily treated on the basis of race. Under §1981, she recovered $50,000 in compensatory damages for a serious medical and nervous condition she suffered as a result of the discrimination and $15,000 in punitive damages. [Williams v. Owens-Illinois, Inc. (1982)].

Virginia Delgado was discriminatorily discharged after being harassed and denied a promotion. Because she was unable to find another job she suffered extreme financial hardship and resulting permanent injury to her health. As the victim of sex discrimination, she could only invoke Title VII remedies and had no claim for damages. [Delgado v. Lehman (1987)]. Compare the case of Charles Grubb who was demoted and fired from his 18-year job as a laundry manager because his employer's new manager believed a black man had no business supervising white women. Mr. Grubb recovered $25,000 under §1981 for his emotional distress. [Grubb v. Foote Memorial Hospital (1985)].

Lois Robinson suffered extreme sexual harassment at her job as a shipwelder where she was subjected to pervasive obscene behavior. She was awared $1 in nominal damages and no other monetary relief under her Title VII claim. [Robinson v. Jacksonville Shipyards, Inc. (1991)]. This stands in stark contrast to the experience of Alvin Hunter who was subjected to a severe campaign of racial harassment and was discriminatorily discharged for complaining. Under §1981 he received $25,000 for indignity and stress and $25,000 in punitive damages. [Hunter v. Allis-Chalmers Corp., Engine Div. (1986)].

Mr. MICHEL. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Connecticut [Mr. FRANKS].

Mr. FRANKS of Connecticut. Mr. Chairman, I rise in support of the Michel substitute. As if to draw a line in the legislative and political sand, those who claim to speak for Americans eager to have a fair civil rights bill have accelerated their rhetoric to a fever-like pitch.

As a new Member of Congress and someone who has personally felt the stings and arrows of racism, I have come to realize our country will only evolve into a truly color-blind society once we remove economic barriers and support incentives for people to work and promote themselves as far as their skills and drive will take them.

Does that mean government should turn its head when men and women of different colors are subject to racial and sexual bias? Of course not.

Mr. Chairman, those who support the Michel substitute believe this legislation will level the playing field for all who seek equal opportunities and equal employment. Let us remember that this bill will overturn two of the five Supreme Court decisions in question. It will allow for an award of up to $150,000 in cases of on-the-job harassment.

In disparate impact cases, it will put the burden of proof on the employer. It adopts verbatim the definition of business necessity from the 1971 Griggs decision language.

It will not institutionalize reverse discrimination. It will not promote costly and endless litigation. It will not inhibit American businesses from hiring the best qualified and promoting the most productive workers.

Mr. Chairman, if we do not pass the Michel substitute, and do pass H.R. 1, this Congress will create a structure that will compel businesses to adopt reactive unfair employee practices, and, most important, stifle real economic opportunity for those left out of the American dream.

If we go by the numbers, as H.R. 1 will do, it will result in hiring through quotas. If an employer were unable to prove a practice was necessary to allow for an imbalance, the potential damage award could put that business, particularly a small business, out of business. Guess who would get hurt? The American worker.

Mr. Chairman, is that how we provide opportunity, by drafting laws that could lead to the destruction of businesses, many of whom employ minorities and women?

The Michel substitute is a just alternative. Does discrimination exist? Unfortunately, yes. Should we punish those who violate the law and have a long record of such abuses? Absolutely.

As a former labor relations manager, I know that the old networking system of employment all too often did not include the hiring of minorities and women.

□ 2040

Outreach programs were needed and continue to be needed to ensure fair employment and equal employment opportunities. If the Congress adopts the Michel substitute, we will be sending a positive message to the men and women of our country and to the people of all races that we are ready to move and pursue a truly color-blind society.

The CHAIRMAN. The Chair advises Members controlling debate that the gentleman from Illinois, [Mr. MICHEL] has 8 minutes remaining, that the gentleman from California [Mr. EDWARDS] has 4½ minutes remaining, that the gentleman from Missouri [Mr. CLAY] has 5½ minutes remaining, and that the gentleman from California [Mr. EDWARDS] is entitled to close debate.

Mr. CLAY. Mr. Chairman, I yield 4 minutes to the gentlewoman from Hawaii [Mrs. MINK].

Mrs. MINK. Mr. Chairman, I thank the gentleman for yielding me time. I rise in opposition to the Michel substitute.

I stood in the well a few minutes ago to ask for support for the Towns-Schroeder substitute because I believed it was fair, it was just. It did not attempt to cap damages in cases of intentional discrimination against women, against religious minorities, against disabled persons.

In the substitute that we are now faced with, there is absolutely no concept of justice because what it does in this area of damages is to limit it to a very, very narrow group of cases dealing with sexual harassment only. The gender discrimination cases are totally left out in this substitute, as though they do not exist in the workplace.

As a matter of fact, the most egregious kind of discrimination against women occurs not in the sexual harassment situation, in my estimation, but it is in the failure of employers to recognize the contribution that women make in the workplace and their absolute entitlement to promotions, to job opportunities. We are talking about job opportunities. We are saying that Americans are fair, that they deal with everyone without regard to sex and race. And yet women know today that they do not have opportunities for advancement. They cannot get promotions. They cannot become partners in law firms. They cannot get promoted into corporate boards.

We know that. We talk about the glass ceiling as though it is some sort of magical wand that is established over society that denies women this opportunity.

There is a division in our debate. The division is intentional discrimination, my friends, and unintentional discrimination. And what I am referring to today in this well is intentional discrimination where individual cases are brought before courts and the courts have determined that has been intentional, deliberate discrimination against a woman or against someone in a religious minority or a disabled person. And having found that there is intentional discrimination, under the current law there is no remedy.

There is no compensatory damages. There is nothing except reinstatement in the job that you have found so unacceptable that you have to challenge your employers and go to court. I find that totally unacceptable.

Therefore, the Michel substitute I regard as unjust. It is going to put into place an injustice in our system of law. It denigrates the whole concept of equal justice before the law.

If we are going to recognize intentional discrimination, then damages have to be allowed for all classes of intentional discrimination, not only the sexual harassment.

One further insult in the area of sexual harassment is that in the very language of the Michel substitute, despite their denials, it says that no such unlawful employment practice shall be found unless the woman goes before her own company's committee that has been established within a period not exceeding 90 days. After 90 days, there is no such opportunity under their substitute to even bring this matter before the attention of the courts, a total denial.

There are so many women in the workplace who suffer under these conditions of discrimination, who take an enormous amount of courage before they step forward. And in many, many cases it is more than 90 days, where they are considering what they should do. And to deny them the basis upon which to bring a lawsuit because they could not act within the 90 days is simply unconscionable.

Therefore, I ask my colleagues to weigh the evidence in the case and to consider the fact that women are in the workplace today and it is because their supervisors, their employers, the people to whom they complain refuse to do anything about it that they have to go to court.

This is not a case of encouraging litigation. It is a case of trying to bring equity by law, and the Congress has this opportunity today to vote down the Michel substitute.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Chairman, I rise as a newcomer to this body, someone who came here on a leave of absence from my real job in the real world as a small businessman, someone who has worked in both the public and private sector.

On the campaign trail I said I would support civil rights reform and represent and protect the needs and concerns of small business, and the President's proposal does exactly that. The President's proposal addresses the concerns regarding quotas and legal damages in a balanced and reasonable manner.

It places the burden of proof on the employer and restores the Griggs case standard for defining business necessity. It will not create a disincentive, as H.R. 1 will, to entrepreneurship and new business startups which will limit ultimately opportunities for disadvantaged and minority Americans.

Remember that survey after survey has clearly indicated that most new job creation comes in the private sector from small and very small businesses. And I tell my colleagues, both sides of the aisle, the full right of citizenship means equal opportunity and empowerment for all Americans in the area of education, jobs, housing and health care. We have got an agenda, an empowerment agenda that we have put forth, and it deserves serious consideration and debate by this body.

If we are really interested in extending freedom, opportunity, and dignity to our fellow Americans, we will move away from this debate, this politicization and polarization of every single issue that comes onto the floor of this House, and get to the substantive debate on each one of those areas of opportunity for our fellow Americans.

Mr. CLAY. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. POSHARD].

Mr. POSHARD. Mr. Chairman, Dr. Martin Luther King, in his letters from a Birmingham jail, had these words to say. He said,

> I know that the law of the land says that I cannot ride where I choose on public conveyance, that I may not eat in public restaurants of my choice, that I may not send my children to the best public schools available. But there is a higher law. There is a higher principle which says that I may do all of these things just by virtue of the fact that I am a human being. This higher law is the inalienable rights that our Constitution speaks of that are man-given, not decreed by law, not decreed by some authority, but they are God-given rights that we all enjoy, just by virtue of the fact that we are free people.

□ 2050

In 1964 the law of the land recognized the supremacy of that higher law, and the 1964 Civil Rights Act became a part of those God-given rights.

To the extent that we have fallen away from that watershed mark of 1964, we must find our way back. We must support the Brooks compromise and defeat this amendment.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Chairman, I thank the distinguished minority leader for yielding me this time.

Mr. Chairman, I will just take a couple of minutes to clarify some statements that I think have been made. I think I heard some people on this side allege that the Michel substitute provided only remedies for sexual harassment.

I refer those Members to section 8 of the bill that says, and this is big print, ladies and gentlemen, "Providing for additional remedies for harassment in the workplace because of race, color, religion, sex, or national origin"; in other words, all harassment is wrong, all harassment is actionable.

Next, I also heard or believe I heard that because there is nothing about quotas in the Michel substitute it is a quota bill. Well, there is nothing about murder either, but it is not a murder bill.

I will tell the Members what we do not have in the Michel bill. We do not have this definition: A quota, as defined in the Brooks substitute, a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained or which cannot be exceeded regardless of whether such persons meet necessary qualifications to perform the job.

Now, why do we not have that defintion? Because we do not want a quota that is so narrowly defined that if one hires marginally qualified people, if they do not achieve a fixed percentage but go to a flexible percentage, they are still able to get under the law. You can still adjust your numbers accordingly. We do not mention quota because it is not a quota bill, and that is a very important point that I think Members should be aware of when they decide which bill is allowing the establishment of quotas and which bill specifically says we want no quotas to apply.

Mr. EDWARDS of California. Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. Mr. Chairman, I want to talk about the crux of this matter.

I represent a district that is rather typical, I think, of America. Eighty percent of my constituents reside in small and medium-sized suburban communities. The remaining 20 percent live in northwest Detroit. About half of my constituents work in traditional blue-collar jobs, and half are white-collar professionals.

I have not heard from large numbers in my district about this bill. There has been a relatively small number of personal letters and phone calls. Some might interpret this relative silence as an indication of lack of concern. My hunch is that there are other causes.

First, the silence reflects confusion. Busy with the pressures of their own daily lives, the citizens of the 17th District may find it difficult to sort out the cacophony of words coming from Washington. The silence also reflects fear. Most middle-income citizens and proportionately even more of lower income face serious economic pressures. People wonder whether they can hold onto their current economic place let alone get ahead.

This administration has deftly played to these fears. The emphatic use of the word "quota" regardless of fact undoubtedly has had some impact.

But there is another still silent America out there in the 17th District, citizens wanting an appeal to their hopes, not just their fear. They want leadership which will show how America can combine opportunity for the individual citizen with equal opportunity for all.

I believe there is that quiet understanding in the 17th District.

When it comes to the long-term future of this country, the President's position sells America short. These citizens know that history values Presidential leadership which appeals to our better rather than our worst instincts, and the President who prided himself in uniting America in the cause of a new world order had a chance to bring us together again to help build a new order here at home. Instead, we find division rather than unity, fear rather than harmony.

I oppose the President's bill and urge the defeat of the Michel substitute.

Mr. MICHEL. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in strong support of the Michel substitute.

Mr. Chairman. I am strongly opposed to discrimination on the basis of race, religion, sex, national origin, or disability. Equal opportunity is one of the greatest foundations of our Nation, and if the law becomes an obstacle to equal opportunity, the law must be changed.

In 1964, Congress changed the law to prohibit discrimination on the basis of race, color, religion, sex, or national origin. Additionally, Congress created remedies and procedures designed to address cases, end the discrimination, and restore equality. Since 1964, Congress has taken many more initiatives in its attempts to fortify our Nation's foundations and ensure equal opportunity for all Americans. The Michel amendment to H.R. 1 is the next step toward that goal, and I am proud to be an original cosponsor of this legislation.

The President's civil rights legislation, introduced as H.R. 1375 and incorporated into the Michel amendment, significantly strengthens the law to prevent employment discrimination without resorting to quotas. Additionally, this amendment compliments the original intentions of title VII of the Civil Rights Act of 1964, namely, to efficiently resolve claims, end discriminatory practices, and restore equal opportunity in the workplace.

I remain firmly opposed to legislation that will force employers, directly or indirectly, to establish hiring and promotion quotas. While I support legislation aimed at ensuring equal opportunity, I will not support legislation aimed at ensuring equal results.

I also agree that the burden of proof in determining whether a particular practice is justified by a business necessity should fall upon the employer, overturning a key aspect of the 1989 Wards Cove Supreme Court decision. The Michel amendment shifts this burden of proof to the employer, as well as reversing several other Supreme Court decisions standing as obstacles to equal opportunity. However, while remedies for back pay and lost benefits are consistent with restoring equality, I am opposed to legislation that threatens employers with lengthy litigation and unlimited compensatory damages and matching punitive damages.

The Michel amendment strengthens and expands our country's civil rights protection laws. In fact, unlike the other alternatives proposed on the House floor today, it extends antidiscrimination laws to cover employees of the U.S. Congress. If the purpose of this debate is to enact into law stronger civil rights protections, vote for the Michel amendment. Other partisan, political objectives should have no place in a debate of this importance.

I urge all of my colleagues to support the Michel amendment to H.R. 1 and to join me in taking real steps toward ensuring that the United States continues to be an international example of equal opportunity. Let's pass the Michel amendment, get it enacted into law, and strengthen the Civil Rights Act.

Mr. MICHEL. Mr. Chairman, before yielding time to the distinguished gentleman from Illinois [Mr. HYDE] to wrap up the debate on our side, may I express my thanks and appreciation to all Members on our side who spoke so eloquently in behalf of the substitute.

Mr. Chairman, I yield 4 minutes, the balance of our time, to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I have never heard in the space of 1 day so much excellent debate and rhetoric concerning civil rights and equality of opportunity, 80 percent of which did not apply to the bills that we are discussing today, but in a general way was very salutary and I am delighted to have heard it.

The administration that is under such fire today is dedicated to strengthening civil rights laws and ensuring every American's right to be free of unlawful employment discrimination, to be judged first and foremost on merit, on ability, not on race, religion, or statistical composition.

Over a year ago, the President laid down four requirements for a civil rights bill. First, it has to provide equal opportunity without resorting to quotas. Second, it must reflect fundamental principles of fairness. Third, it must not encourage litigation or create a lawyer's bonanza. And, last, it must place Congress under the same requirements as they prescribe for others.

Unfortunately, in the drafting of the substitutes, some of my colleagues on the other side have forgotten these fundamental principles.

Thus, of the three substitutes, only one incorporates these four requirements, and it is the Michel substitute. The Michel substitute is the only bill codifying the actual holding of the Griggs decision which has been the law for the past 20 years.

In cases of disparate impact, unintentional discrimination, Griggs held that where an employment practice is fair on its face but discriminatory in application, the employer may still use the practice if it can be justified by business necessity. Business necessity, as defined in Griggs, means that the practice bears a manifest relationship to the employment in question. The definition will not require years of endless litigation for the courts to determine its meaning as the one in H.R. 1 will.

One need only look at the holding in Griggs and the subsequent case law applying Griggs, New York City Transit versus Beazer, Watson versus Fort Worth Bank, to conclude that this is genuine restoration, an accurate codification of pre-Wards Cove law since 1971.

This is one of the key sections which prevents this bill, unlike the other substitutes, from being a quota bill. We have no need to pile layer upon layer of antiquota language.

A proper construction of the disparate-impact analysis found only in the Michel substitute ensures that employers need not resort to quota hiring in order to avoid such litigation.

Our substitute also grants new relief for victims of harassment. The purpose of this expanded relief is to correct an anomaly under present title VII law whereby victims of harassment obtain monetary relief only if they quit or are fired. We allow a judge to award up to $150,000 in equitable relief to victims of

harassment on the basis of race, sex, color, national origin, and religion.

The Michel substitute, interestingly enough, ladies and gentlemen, applies title VII to the Congress and, unlike other substitute, authorizes a private right of action to victims of discrimination once they have worked their claim through our in-house administrative process. It is only right that we give our own employees the same rights we give to every other American worker.

The Michel substitute is the only bill that really outlaws the discriminatory practice of race norming.

□ 2100

Race norming is used by employers and employment agencies to artificially falsify the test scores of job applicants based on race and ethnicity. Changing test scores based solely on someone's race, ethnicity, or national origin is inherently unfair and a misleading practice.

The Michel substitute clearly outlaws this practice without outlawing the use of all aptitude tests which may well be the result of the Brooks substitute.

I urge voting for the Michel substitute as the only legislation in this field that ever will become law.

The CHAIRMAN. The gentleman from California [Mr. EDWARDS] has 2 minutes remaining.

Mr. EDWARDS of California. Mr. Chairman, to close the debate, I yield 2 minutes to the distinguished gentleman from Utah [Mr. OWENS].

Mr. OWENS of Utah. Mr. Chairman, I rise in support of the Brooks-Fish substitute to the Civil Rights and Women's Equity in Employment Act. Over the past 2 years, heated political debate on the complex and controversial provisions, has stalled efforts to strengthen the Civil Rights Act and to repair damage inflicted by the Supreme Court. The Brooks-Fish substitute attempts to break the impasse by incorporating legitimate concerns of the business community.

This bipartisan substitute, similar to the committee bill, would overturn the five key 1989 Supreme Court decisions which made it more difficult for women and minorities to prove discrimination. It also would authorize compensatory and punitive damages in certain title VII cases. Unlike the committee bill, the Brooks-Fish amendment would place a $150,000 cap on punitive damages, or the amount of compensatory damages, whichever is greater. This provision was appropriately included to alleviate the fears of many small business owners.

The Brooks-Fish amendment explicitly prohibits the use of quotas by employers, stipulating that the use of quotas is an unlawful employment practice—the administration proposal contains no anti-quota provisions. The anti-quota provision in the Brooks-Fish substitute will send a clear message to the courts that nothing in the legislation can be interpreted to permit hiring or promoting by fixed numbers or percentages.

This substitute also includes the definition of "business necessity" that was agreed to by the Business Roundtable, specifying that employers have the right to determine the requirements for a job; as long as they are job-related, employers may rely on relative qualifications or skills as the basis for employment decisions. It is ludicrous that the administration can argue that this language, agreed to by the Business Roundtable, can in any way encourage quotas.

The drafters of this compromise have worked very hard to address the fears and concerns of the business community. Many are addressed in this bill. If Mr. Sununu and the President hadn't decided to scuttle the Business Roundtable talks and make this into a polarized political issue, we would have had an agreement by now. We were that close.

It is deeply regrettable that this debate has become so charged and so polarized. In some cases, we have even seen appeals to our darker instincts, from the unforgivable exploitation of Willie Horton in the last Presidential election campaign, and a Senator's racially charged campaign in North Carolina, to the continual rote repetition of quotas, quotas, from Maine to West Point when, in fact, there is no question of quotas in this compromise at all. That is unfortunate and it is divisive, and in its spirit is beneath the dignity and honor of the Presidential office.

We should have simply accepted that we have all made a good faith effort in the bills before us today to address the enforcement and effectiveness of civil rights legislation. We will always have disagreements, for that is the nature of politics. But I believe we are all trying, in good faith, political manipulation aside, to do the right thing and to honor the ideals of America and the principles of equality upon which our country was founded.

There is no credibility to the argument that the Democratic compromise bill will encourage sub rosa quotas from employers. This compromise is the closest of the three bills to simply restoring the protections of the law which were eroded by the five Supreme Court decisions we have heard so much about these last few hours. If quotas were not a problem before Supreme Court decisions changed the law, why would they be now with the passage of the Democratic compromise?

If there are those who are still fearful that passage of this bill will give an unfair advantage to members of minority groups and women in the competition for jobs, they have forgotten what civil rights means. It does not mean that one group is advantaged over another. It means that all Americans have an equal opportunity. If there are those who still find this concept troubling, I have no sympathy for them. Equality of opportunity is the essence of America. Those who object to this, Mr. Chairman, object to America.

I urge the Committee to reject the Michel substitute and support the Brooks-Fish bipartisan compromise.

Mr. BROOKS. Mr. Chairman, I oppose this Michel Substitute because it is a wolf in sheep's clothing. It contains a few of the provisions in the substitute that Mr. FISH, and I will offer later, but, it completely ignores many of the damaging 1989 Supreme Court decisions that need to be reversed. It does not seek an accommodation between the needs of business and workers. Instead, it simply skews all major provisions in favor of corporations, and it fails to establish meaningful procedures and remedies to continue the progress in civil rights that this country had made up until 1989.

This amendment makes it easy for a corporation to justify employment practices that in impact would result in discrimination against women and minorities. It would thus permit corporations to continue practices that have an adverse impact on the ability of whole segments of our population to be treated fairly in the workplace.

Further, this amendment does not adequately address the need for women and minorities to be compensated when they experience intentional discrimination under title VII of the Civil Rights Act of 1964. It permits compensatory or punitive damages in discrimination cases only for racial minorities, and it only provides equitable relief for women and other minorities. These equitable remedies are capped even though actual expenses may be more—and it would limit these awards only to cases of harassment.

The amendment sidesteps the question of quotas—the very issue that its supporters have attempted to exploit as a smokescreen for undercutting civil rights gains of the past 40 years.

But, perhaps the biggest snake in this amendment is the provision entitled "alternative means of dispute resolution." Under the guise of encouraging settlements out of court, this provision could force would-be employees to sign away their ability to enforce their rights as a condition of getting the job, just as long as they do it voluntarily. Would anyone here refuse to sign away that right if confronted by their employer to do so on the first day of work?

Let us be realistic. This substitute is an employer's rights bill masquerading as a civil rights bill. It should be defeated.

Mr. MFUME. Mr. Chairman, I rise in opposition to the Michel substitute and encourage those who are truly in favor of a civil rights bill to follow suit. Last night I called into question the President's sincerity about passing a civil rights bill. After again reading the Michel substitute, my suspicions have come to light right before my eyes.

The Michel substitute in effect codifies the Supreme Court decisions of 1989 and virtually

leaves the current rights situation unremedied. The five controversial Supreme Court decisions gutted our Nation's antijob discrimination laws making it more difficult for minorities and women to seek just relief.

Additionally, by limiting monetary relief to only claims of harassment and excluding all other types of discriminatory employment practices. The messages sent from this provision to women, minority, and the disabled is that these persons are second class citizens who threaten the status quo.

One of the primary purposes of the Civil Rights Act of 1991 is to restore the requirement from Griggs versus Duke Power Co. that employment practices which result in a disparate impact against minorities and women must be defended by proof of business necessity shown in terms of its relationship to successful job performance. The employer obligation to prove business necessity was substantially diluted by the Supreme Court's decision in Wards Cove Packing Co. versus Atonio.

The Michel-Bush administration substitute does not require an employer under any condition to demonstrate business necessity in terms of successful job performance, nor does it require proof of necessity. This creates a problem because although a company concedes that its interests do not require a particular employment practice which has a strong disciminatory impact, it may continue using this practice under the administration's bill if the company merely shows that its legitimate employment goals are significantly served by the practice.

This could lead to flagrant discriminatory practices that will undermine our national commitment to civil rights under law.

Mr. Chairman, we have the opportunity to defeat the President and his anti-civil rights agenda. I urge my colleagues to defeat Bush-Michel. It is time to put racially divisive cynacism behind us and join together in supporting the strongest and most progressive bill on the floor.

Mr. KOLBE Mr. Chairman I rise today in support of the Michel substitute to H.R. 1—the true civil rights bill. This country stands for many things, but none more passionately than individual equality and protection under the law. In America, each person should have the equality of opportunity to succeed and each individual is entitled to be treated fairly and equally in that quest. What this country does not stand for, however, are group entitlements preferences, quotas or statistical uniformity based on race.

Simply put, I support the Michel substitute, also introduced as H.R. 1375, because it comes closest to achieving the promise of individual equality under the law.

H.R. 1375 will significantly strengthen the rights of victims of employment discrimination. Among other protections, it provides a remedy of money damages of up to $150,000 for on the job harassment; mandates that Congress comply with the same antidiscrimination laws that apply to everyone else; broadens Federal laws protecting against racial discrimination to cover virtually all aspects of employment; guarantees the rights of victims of discrimination to challenge consent decrees; and requires an employer to justify as a business necessity a particular practice identified by the plaintiff that results in a disparate impact.

In crafting H.R. 1375, offered in this debate as the Michel amendment, the administration and Republican leadership have drawn a bill that is fair to all people and that will discourage color consciousness and encourage color blindness. Unfortunately, H.R. 1 will do just the opposite.

H.R. 1, encourages litigation because it will make it easier to sue in disparate impact cases. It assumes an employer is guilty of discrimination until proven innocent. That an employer actually intended to discriminate need not be proven, only that the employer has the wrong statistical balance in her workforce. In other words, an employer must hire in direct proportion to the racial and sexual composition of the local labor force. Nor is it necessary for the plaintiff to specify which policies in particular have caused the discrimination. Thus, an employer is forced to hire by the numbers.

Statistical proportionality according to race, of course, defies the laws of probability, as any number of innocent social processes could result in disproportionate representation in a particular employment setting. How many Members' staffs are made up in exactly the same racial and sexual proportions to the local labor force? How many Members even know what the percentages are? Who decides which groups are favored and which have to be proportionally represented in the work force? Should, for example, Slavs or Catholics or Aleuts be preferred? What about subpopulations? Where do we stop?

And, most importantly, what happened to the notion of a society based on merit, not on skin color? Clearly, race hiring violates the promise of the Civil Rights Act, which outlaws discrimination against individuals based on their race. By mandating statistical balance, we require employers to hire by race, for if an employer fails to have the right racial makeup, she faces severe penalties; but no penalties for hiring by the numbers. Indeed, the threat alone of multimillion-dollar damage awards is incentive enough to hire by race. In the final analysis, H.R. 1 will result in quotas and discrimination against those who would have been afforded the opportunity based on merit, but lost it based on skin color. Civil rights this is not.

H.R. 1 has other problems, too. The bill precludes challenges to consent decrees by victims of discrimination and it encourages litigation, instead of conciliation. The bill would also apply retroactively essentially changing the rules in the middle of the game and thereby allowing attorneys to reopen cases and sue for new damages.

The supporters of H.R. 1 are well intended but misguided. The people of this country don't want preferences based on race, quotas based on gender or hiring according to skin color. They want equality of opportunity for all people and they want employment issues to be determined on merit. President Bush's bill will allow all people to be judged by the content of their character, according to their abilities and aspirations.

Mr. KYL. Mr. Chairman, I rise in support of the Michel substitute and in opposition to the Brooks-Fish substitute.

I am saddened by much of the debate, Mr. Chairman. Time after time, Members have taken the well to question the President's motives. "He only wants the issue to play politics," they say. "He wants to bring back Willie Horton."

That's a cheap shot. It's unfair. It's untrue. It's hurtful.

Like all the rest of us, George Bush is fallible. But, would anyone here really doubt his personal committment to civil rights, to minorities, to fairness?

George Bush is the epitome of fairness—I don't think there is a discriminatory bone in his body. It says a lot about the merits of the argument against the President's bill—the Michel substitute—that so much time has been spent calling the President a racial hypocrite rather than arguing the merits of his proposal.

Mr. Chairman, none of us oppose civil rights or equal opportunity, and I deeply resent implications to the contrary. Let us candidly acknowledge that the legal issues are arcane. Let us also acknowledge that when Congress allows unlimited damages, and punitive damages, in title VII cases, employers are going to protect themselves by doing what they have to—in this case, hiring by the numbers. The Brooks-Fish substitute causes this result, intended or not. That's why it's called a quota bill. That's why it's wrong, and why the Michel substitute is preferable.

Brooks-Fish attempts to paper over the problem by outlawing quotas; but, the definition of "quota" is illusory, so quotas are not, in reality, prohibited.

This is just as well, because, if the bill really did outlaw quotas, businesses would be faced with a catch-22: don't employ quotas and be sued; employ quotas and be sued.

Another attempt to divert political opposition comes in the form of a cap on punitive damages. But the Brooks-Fish cap is no cap at all. Defined as the higher of $150,000 or the amount of compensatory damages, which is unlimited, there is no cap in reality. This unlimited exposure provides an even greater incentive for employers to avoid litigation by hiring by quotas.

Mr. Chairman, equality is fundamental to our society—equality of every individual. The Michel substitute promotes equality. The Brooks-Fish substitute, unfortunately, will promote divisiveness, preferential treatment and inequality. I urge my colleagues to support the Michel substitute.

Mr. FRANKS of Connecticut. Mr. Chairman, I speak to you as a black Republican, a small businessman, and a believer in equal opportunity, not inordinate special privileges. I also speak to you to as a supporter of the Michel substitute.

I was elected a Member of Congress because of who I am, not what I am. That is the standard by which I wish to be judged by my colleagues.

What our Nation needs, and the Michel substitute provides, is employment based on merit, a system which challenges young people of all colors to achieve.

We must have a color blind society which urges youth to strive for the best that they can be, keeping in mind that their merits will carry them.

The quality of the individual should be the determining factor, not the quantity of individuals. It's quality, not quantity.

Mr. Chairman, I also speak today as a small businessman. Small business is the backbone of this economy and largest employer in the Nation. Without a strong a viable network of small businesses, this country would economically falter.

H.R. 1 and its companions could inevitably have an adverse effect on small businesses everywhere. H.R. 1 would allow for unlimited punitive and compensatory damages and force many employers to hire by the numbers in order to safeguard themselves from astronomical damage awards.

Furthermore, H.R. 1 and its companions define business necessity in a way that has never been held by any court in this land. This will also cause employers to be unsure of how to defend themselves under business necessity.

Small businessmen do not have a lawyer waiting in the wings, like large companies do, to defend their actions. This in turn leads the employer to spend great sums of money just to defend his practices, being ever mindful of the overwhelming damages that could be brought against him and eventually lead to bankruptcy.

We recently saw how one present system can impair small business. A "60 Minutes" program showed how a lamp manufacturer in Chicago was impacted by discrimination litigation. This small business owner, who was operating with little profit, provided much needed employment in a depressed area of Chicago where other employers fear to tread. Along comes the EEOC and says you do not have enough of this group or enough of that group.

So instead of encouraging the employer, we threaten them with a lawsuit which they can not afford.

If H.R. 1 passes this will be repeated with greater vengeance. Law suits, or threat of law suits will close down these employers, and in the end the victims will be the unemployed employees.

We must continue to stress equality under equal opportunity if we are to have any hope of a truly color-blind society.

I urge this body to support the Michel substitute, a truly comprehensive piece of civil rights legislation.

Mr. GALLO. Mr. Chairman, because of my longstanding commitment to civil rights and equality of opportunity for all Americans, I am proud to support the Michel substitute to H.R. 1. This substitute, which embraces the language of President Bush's civil rights bill, and which adds an important provision on race-norming developed by Congressman HYDE, deserves the full support of this House.

Along with President Bush and scores of my colleagues, I have some serious and genuine reservations about the legislation which has been reported to the floor, and about the two other substitutes that will be offered. These reservations include concerns about provisions expanding damages, instituting retroactivity, and gutting the mediation process. I am also concerned about the very real possibility that all the other alternatives would lead to the adoption of quotas by employers as inoculation against long and costly law suits.

If this sounds familiar, that's because it is—I had these same concerns last year with H.R. 1's predecessor, H.R. 4000, a bill I voted against and that President Bush successfully vetoed. I had hoped that before the leadership of the House brought this year's version to the floor, we would have seen some substantive changes from the legislation the Congress was unable to enact into law last year. Unfortunately, that is not the case.

But, it didn't have to be this way. First, because there are other ideas in the House about how to accomplish the noble goals of H.R. 1 without enacting its shortcomings. Second, because these ideas were brought together last March in H.R. 1375, which is now offered as the Michel substitute. This alone is the measure that the Congress should pass and that the President would sign.

I believe that the Michel substitute—which has President Bush's endorsement—will strengthen employment discrimination law without forcing employers to resort to quotas. The Michel substitute will codify the landmark Supreme Court decision found in Griggs versus Duke Power Co. and would overturn a key aspect of the Court's decision in the Wards Cove case. And it would accomplish this clearly and unambiguously—and that can not be said for H.R. 1 or any of the other substitutes that will be offered today.

The Michel substitute would also bring Congress under the same antidiscrimination requirements that it has enacted for the private sector and the executive branch. In short, I think this bill addresses the fundamental problems that H.R. 1 and the other substitutes seek to address, without creating the need for employers to impose unfair quotas to guard against costly lawsuits.

Unfortunately, the rule under which we are considering this legislation makes it very unlikely that this substitute will stand. Why? Perhaps because it might take an issue away from our friends on the other side of the aisle. It seems to me that there are some people who are more interested in perpetuating an issue, than in stopping the perpetuation of discrimination.

I wish we had a real choice today—a choice between the Democrats' proposal and the Republican solution. Then the American people could clearly see and judge the differences which separate our two parties. Instead of being able to choose between two clearly articulated alternatives, we are hobbled by a restrictive rule that muddies the waters and provides more cover than it does choice. This is an unfortunate way to approach an important issue about which honest and well-meaning people have honest and well-considered differences.

I urge all of my colleagues who genuinely want a civil rights bill enacted this year to support the Michel substitute and oppose the others. The Michel substitute gives us the opportunity to enact a truly meaningful civil rights law this year—let's not lose it.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois [Mr. MICHEL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MICHEL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 162, noes 266, not voting 3, as follows:

[Roll No. 128]

AYES—162

Archer	Hastert	Pursell
Armey	Hatcher	Quillen
Baker	Hayes (LA)	Ramstad
Ballenger	Hefley	Ravenel
Barnard	Herger	Ray
Barrett	Hobson	Regula
Barton	Hopkins	Rhodes
Bateman	Huckaby	Ridge
Bentley	Hunter	Riggs
Bereuter	Hyde	Ritter
Bilirakis	Inhofe	Roberts
Bliley	Ireland	Rogers
Boehner	James	Rohrabacher
Broomfield	Jenkins	Ros-Lehtinen
Bunning	Johnson (CT)	Roth
Burton	Johnson (TX)	Roukema
Callahan	Kasich	Rowland
Camp	Kolbe	Santorum
Campbell (CA)	Kyl	Saxton
Chandler	Lagomarsino	Schaefer
Clinger	Lancaster	Schiff
Coble	Lent	Schulze
Coleman (MO)	Lewis (CA)	Sensenbrenner
Combest	Lewis (FL)	Shaw
Coughlin	Lightfoot	Shuster
Cox (CA)	Livingston	Skeen
Crane	Lowery (CA)	Slaughter (VA)
Cunningham	Machtley	Smith (NJ)
Dannemeyer	Martin	Smith (OR)
Davis	McCandless	Smith (TX)
Dickinson	McCollum	Solomon
Dornan (CA)	McCrery	Spence
Dreier	McDade	Stearns
Duncan	McEwen	Stump
Edwards (OK)	McGrath	Sundquist
Emerson	McMillan (NC)	Tauzin
Fawell	Meyers	Taylor (MS)
Fields	Michel	Taylor (NC)
Franks (CT)	Miller (OH)	Thomas (CA)
Gallegly	Miller (WA)	Thomas (GA)
Gallo	Molinari	Thomas (WY)
Gekas	Montgomery	Upton
Gibbons	Moorhead	Valentine
Gilchrest	Morrison	Vander Jagt
Gillmor	Myers	Vucanovich
Gingrich	Nichols	Walker
Goodling	Nussle	Weber
Goss	Oxley	Weldon
Gradison	Packard	Wolf
Grandy	Parker	Wylie
Gunderson	Paxon	Young (AK)
Hammerschmidt	Petri	Young (FL)
Hancock	Pickett	Zeliff
Hansen	Porter	Zimmer

NOES—266

Abercrombie	Browder	DeLay
Ackerman	Brown	Dellums
Alexander	Bruce	Derrick
Allard	Bryant	Dicks
Anderson	Bustamante	Dingell
Andrews (ME)	Byron	Dixon
Andrews (NJ)	Campbell (CO)	Donnelly
Andrews (TX)	Cardin	Dooley
Annunzio	Carper	Doolittle
Anthony	Carr	Dorgan (ND)
Applegate	Chapman	Downey
Aspin	Clay	Durbin
Atkins	Clement	Dwyer
AuCoin	Coleman (TX)	Dymally
Bacchus	Collins (IL)	Early
Beilenson	Collins (MI)	Eckart
Bennett	Condit	Edwards (CA)
Berman	Conyers	Edwards (TX)
Bevill	Cooper	Engel
Bilbray	Costello	English
Boehlert	Cox (IL)	Erdreich
Bonior	Coyne	Espy
Borski	Cramer	Evans
Boucher	Darden	Fascell
Boxer	de la Garza	Fazio
Brewster	DeFazio	Feighan
Brooks	DeLauro	Fish

Flake	Lloyd	Roemer
Foglietta	Long	Rose
Ford (MI)	Lowey (NY)	Rostenkowski
Ford (TN)	Luken	Roybal
Frank (MA)	Manton	Russo
Frost	Markey	Sabo
Gaydos	Marlenee	Sanders
Gejdenson	Martinez	Sangmeister
Gephardt	Matsui	Sarpalius
Geren	Mavroules	Savage
Gilman	Mazzoli	Sawyer
Glickman	McCloskey	Scheuer
Gonzalez	McCurdy	Schroeder
Gordon	McDermott	Schumer
Gray	McHugh	Serrano
Green	McMillen (MD)	Sharp
Guarini	McNulty	Shays
Hall (OH)	Mfume	Sikorski
Hall (TX)	Miller (CA)	Skaggs
Hamilton	Mineta	Skelton
Harris	Mink	Slattery
Hayes (IL)	Moakley	Slaughter (NY)
Hefner	Mollohan	Smith (FL)
Henry	Moody	Smith (IA)
Hertel	Moran	Snowe
Hoagland	Morella	Solarz
Hochbrueckner	Mrazek	Spratt
Holloway	Murphy	Staggers
Horn	Murtha	Stallings
Horton	Nagle	Stenholm
Houghton	Natcher	Stokes
Hoyer	Neal (MA)	Studds
Hubbard	Neal (NC)	Swett
Hughes	Nowak	Swift
Hutto	Oakar	Synar
Jacobs	Oberstar	Tallon
Jefferson	Obey	Tanner
Johnson (SD)	Olin	Thornton
Johnston	Ortiz	Torres
Jones (GA)	Orton	Torricelli
Jones (NC)	Owens (NY)	Towns
Jontz	Owens (UT)	Traficant
Kanjorski	Pallone	Traxler
Kaptur	Panetta	Unsoeld
Kennedy	Patterson	Vento
Kennelly	Payne (NJ)	Visclosky
Kildee	Payne (VA)	Volkmer
Kleczka	Pease	Walsh
Klug	Pelosi	Washington
Kolter	Penny	Waters
Kopetski	Perkins	Waxman
Kostmayer	Peterson (FL)	Weiss
LaFalce	Peterson (MN)	Wheat
Lantos	Pickle	Whitten
LaRocco	Poshard	Williams
Laughlin	Price	Wilson
Leach	Rahall	Wise
Lehman (CA)	Rangel	Wolpe
Levin (MI)	Reed	Wyden
Levine (CA)	Richardson	Yates
Lewis (GA)	Rinaldo	Yatron
Lipinski	Roe	

NOT VOTING—3

Lehman (FL)	Sisisky	Stark

□ 2128

Mr. ATKINS and Mr. HALL of Texas changed their vote from "aye" to "no."

Messrs. McCANDLESS, THOMAS of Georgia, HERGER, and MARTIN changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. BROOKS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

□ 2130

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LEHMAN of California) having assumed the chair, Mr. MFUME, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws, that ban discrimination in employment, and for other purposes, had come to no resolution thereon.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1790

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1790.

The SPEAKER pro tempore (Mr. LEHMAN of California). Is there objection to the request of the gentleman from Kansas?

There was no objection.

REPORT ON NATION'S ACHIEVEMENTS IN AERONAUTICS AND SPACE DURING 1989 AND 1990—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science, Space, and Technology:

(For message, see proceedings of the Senate of today, Tuesday, June 4, 1991.)

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 392

Mr. McNULTY. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 392.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

MOVING THE EUROPEAN NEGOTIATORS FOR GATT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. BEREUTER] is recognized for 5 minutes.

Mr. BEREUTER. Mr. Speaker, 2 weeks ago, the House and the other body both rejected fast-track disapproval resolutions. If either Chamber had approved their respective resolution, the Uruguay round of the General Agreement on Tariffs and Trade [GATT] would have been effectively ended. Negotiating authority needed by the President to complete the round has now been automatically extended for an additional 2 years.

The current round had been scheduled to conclude last December, but the unwillingness of the European Community to even consider the Hellstrom proposal—named for the Swedish Agriculture Minister—as a starting point for substantive negotiations in the agricultural area, caused the negotiations to collapse. Agreement in the 14 other negotiating areas, such as services, intellectual property and market access were very close or could be envisioned. The remaining issues were easily seen as negotiable and quickly achievable. Indeed, the 15 areas have now been reduced to 7 in large part because of the number of issues that have been resolved. Some major negotiation areas are: market access, services, TRIPS [trade related aspects of intellectual property], textiles, antidumping, TRIMS [trade related investment measures], government procurement, and dispute settlement.

Some critics, primarily European, have wrongly blamed the United States for the failure. The EC was isolated in their agriculture position against the Cairns Group, most developing countries, as well as the United States. Japan and South Korea conveniently found cover in the EC position, but quickly expressed willingness to compromise following the collapse of the round.

Since the collapse in December, Ray MacSharry, the EC Agriculture Commissioner, has indicated that the EC would be willing to negotiate reforms in each of the three crucial components of the agriculture area, as demanded by the Cairns Groups, developing countries and the United States. In very simple terms, only the percentage commitments by which export subsidies will be reduced, market access will be increased, and trade distorting internal subsidies will be reduced, remain to be resolved in the agriculture area.

Political aspirations by a few key European Community officials make resolution of the outstanding agricultural issues, at minimum, extraordinarily difficult. Ray MacSharry is the European Community's Commissioner for Agriculture. It is frequently said that Mr. MacSharry will give up his position in the EC to become a candidate for Prime Minister of Ireland. Jacques Delors, President of the Commission of the European Community, is widely noted as a possible candidate for the French Presidency. While the agriculture vote in each of these two countries is not overwhelming, both are significant swing voter blocks and are viewed as a volatile political group. Undoubtedly, these considerations will make it exceedingly unlikely that these officials will make appropriate and significant concessions in the agriculture area; action undoubtedly seen as harming their potential candidacies.

It is crucial then, that the European industrial community and services industries, and the consumers of the European Community recognize the losses and continued costs they will bear if the Uruguay round is not successfully concluded. European Community agriculture subsidies and protection cost EC taxpayers over $40 billion yearly and consumers over $30 billion annually. The Cairns Group of nations and

many developing countries have made success in the agriculture area of the negotiations their No. 1 priority. Without a commitment by the EC to improve import access and reduce export subsidies, they—the Cairns Group and the LDC's—will not agree to open their countries to the financial and other service firms of the developed countries like the EC, the United States, and Japan; nor will they agree to the patent and intellectual property rights reform elements before the Uruguay round. Direct and ongoing losses due to the international piracy of intellectual property easily costs the European Community, as well as United States and Japanese entrepreneurs, the equivalent of billions of dollars on each side of the Atlantic and Pacific every year. Closed services and investment markets also cost EC firms the equivalent of many billions of dollars every year in lost opportunities.

The European Community's industrial and services sectors therefore should, and probably must, convey their support for reforms in the Uruguay round to the European Commission if it is to be successfully concluded. Without significant internal pressure, prospects for a successful round are very poor. The collapse of the Uruguay round last December provides ample evidence that the internal pressure from the EC industrial and service sectors then exerted was not enough to move EC negotiators from their stubborn and unrealistic position on agricultural reforms.

Mr. Speaker, consumers and taxpayers in America, and around the world, have much to gain from a successful Uruguay round of GATT negotiations. This Member would hope that EC officials will not only recognize the losses that will result from a failed round, but also will recognize that preventing reform of the world trading system would deny each of our constituents, and indeed the people of the world, an incredible array of opportunities—including the basic opportunities for our Nation's economy to expand, to continue growing, and to improve individual and our national standards of living.

□ 2140

HONORING THE 45TH ANNIVERSARY OF THE FOUNDING OF THE ITALIAN REPUBLIC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, I rise to commemorate the 45th anniversary of the founding of the Italian Republic.

Among our allies around the globe, Mr. Speaker, few nations share our values of freedom and self-determination more closely than Italy.

Our partnership with today's Italian Republic stretches back to its inception on June 2, 1946, when the people of Italy voted in a national referendum to adopt a democratic form of government. On that same day, representatives were chosen for a constituent assembly. The assembly adopted a new constitution that took effect on January 1, 1948.

Amid the devastation of World War II, America helped to nurture Italy's fledgling democracy with aid provided primarily through the Marshall plan. And with America's support, the Italian people dedicated themselves to the awesome task of establishing a new democracy. With their tireless determination, the Italian people successfully organized a government that guaranteed basic human rights such as equal treatment under the law, freedom of religion and the separation of church and state. Those basic freedoms continue to thrive today under elected governments that have witnessed a dramatic rebuilding of Italy from the ruins of war.

America's support for Italy's democracy has helped to make that country one of our strongest allies. Since the founding of the Republic, Italian governments have played a crucial role in defending Western Europe as a partner in the North Atlantic Treaty Organization. Most recently, Italy also joined the United States and other nations in providing armed forces and supplies during the war to liberate Kuwait from Iraqi aggression.

As we continue our efforts to promote democracy and human rights throughout the world, I am confident the Italian Republic will continue to play a vital role as a partner in freedom.

That is a fitting legacy for Italy, a nation renowned for the democracy of ancient Rome as well as innumerable other contributions to civilization in areas such as music, art, architecture, literature, and law.

In light of these many accomplishments, Mr. Speaker, I would like to express my very best wishes and congratulations to the people of Italy on the 45th anniversary of the founding of their modern democracy. May the freedom-loving people of Italy continue to enjoy the fruits of their democracy well into the 21st century and beyond.

NATIONWIDE INSURANCE CO.'S COMMITMENT TO COMMUNITY SERVICE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. WYLIE] is recognized for 5 minutes.

Mr. WYLIE. Mr. Speaker, Nationwide Insurance Co. is headquartered in Columbus, OH, which I have the honor to represent. I rise to announce that I am recommending to President Bush that Nationwide and it's 43,000 employees be recognized for outstanding service to the communities they serve and that their collective achievements be designated as one of his Thousand Points of Light.

The President's Thousand Points of Light Program is designed to recognize the achievements of individuals or organizations that address our Nation's most pressing social problems through direct and consequential acts of community service. Nationwide's policy has always been to encourage its employees to be involved in their communities and help improve the quality of life of those in need. I am proud to say that the employees have willingly risen to the challenge on countless occasions, and the commitment they have made to their communities has taken on a life of its own. While the company's employees around the country have been involved in a wide variety of selfless services to the needy over the years, I am most familiar with the activities of those in the Columbus area, so I would like to take just a few moments to offer the following examples of what the headquarters employees alone have accomplished.

In 1990, the employees donated $1.9 million to the United Way of Franklin County—over 6 percent of the county total. The Nationwide companies also match, dollar for dollar, all employee contributions. This means that Nationwide contributed in total over 10 percent of all United Way dollars in Franklin County last year.

In 1990, the employees donated nearly 2.5 million units of food to Franklin County's Operation Feed campaign. That was more than one-fourth the local drive's collection of more than 9 million units, which was the largest community total in the United States. If considered as a separate community, Nationwide would have been the second largest food contributor in the country, outpaced by only Franklin County.

In 1989, Nationwide's employees donated 10,684 pints of blood. They have been No. 1 among all blood donor groups in Ohio since 1977.

The employees made solid contributions to the community by their participation in civic, educational, cultural, charitable, church and other organizations, and as elected or appointed public officials. For example, over 200 employees serve directly as volunteers or board members on the United Way's 69 Franklin County agencies. It is a company tradition to encourage employees to get involved in their communities.

Since 1987, Nationwide's employees have supported the Nationwide Insurance Activities Association Literacy Club. Employees interested in learning how to become a tutor may attend class with the Columbus Literacy Council and be reimbursed at one-half the fee. Monthly meetings are held for Nationwide tutors to learn from each other new ways in helping their students. Nationwide facilities are available for tutors to use in teaching their students.

The employees collect shoes for the needy on an ongoing basis. Thousands of pairs of shoes, men's women's and children's, are collected yearly and turned over to a community organiza-

tion which makes sure they are passed on to those in need.

The employees sponsored the Nationwide's Activity Clown Corp. which makes monthly visits to Children's Hospitals to "serve up smiles" for the patients. They also make visits to nursing homes and participate in community events. In addition, they sponsor Nationwide employees' children in a Cadet Clown Corp.

Each December the employees donate money to help clothe the needy children of the community by giving to Charity Newsies—a Columbus organization that sells special editions of the Columbus Dispatch for charity. Hundreds of Nationwiders also give toys to the One New Toy program for St. Stephens Community House and volunteer their time to sort and box Christmas food baskets. Nationwide's annual Warm and Fuzzy Christmas Tree is decorated with gloves, mittens, scarves, and hats which are donated to help clothe the needy children.

Nationwide's employees participate yearly in the YMCA Corporate Challenge. This is a year-round 16 event competition with other corporations that helps collect money to allow under-privileged children to attend YMCA Day Camp and other special events.

Nationwide purchases and donates approximately 400 to 500 tickets to allow under-privileged children to attend Nationwide Night at the Columbus Clippers baseball game.

Mr. Speaker, in closing may I add that these projects are just a small fraction of the many generous achievements that the good people of Nationwide around the country have demonstrated over the years. If ever a group deserved to be recognized for its compassion and generosity, it is the dedicated people of Nationwide. I believe both they and their company serve as a shining example of what the Thousand Points of Light Program is all about.

THE 10TH ANNIVERSARY OF THE DIAGNOSIS OF THE FIRST CASE OF AIDS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Ms. PELOSI] is recognized for 60 minutes.

Ms. PELOSI. Mr. Speaker, I have called this special order today in recognition of the 10th anniversary of the recognition of the AIDS epidemic. I thank my colleagues for joining me and bringing attention to the magnitude and urgency of this epidemic.

On June 5, 1981, the Centers for Disease Control published the first account of five men in Los Angeles who had developed a rare and inexplicable form of pneumonia. These cases would turn out to be the first reported cases of AIDS.

In the 10 years since the first CDC report, the number of reported cases in the United States has grown now to 200,000, and more than 1 million Americans are believed to be HIV-infected.

In the second decade of the epidemic the CDC projects that we will have another 500,000 cases in the United States and at least 10 million in the world. The magnitude of the epidemic is staggering.

Mr. Speaker, in the course of this special order I will go into some more specifics about prevention, research, care, and how it affects our country and in particular my community of San Francisco, but before I do that, I would like to yield to some of our colleagues who have joined in this special order.

First, Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. STUDDS], who has worked very hard on this issue for a long time, who was here when the AIDS epidemic was first diagnosed, and who can speak about the first decade of AIDS.

Mr. STUDDS. Mr. Speaker, I thank the gentlewoman for yielding, and I commend her for her ceaseless and tireless efforts in this behalf.

Mr. Speaker, to focus on 10 long years of the AIDS epidemic is to relive the loss and the grief, the dispair and the rage of the last decade.

All of that is sadly appropriate.

But in this epidemic we have also, somehow, rediscovered that most human of responses: hope. Since the first case of AIDS was diagnosed 10 years ago, we have also taken some giant steps forward.

Anniversaries are for remembering—and for moving ahead.

Eight years ago, along with my good friend TED WEISS, I stood in this well to participate in a special order, much like tonights. We had gathered to draw attention to a strange and horrible and deadly new disease which was killing Americans by the dozen—and which was being virtually ignored by the Federal health bureaucracy.

By May 1983, 8 years ago, 500 people had died of AIDS.

In my home State of Massachusetts, six had died.

It was, so far as I know, the first time the word AIDS was mentioned on the House floor. In my remarks that night, I observed that epidemiologists were warning that we might have seen no more than the tip of this horrifying iceberg.

As of yesterday, as we all know, over 100,000 Americans are dead. Another million are thought to be infected with the AIDS virus, and 3,000 new cases are reported each month.

Mr. Speaker, this constitutes a public health emergency the magnitude of which our Nation has never experienced, and the consequences of which may rock our entire health care system.

And, of course, it has been an unspeakable tragedy for the individuals whose lives have been touched.

We still do not fully comprehend what causes it and we still do not know what could cure it. Those portions of our Nation's population which have been savaged by AIDS, most particularly the gay community, have endured, and suffered and grieved to the point of numbness—and beyond. It sometimes seems that the principal social activity today of a whole generation of young gay men and women is attending the funerals of equally young friends.

So now, in a quiet and somber chamber, and with some historical perspective, is it so hard to understand the shock and disbelief—then the anger and rage—of dying people whose cries for help went so totally ignored for so long that there was only one explanation: that victims of AIDS were somehow not like victims of legionnaires disease or toxic shock, the fear of each of which sent shockwaves through the White House, the Centers for Disease Control, and the entire Nation.

What other possible explanation was there for the resistance—not for days or months, but for years—to basic AIDS research and education?

Well into the eighties, you will recall, the administration was still proposing cuts in the AIDS research budget, and still forbidding Surgeon General Koop to distribute his own report on AIDS, even after Congress mandated a national mailing of that report. American citizens were, quite simply, starved for basic facts about the epidemic.

Some Members may recall that, at that time, I led what turned out to be a proud parade of Members—many of whom are in this Chamber right now—who took it upon themselves to use the congressional frank to mail the Surgeon General's report to their constituents. Some considered this politically risky. It was not. People in my district and elsewhere thirsted for reliable, authoritative guidance on AIDS: What it was, what it wasn't, and how to minimize the likelihood of getting it.

It was not until a year later, after the death of a widely admired movie star, that the President of the United States dared speak its name and publically acknowlege the existence of the epidemic.

In that era of cold-blooded fiscal analysis, you'd think someone might at least have calculated the financial consequences of AIDS, which have been as staggering as its human costs. Health care expenditures for a typical person with AIDS, average nearly $100,000. We are already talking tens of billions of dollars annually.

Individuals and families are bankrupt before they know what hits them, given this cruelly ironic fact that

health insurance tends to vaporize when it's most needed. Employers, meanwhile, are faced with impossible choices between maintaining insurance for a worker with AIDS, or coverage for all other employees.

AIDS sufferers terminated by employers from group insurance policies are, after 18 months, completely vulnerable. People with AIDS are considered uninsurable and are unable to purchase private coverage, at any price. Public assistance, through Medicaid or Medicare, are the only remaining options.

As a result, roughly 40 percent of AIDS patients end up on Medicaid, and the Federal portion of AIDS-related Medicaid spending has risen from $10 million in 1983 to over $650 million this year.

In some of these ways, care—or the lack of it—for people with HIV is not so different from the treatment of people with other illnesses. Health care in this country is delivered in a highly inequitable, wasteful and irrational way. It is ironic that our mistakes and lethargy in confronting the AIDS crisis may be what finally leads us, inevitably, I hope, toward a comprehensive system of universal, national health insurance.

The major difference is that, as they struggle to stay afloat financially, people with AIDS are also suffering from one of the most painful and debilitating diseases known to mankind.

It is, thus, exceedingly difficult for many whose lives have been unthinkably changed by this disease to control the rage. But that must obscure neither the distance we have come, nor the work we still have before us.

The Federal Government has begun to accept some responsibility for dealing with the crisis. Yet State and local governments are still overwhelmed, unable to cope with minimal levels of primary care, much less prevention.

We are now committing far greater resources, some $1.92 billion, to research, which has resulted in some medical headway, especially in treating secondary complications of HIV disease. But there is much more we do not yet understand.

We have made real strides in public awareness. But education is an ongoing process, and the virus continues to spread at an alarming pace. People die senselessly because they lack understanding of how to avoid the virus.

We have slowed the increase of the disease among some groups, including gay men; but the rate of increase is three times higher than that among heterosexuals and newborns. And the most distressing rate of increase is now among people of color.

So where is the hope?

In the thousands of incredibly committed and talented and selfless people who have recognized this emergency as a human tragedy.

In preparing for tonight's special order, I called several of these people and groups in and near my congressional district, just as you could in any city or town in this country, which have been working their hearts out to try to keep the lid on the epidemic locally. I wanted to hear how they, after a few moments of reflection, would sum up the last 10 years.

The metaphor I heard most often from them related, perhaps not surprisingly, to war.

From Larry Kessler, head of AIDS ACTION Committee of Massachusetts, comes the observation that "the war on AIDS has been waged by a strictly volunteer army."

"Let the government," he writes, "acknowledge the heroism of those in the war against AIDS and then roll up its own sleeves."

Others echoed similar themes.

"Outer Cape Cod Health Services, a rural community health center, has provided care for persons with AIDS for 10 years," wrote its executive director, Scott Penn. "We recorded one AIDS death in 1981. Now a HIV-related diagnosis is the second most frequent reason for a medical visit here. With no end in sight."

As a health administrator who has spent the entire 9 years of my professional career involved in HIV-related services. I feel like a foot soldier in a war where my friends and colleagues are dying around me. With no end in sight.

Although I dispair about 10 years of lost opportunities for controlling the epidemic, I call on the administration for leadership, the Congress for appropriations, and our fellow citizens for compassion. Until there is a cure and a vaccine, we must make certain that no one else becomes infected, while those living with HIV have access to compassionate, comprehensive care.

And from Project Care in the city of New Bedford:

Rarely, outside of war, have people had to lay witness to the passing of lives which are so precious. On a daily basis we are reminded of our own mortality and the need to cherish each moment.

Our attempts to diminish the loneliness, the pain and the suffering, often seem insignificant amidst the need of those with chronic illness. Our anger surfaces as we look for hope and are met with disdain and distrust.

We will not stop advocating for essential services as well as continued prevention efforts in order that we all may see an end to this suffering. We cannot be content with current efforts as we sit amidst men, women and children who have few treatment options available to them.

We shall not forget those who, in individual and collective efforts, daily perform small miracles. I am talking about professionals, volunteers and caretakers who provide support to those who are infected. It is on this occasion that we need to acknowledge their abundant loving efforts in the struggle against AIDS.

Alice Foley, executive director of the Provincetown AIDS Support Group, writes:

There is a certain sense of the macabre in marking this anniversary. The sense of tragedy for lives never lived, the staggering reality of the numbers. How did we get from that day 10 years ago to today?

* * * The element of volunteerism seen with this epidemic is immeasurable. As the numbers continue to escalate, how do we take care of the caretakers? The typical volunteer does not exist. They are young, old, men, women, gay, straight, recovering addicts, and parents of people with AIDS. The volunteerism seen with this epidemic is a major hidden cost that could never be assimilated by the health care system.

Albert Camus' character, Dr. Rieux, in "The Plague," writes that as the plague finally vanished from Oran, he

* * * resolved to compile this chronicle, so that he should not be one of those who hold their peace but should bear witness in favor of those plague-stricken people; so that some memorial of the injustice and outrage done them might endure; and to state quite simply what we learn in time of pestilence: that there are more things to admire in men than to despise.

Mr. Speaker, the AIDS crisis has forced us—as a society and, indeed, within this House—to become much better educated about whole worlds that we once knew very little about. I hope we have learned through this crisis how much more there is to admire in each other than to despise.

□ 2150

Mrs. BOXER. Mr. Speaker, I thank the gentlewoman for having this special order to recognize the AIDS epidemic.

On this occasion I would like to take the opportunity to introduce a resolution calling upon Congress to reaffirm its commitment to ending the AIDS epidemic and to ensuring compassionate and comprehensive care for Americans diagnosed with AIDS.

We must not forget those who have died of AIDS and those who we might yet be able to help. For them, I have introduced the following resolution.

H. RES. —

Whereas, since 1981, more than 170,000 Americans have been diagnosed with AIDS (acquired immune deficiency syndrome) and more than 100,000 of such Americans have died of the disease;

Whereas AIDS is the 2nd leading cause of death among American men between the ages of 25 and 44, and the 5th leading cause of death among American women between the ages of 15 and 44;

Whereas, each year, approximately 40,000 American adults and adolescents are infected with HIV (the human immunodeficiency virus), and at least 2,000 new HIV infections occur among newborns;

Whereas the National Association of Public Hospitals has reported that an average of $2,500 for each AIDS case admitted to public hospitals is uncompensated by private insurance or public programs;

Whereas there is no known cure for AIDS, and the only approved antiviral therapy, AZT, cannot be used by half of all individuals who have HIV; and

Whereas the median length of time for survival of individuals who are diagnosed with AIDS is only 770 days for individuals who receive AZT, and 140 days for individuals who do not receive AZT: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the Congress should act now to end the AIDS epidemic by any means possible; and

(2) the Congress should reaffirm its commitment to ensuring compassionate and comprehensive care for Americans diagnosed with AIDS.

Ms. PELOSI. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. STUDDS] for his very poignant statement. It is very heartbreaking to hear these eloquent statements from people on the front line in the fight against AIDS. I am very grateful for the contribution the gentleman has made to this special order this evening.

Mr. Speaker, it is now my privilege to recognize another champion in this fight against AIDS, the gentleman from New York [Mr. GILMAN], who has been relentless in pursuit of a cure, a vaccine, in care, in research, whatever it takes to help us win this battle.

□ 2200

Mr. GILMAN. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, I rise today to call attention to the widespread AIDS [Acquired Immune Deficiency Syndrome] epidemic and I commend the gentlewoman from California [Ms. PELOSI] for arranging this special order. This month regrettably marks the 10th anniversary of the AIDS epidemic and this dreadful disease shows no sign of relenting. As the AIDS disease continues to spread throughout the United States and the rest of the world, there is a pressing need for more education, more research, and increased awareness.

As of January 1991, over 161,000 cases of AIDS nationwide had been reported with over 100,000 deaths since the virus first appeared in June of 1981. The increasing incidence of AIDS and its concentration among certain groups have spurred an increasing number of research and epidemiological studies.

The total number of AIDS cases worldwide is currently estimated at over 700,000. Alarming research indicates that by the year 1993, the United States alone could be faced with as many as 480,000 cases and 340,000 deaths.

A particular concern of mine is the alarming number of people in my home State of New York who have been afflicted by the AIDS virus. As of 1988, AIDS has become the third leading cause of death in New York City. New York continues to lead the Nation in reported cases of AIDS with 36,459 cases as of March 1991. Furthermore, in New York State it has been reported that there were 200,000 HIV positive individuals statewide.

Although AIDS continues to spread and destroy the lives of thousands upon thousands throughout the world, there are those victims who choose not to lie helpless until death strikes. There are such courageous individuals as 14-year-old Ryan White. Most of you may remember Ryan as the steadfast young man who contracted AIDS through a blood transfusion. The serenity, courage, and wisdom with which Ryan faced his affliction was an inspiration for us all.

The Ryan White story inspired the passing of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990. That law amended the Public Health Service Act to provide grants to improve the quality and availability of care for individuals and families with HIV disease as well as other health care needs.

Additionally, in fiscal year 1991, Congress appropriated $1.8 billion towards AIDS research and education, but more funding is desperately needed.

It is time for all Americans to reflect on how extensively the AIDS disease has spread and how far we have to go in order to effectively respond to the continuing challenges presented by the AIDS epidemic. It is essential that these efforts continue and be accelerated in order to prevent the continuing transmission of HIV and to meet the challenges of AIDS.

Mr. Speaker, in light of the fact that this month commemorates the 10th anniversary of the AIDS virus in the United States, it is imperative that we focus increased attention on the prevention and cure of this deadly disease. AIDS should not be given the honor of another such anniversary.

I thank the gentlewoman for yielding and for her commitment to resolving this public health issue.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for his valuable statement and his hard work on behalf of all of those who are concerned about the AIDS epidemic.

Mr. Speaker, it was my pleasure and privilege when I came to the Congress for 3½ years to serve on the Subcommittee of the Government Operations Committee on Health and Human Services and Interdepartmental Relations. The chairman of that subcommittee, the gentleman from New York [Mr. WEISS], to whom I will yield in a moment, in that capacity as chairman of the subcommittee as well as being Representative of the State of New York, has been one of the national leaders in the fight against AIDS. In a very substantive way, he has made an enormous difference on this issue, especially in relationship to the availability of drugs for AIDS.

It is my privilege to yield to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Speaker, I thank the gentlewoman for those very generous words.

First, let me express my gratitude to Congresswoman PELOSI for organizing this special order on the 10th anniversary of the AIDS epidemic. It is a sorrowful day because, contrary to popular belief, the tragedy of AIDS is still with us and does not seem to be abating.

The latest surveillance reports tell us that the reported cases of AIDS are approaching 175,000, and there are many others that have not been reported. We know that a million persons are infected with HIV and, unless a scientific breakthrough occurs, they will eventually become desperately ill.

It is important for those of us in the Congress who have been working to support the programs necessary to find a cure, prevent transmission, and provide care for those who are affected to speak out—to remind this Nation that the epidemic is far from over; that in fact, it is increasing as we stand here to commemorate it.

I have had the good fortune to be the chairman of a subcommittee that oversees the Department of Health and Human Services. The subcommittee has continuously monitored the Federal response to this epidemic through hearings and reports on Department policies and programs related to AIDS.

The Federal response in the early years was woefully inadequate. Although Public Health Service employees were alert to the dangers of AIDS and tried their best to bring it to the attention of administration officials at the highest levels, Presidential budget requests were minimal. The Congress had to take the lead in providing funds and direction to fight the spreading epidemic.

We have still not seen the kind of administration leadership necessary to put the epidemic to rest and to provide even minimally adequate treatment, health care, and social services to those whom it strikes.

Just this Thursday, my subcommittee will be holding a hearing on some of the problems faced by women with AIDS. The first woman was identified with an AIDS-like condition in 1981, and yet women are still excluded from many benefits and services because their AIDS-related problems have been neglected from the earliest days of the epidemic. This is especially serious since it is now women who are developing AIDS in the greatest proportion.

As the epidemic climbs into its 11th year, I pledge my continuing efforts to fight this tragic disease. I hope and pray that our efforts will bring relief to all whose lives are touched by AIDS and prevent others from becoming its casualties.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for his statement and for his participation in this special order, but most of all for his leadership in this fight.

In any fight, in any battle, Mr. Speaker, we know how important it is to have fresh recruits. Although the gentleman from Ohio may have been working on this issue outside the Congress, he is a fresh recruit inside of the Congress. He serves on the subcommittee of the gentleman from New York [Mr. WEISS], of the Government Oper-

ations Committee overseeing the Department of Health and Human Services. So we are very pleased that he is able to join us this evening.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. HOBSON].

Mr. HOBSON. Mr. Speaker, I thank the gentlewoman from California [Ms. PELOSI].

Mr. Speaker, I rise today in recognition of our Nation's 10-year struggle with the AIDS virus. Indeed, what was first reported in 1981 as a rare form of pneumonia, has turned out in 1991 as a nationwide epidemic.

AIDS is affecting every segment of our society. The official death toll in the United States is well over 100,000 and it is estimated that more than 1 million Americans are infected with HIV. This virus has no social, economic, racial, or political boundaries.

AIDS has spread to every country, every State—and even to our own local communities and neighborhoods. In fact, women and children are the fastest growing group of AIDS cases in the United States. Pediatric AIDS cases are expected to increase more than 10-fold in the next 5 years. The costs for caring for those already infected could reach well over $100 billion.

AIDS is a difficult issue. Because of the fear and hysteria associated with the virus, particularly in its early days, we have been confronted with a health care dilemma we have never before had to face. No one disease—past or present—encompasses all of the challenges posed by AIDS.

We have made some progress in the last 10 years. Through education, we have been able to dispel some of the fear and ignorance directed toward those afflicted with the AIDS virus. Several States have also taken the lead in developing effective AIDS programs.

As a former State senator in Ohio, I authored our State's comprehensive AIDS law. Through more than 2 years of extensive research and public testimony, we developed a plan to help protect the public from further infection and to establish cost-effective care for those already infected. The bill was supported by a diverse group of business, health care, religious and social organizations, including PWA's. It included alternative care facilities for AIDS patients, a contact tracing program through the Ohio Department of Health, along with many of the recommendations from President Ronald Reagan's Commission on AIDS.

However, there are still great challenges ahead. We must continue our press for a cure and effective treatment programs, with the hope of saving those already infected. And we must continue education programs, particularly among our young people, to prevent further spread. We cannot allow ourselves to lose another generation to AIDS. I would also encourage this Congress to examine the effective programs we have established in Ohio and implement them on a national level.

I thank Congresswoman PELOSI for this opportunity to address this most serious issue. It is important we, as leaders of this Nation, take this time to reflect on the full impact of the AIDS epidemic and what we must do to save our children, our grandchildren and our friends from the threat of this disease.

□ 2210

We must have the courage to stand and see that all people receive the care that is necessary and the compassion that this country has for those who are afflicted with this disease.

I am new to the Congress, and I am, as the gentlewoman said, on the committee of the gentleman from New York [Mr. WEISS], and I pledge to you that I will continue to work for effective and caring legislation in this area.

I thank the gentlewoman very much for this opportunity.

Ms. PELOSI. Mr. Speaker, the gentleman is welcome, and his participation in this fight is most welcome in the Congress, and I am certain on the committee. I thank you very much for participating this evening.

Mr. Speaker, next I yield to another member of the subcommittee of the gentleman from New York [Mr. WEISS]. As I say, it was a special place to have served, because some of the best work on AIDS in the country is done there. It is an oversight subcommittee, and so anything that is not being accomplished soon comes before that subcommittee because of the aggressive leadership of the gentleman from New York [Mr. WEISS] and the full participation, and as you can see this evening, bipartisan participation of the members of the subcommittee and their concern for this issue.

I am pleased tonight to yield to the gentleman from New Jersey [Mr. PAYNE], who has made a very, very special contribution to this fight. He has been relentless, persistent, just constantly, constantly calling to the attention of the country and the Congress how the issue affects his community and, of course, the country as well.

I am very pleased to yield to the gentleman from New Jersey [Mr. PAYNE] as he participates in this special order this evening.

Mr. PAYNE. Mr. Speaker, let me thank the gentlewoman from California for calling this special order tonight. Whether it is about women's rights in the workplace, whether it is about human rights in Tiananmen Square, whether it is about the devastation of AIDS, we find this person in the forefront speaking for those who cannot speak for themselves, and so I feel very delighted to share in this special order.

I also would like to commend my subcommittee chairperson, the gentleman from New York [Mr. WEISS], of the Committee on Government Operations, for the outstanding work that he has done to keep in the forefront through the NIH and the CDC what is going on and what should go on as we deal with this very devastating illness in our country.

I rise today, Mr. Speaker, to register my profound sadness at the passing of a decade of the AIDS epidemic in our Nation. Since that time when physicians and scientists first identified this disease, AIDS has devastated our Nation. It has taken the lives of men, women, and children of every single age group, gender, race, and class.

Since 1981, over 174,000 American people have been diagnosed with AIDS. 110,000 of those have died, and there are estimates that more than a million Americans are infected with the HIV virus.

I am very familiar with the face of AIDS and with the destruction it wreaks. In my district, the very first case of pediatric AIDS was detected. In the largest city in my district, Newark, the caseload has increased 83 percent in just the past 2 years. Newark has one of the highest sero prevalency rates of infection in the Nation. In the wake of this destruction are left abandoned babies, many carrying the HIV virus or exhibiting signs of drug exposure. As I visit the neo-natal intensive care units in my district at Newark's Beth Israel, St. Michael United at College Hospital; I see these innocent victims, helpless in their basinettes.

Ten years after the first published cases of AIDS, we have little to show in terms of progress in battling this deadly disease. Thankfully, we can now test for antibodies to the virus and trace the path of infection. Yet, tragically, we have not succeeded in controlling the tide of infection, nor can we cure the sick once they are infected. Much more must be done in terms of preventive education.

I am heartened, however, by the progress that we have made as of late. Greater attention to the tragedy of AIDS has brought about an increase in funding for research and treatment. While scientists work to discover a cure to the HIV virus, health care professionals have also made strides in caring for people suffering with AIDS.

Perhaps most frightening of all in this tragic situation, is the dearth of clinics and facilities available to drug addicts and pregnant women, both infected and uninfected, who want to escape the cycle of addiction and transmission but cannot find a space. The drug epidemic and the AIDS epidemic are leading a symbiotic existence, and until we begin to solve both problems simultaneously, neither epidemic will ever be brought under control.

I hope that we in Congress recognize this fact and act swiftly to ensure that another decade does not pass before this AIDS crisis is effectively controlled. It will take the full strength, compassion, and support of the American people to triumph over this epidemic, but I am confident that we can succeed.

Ms. PELOSI. Mr. Speaker, I thank the gentleman from New Jersey [Mr. PAYNE] very much for his hard work on this issue and the leadership that he has demonstrated in his community and in the Congress on this. I appreciate his participation in the special order as well as the participation of some of our other colleagues who have submitted statements for the RECORD: the gentleman from Maryland [Mr. MFUME], the gentleman from Utah [Mr. OWENS], the gentlewoman from Maryland [Mrs. MORELLA], the gentleman from California [Mr. FAZIO], the gentleman from New York [Mr. GREEN], and the gentlewoman from California [Mrs. BOXER].

Mr. Speaker, at the beginning of my remarks, before yielding to my colleagues, I mentioned that in addition to the staggering statistics that I quoted, I cited for the country and the world that we were suffering in a particular way in my community in San Francisco in the district which I represent.

In February of this year, San Francisco, a city of 740,000 people, topped the 10,000 mark in the number of AIDS cases diagnosed. This summer we will set another grim milestone when 1 out of every 100 citizens of the city, residents of the city, will have died of AIDS. Twenty-five percent of the deaths in the city each year are now due to AIDS, and the Department of Public Health estimates that approximately 23,000 people and 11 percent of the adult males in the city are infected with HIV.

Given the history of HIV disease, these people will likely become ill over the next 10 to 20 years with the opportunistic disease of AIDS.

The toll of this epidemic in San Francisco and other cities was not even imaginable 10 years ago. We cannot imagine the toll, but it has become completely unacceptable.

Mr. Speaker, in the area of research, one area where we have been making remarkable progress is in basic biomedical research. At the beginning of the epidemic, the disease was mysterious. In the last 10 years, scientists have been able to identify HIV, the virus that causes AIDS, and now the scientific understanding of the virus is impressive.

Progress has also been made in identifying potential therapeutic drugs.

The AIDS epidemic has energized the research community and stimulated rapid progress in understanding the virus. It has also forced the research establishment to deal with complex ethical issues and to reform clinical trials to be more humane and responsive to participants, and, I might add, representative.

□ 2220

At the same time, the epidemic has made the public realize that modern science does not have all the answers—the limits to science now seem much more real than 10 years ago. We do not have a cure.

PREVENTION

Ten years ago, AIDS was mysterious partly because we did not know how it was spread. Now it is hard to imagine very many people in the United States who could not tell you how the AIDS virus is transmitted. We have learned, however, that information alone is not sufficient. Sophisticated prevention demonstration projects sponsored by the National Institute of Mental Health [NIMH] and the National Institute of Drug Abuse [NIDA] have documented the potential for highly successful prevention outreach programs.

Yet, the Centers for Disease Control [CDC] project another 40,000 HIV infections this year. This is unacceptable. The technology discovered in federally supported prevention science has not been transferred to prevention services, and resources allocated to prevention efforts are painfully inadequate.

At this point 10 years into this epidemic, prevention outreach programs remain our best hope of halting the epidemic. At the same time, we must realize that in order to win the war against AIDS a cure or a vaccine will be necessary. Fortunately, we can expect significant progress on vaccine development in the next decade—experimental vaccines may soon be in large-scale international trials. This gives up hope.

PATIENT CARE

The Nation's health care system is in crisis and getting worse.

I have addressed the issue of research and prevention. I would like to spend a moment or so on the question of patient care.

The AIDS epidemic has imposed additional burdens on an already overburdened public health care system. The heavy concentration of AIDS cases in major metropolitan areas—where urban problems are increasing and resources are decreasing—has made matters even worse.

In the first 9 years of the epidemic, the Reagan and Bush administrations wanted no responsibility for the patient care crisis caused by the AIDS epidemic. Thankfully, last year Congress passed the Ryan White Comprehensive AIDS Resources Emergency Act which has begun its promise of bringing much needed relief to the hard hit cities of the United States. Adequately funding this care program in the next few years will prove to be one of the first challenges of the second decade of AIDS.

At this point there is more interest and discussion in national health insurance than at any point since the 1970's. The AIDS epidemic has helped move this debate. My hope is that the new decade will see Congress provide for universal access to a single payer health insurance system. This is needed to remove the menace of illness destroying all of an individual's resources.

I would like to focus on AIDS and the budget now. As my colleagues know, we are now living under severe spending constraints imposed by the 5-year budget agreement. While reducing the budget deficit is a national priority, we must not lose track of our other responsibilities. In the last 12 months, the number of AIDS cases reported in the United States has increased by 34 percent. Yet, the President has proposed to increase spending on AIDS by only 3.4 percent—responding at one-tenth of the need for increased resources. The AIDS epidemic will not stop its relentless course while we struggle with deficit reduction.

We must think about AIDS differently from other priorities, including health priorities. In terms of number of years of life lost before age 65, AIDS will surpass both cancer and heart disease this year. And remember, AIDS is a viral disease which was not identified until 10 years ago. Because of the continued public health threat of this epidemic, an emergency response is required.

Ironically, the AIDS epidemic began at the same time that Ronald Reagan assumed the Presidency. History will reveal that the Reagan administration reacted slowly and with inadequate resources.

I would like to close, Mr. Speaker, by focusing on a quote which was one of my favorites, but which was quoted to us recently by Bill Moyers in a speech in which he quoted George Bernard Shaw. George Bernard Shaw said that the sign of a truly educated person is that person's ability to be moved by statistics. I find the statistics associated with AIDS to be devastating, to be incredible, and to be as I mentioned before unacceptable.

I said in my beginning remarks, 200,000 cases, the reported cases in the United States, with 1 million Americans HIV-infected, 500,000 cases in the next years ahead, and 10 million around the world. Staggering statistics, but we must all be truly educated to these facts and statistics and show our intelligence by being moved by them, moved to action.

Certainly hearing the statistics is a move to compassion and concern, but those two attributes while motivating are no substitute for a positive program of action. I refer to the prospects of research, and I gave an optimistic

view of it. I certainly do not think we have achieved enough in terms of making drugs available to those who need them for either a drug like AZT which is not a cure but helps people cope, or with finding the ultimate cure or vaccine for prevention.

Mr. Speaker, I would hope that if we had known what we were facing in 1981, we would have done a much better job as a nation to address the many challenges of the first decade of AIDS. Now we should know what the challenges are for the next decade of AIDS. We have no excuse if we do not redouble our efforts on all fronts—and shape more effective and more humane responses. AIDS affects all of us—and all of us must be part of the solution.

Mr. Speaker, I thank my colleagues for joining in this special order, both those who participated in person and those who submitted statements, and thank so many in the House who have championed the cause over the past 10 years. I would be in big trouble, Mr. Speaker, if I started naming these Members because it is impossible to do that.

Mr. MFUME. Mr. Speaker, I would like to thank the Honorable Congresswoman from California, NANCY PELOSI, for calling special orders on the strides that have been made and the challenges that confront us in the treatment of acquired immunodeficiency syndrome [AIDS].

Since the first AIDS case was reported by the Centers for Disease Control, this previously unknown disease has exploded into a national epidemic that has touched every segment of our society.

I am gravely concerned not only by the impact of AIDS on a global scale but also about the high incidence of AIDS among African-Americans—particularly among women and children.

For example, in my district of Baltimore, MD, there were 1,650 AIDS cases reported and more than two-thirds of those cases were African-Americans. Furthermore, a recent study conducted by the Johns Hopkins University indicates that over half of Marylanders eligible to receive AIDS drug therapy are unable to do so. This is due to either a lack of access to the health-care system or because they cannot afford the care. Although we have come a long way in our understanding and treatment of this fatal disease, medical discoveries will be for naught unless problems such as these are aggressively confronted and solved.

The United States is a Nation that spends 12.2 percent of its gross national product on health care—more than any industrialized nation. Yet we still find that over 33 million citizens are lacking basic health care. It has been estimated that if our health-care system could reduce by half the 24 cents out of every dollar it spends on administrative costs, all those without health insurance coverage could be insured. A greater emphasis needs to be focused by health-care providers and policymakers alike on solutions that will rectify such irregularities.

It is my strong belief that we cannot discuss intervention without first effectively educating those most at risk, tenaciously continuing research, and eliminating those barriers to the health-care system that typically prevent high-risk groups from obtaining adequate treatment.

I am fortunate to have been able to inform my constituency about AIDS through the use of my television program and newsletters and I will continue to support legislation aimed at finding a cure and preventing the spread of this dreadful disease.

Again, I appreciate being given the opportunity to comment on this issue.

Mr. OWENS of Utah. Mr. Speaker, several months ago a milestone passed—the Federal Centers for Disease Control announced that the U.S. death toll for AIDS had reached 100,000. In the next 3 years, the Centers for Disease Control predicts another quarter-million deaths will occur from AIDS. After accidental death, AIDS is the number one killer of men age 25 to 44. It is the fifth leading cause of death among women aged 15 to 44.

Over the last few years the AIDS epidemic has somewhat faded from public consciousness—unfortunately, however, the human immunodeficiency virus that causes AIDS is not going away. In fact, the AIDS virus will continue to spread at rapid rates unless immediate action is taken. A total of 55,460 Americans died of AIDS in 1989 and 1990—55,460—this figure amounts to more than died in the first 8 years of the epidemic.

Over the past decade, the pattern of who is infected with AIDS has changed. The AIDS epidemic has mainly been concentrated in large cities throughout our country. In smaller cities, however, the 1989 figures show that AIDS incidence grew approximately 4 times as fast as in the larger cities. Also most cases of AIDS victims were among gay men and IV users—now, however, new cases of AIDS among gay men rose by 11 percent compared to a 36-percent increase among heterosexuals and newborns. Presently, the female population is the fastest growing group of people with AIDS!

The fiscal year 1992 administration request for the AIDS budget, a 3.5-percent increase from fiscal year 1991, was the smallest increase requested by the administration in several years. Now is not the time to go backwards. Funding in education, prevention, and research must continue at appropriate levels to combat AIDS. I would like to thank congresswoman PELOSI and congressman STUDDS for holding this important special order and for bringing forth the attention this epidemic deserves.

Mrs. MORELLA. Mr. Speaker, I appreciate this opportunity to reflect on the AIDS epidemic over the past 10 years and to discuss our many priorities in this regard for the future. Congresswoman PELOSI has been a tireless advocate for persons with AIDS and their families, and I look forward to continuing to work with her to ensure adequate funding for AIDS research, treatment, education, and prevention programs.

When HIV/AIDS was first diagnosed, it was viewed as a disease primarily affecting gay men. In the past several years, however, the epidemic has spread rapidly throughout our population. Women are now the fastest growing group of persons with AIDS. The Centers for Disease Control predict that HIV/AIDS will be one of the five leading causes of death in women of reproductive age in the United States by the end of this year, and it will be the leading cause of death in African-American women by 1995.

While these statistics are startling, they do not even take into account the full scope of the AIDS epidemic in women, since the number of cases has been substantially undercounted. This undercount is due, in part, to the fact that low-income women often die before they are diagnosed with AIDS, or are diagnosed with AIDS-related diseases, but not with HIV disease. AIDS appears to manifest itself differently in women; women with HIV are prone to different opportunistic infections, such as reproductive tract infections and cervical cancer. And yet, most AIDS research, treatment, and prevention programs focus almost exclusively on men. The little research that has been done has focused primarily on the woman's role as the transmitter of the disease to children, rather than on women as individuals at risk of HIV.

As a result, there are virtually no studies to explore how HIV is transmitted to women, how HIV disease progresses in women, what treatments are most effective for women, and how physical and chemical barrier methods of HIV prevention, controlled by women, can be developed, tested and distributed to women at risk. To date, there is not one clinical trial designed to explore or address the specific clinical concerns of HIV-infected women.

I have introduced legislation to provide $10 million to fund a joint research initiative within NIH and ADAMHA to support both intramural and extramural research concerning HIV transmission, development, treatment, and prevention in women. The bill would also provide $6 million for expanded clinical trials involving AIDS treatment for women. Funding for these trials would be available for support services, such as child care and transportation, to enable low-income women to participate in clinical trials.

In addition to the need for research, there is also a critical need for preventive health services targeted to high-risk women, particularly because these women are often unaware of their risk status. A recent study conducted by the Centers for Disease Control indicated that approximately 80 percent of women who went to public clinics for the treatment of intravenous drug use or sexually transmitted diseases did not believe that they were at risk for HIV.

I have introduced a second bill to provide $10 million to develop innovative, community-based strategies for outreach, prevention, referral services, advocacy, and training targeted at reaching women at high risk for HIV. Such strategies would make use of organizations that already serve this population, such as women's services providers, community-based organizations, community health centers, family planning clinics, and drug abuse treatment providers.

If we are to reach high-risk women, we must develop programs that address cultural, linguistic, and economic factors that prevent women from seeking health services in general. The lack of child care or transportation

are major barriers for women, and outreach programs must be based in community sites that are safe places for women and their children. The majority of the advocates and outreach workers should be women in the community who are recovering IV-drug users or peers of the women who are being recruited. These women need assistance in negotiating the system and they need support to stay within it. The AIDS epidemic among women cannot be separated from the social environment in which it predominantly occurs—one of inadequate health care, poverty, drug abuse, and unemployment.

Mr. Speaker, I commend the gentlewoman from California for scheduling this important special order. There are many priorities facing us as we enter the second decade of the AIDS epidemic. I urge my colleagues to work with us to address these challenges so that we can make it the last decade of the AIDS epidemic.

Mr. FAZIO. Mr. Speaker, I rise in commemoration of the 10th anniversary of the AIDS epidemic in the United States.

AIDS continues to spread at alarming rates. The threat continues to grow and the statistics are staggering. Although these statistics are becoming more widely known, they are worth repeating.

Over 174,000 cases of AIDS have been reported in the United States since June 1981. The Centers for Disease Control estimates that there will be approximately 60,000 newly diagnosed cases in 1991. Currently, at least 1 million Americans are HIV infected and 40,000 more of us are expected to become infected. As many as 2,000 babies will be born with the HIV infection this year.

Every day, about 125 people die of AIDS-related causes. Over 110,000 Americans have died of AIDS to date. By 1993, as many as 480,000 cases and 340,000 deaths are expected. AIDS is now the leading cause of death among men aged 30 to 44, among women aged 25 to 39 and among children age 1 to 4.

AIDS is our number one public health concern, and constitutes a national and international emergency. The need for measures to address the crisis in this country is greater than ever, as thousands are dying and enormous strains are being placed on our health care system and local communities. My own State of California has been particularly hard-hit, with the second highest rate of HIV infection in the country. Millions more will continue to be infected until adequate steps are taken to address the spread and treatment of AIDS. But ignorance continues to be our biggest obstacle in the search for a cure.

Education and research are key to conquering the AIDS epidemic. Focusing our efforts and resources on educating both high- and low-risk populations and on support of federally funded research projects will, I hope, move us closer to finding a remedy. Effective and compassionate legislation in support of these efforts is essential if we are to meet this crisis.

Mr. GREEN of New York. Mr. Speaker, first I should like to thank the gentlewoman from California [Ms. PELOSI] for calling this special order to mark the 10th anniversary of the AIDS epidemic.

It was approximately 10 years ago that a group of constituents met with me to talk about a mysterious disease that was killing gay men and the need for research to find out what was happening. It was obvious to me that their case was a compelling one and I joined with the gentleman from California [Mr. ROYBAL], who was also beginning to see the epidemic in his community, and approached the gentleman from Kentucky [Mr. NATCHER], the chairman of the Appropriations Subcommittee on Labor, Health and Human Services, and Education, and the gentleman from Massachusetts, the late Mr. Conte, its ranking minority member, to tell them of the AIDS epidemic and the need for research funds.

The distinguished chairman and ranking member of that subcommittee responded and we got the first appropriations to start the investigation of this epidemic and how to deal with it. Thanks to that initial investment and vastly increased funding in subsequent years, we now know how the disease is transmitted, and we also know some treatments for it. Unfortunately, we do not yet have either a vaccine or a cure, although we hope that further research will yield those results.

As that research continues, we must take care of the problems at hand. We must reaffirm the commitment to prevention and treatment services that we made when we passed the Ryan White CARE bill last year. At that time we recognized the need for prevention services to slow and hopefully stop the transmission of the human immunodeficiency virus, for early intervention services for those who are HIV-positive but are not yet afflicted by the disease and of course, for treatment of those who have full-blown AIDS. The Ryan White bill authorized $875 million for those much needed services and for the first time targeted some of those funds to the communities hardest hit by the AIDS epidemic.

Again, thanks to the foresight of the distinguished chairman from Kentucky Mr. NATCHER, money was set aside, at the request of 23 of my colleagues and me, in the Appropriations Subcommittee on Labor, Health and Human Services, and Education, in anticipation of enactment of the legislation. It was with great disappointment that we learned that the other body had not provided any funding for the CARE bill, making the struggle for full funding an uphill, and ultimately only partially successful battle in the House-Senate conference. As a member of the Appropriations Committee I am all too aware of the budgetary constraints that guide our funding decisions. However, after 9 years and the loss of thousands of lives to AIDS, none of us can afford to turn our backs on the AIDS crisis and the work that needs to be done. The problem that is now associated mostly with the large urban areas of the United States all too soon will be a problem in the suburbs and rural areas of this country. Already, since the Ryan White bill was passed last year, two more cities, Baltimore and Oakland, have been added to the list of targeted communities that need additional funds to deal with the AIDS crisis. How many more cities, towns, and villages will have to be added before we provide the resources that are needed to arrest this epidemic?

I suppose if there is one message that I wish to get across during this special order it is that we must not flag in our efforts to bring an end to this horrible epidemic because much remains to be done, even after 10 years. Let us renew our commitment to the fight against AIDS and back that commitment with adequate resources so that when we return here on June 4, 2001, we will do so to celebrate our victory over AIDS, rather than to mark the start of its third decade as a deadly epidemic.

GENERAL LEAVE

Ms. PELOSI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the matter of this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SISISKY (at the request of Mr. GEPHARDT) for today and the balance of the week on account of personal business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SANTORUM) to revise and extend their remarks and include extraneous material:)

Mr. BEREUTER, for 5 minutes, on June 4 and 5.

Mr. GINGRICH, for 60 minutes, on June 10, 11, 12, 13, 14, 17, 18, 19, 20, and 21.

Mr. WYLIE, for 5 minutes, today.

Mr. GEKAS, for 60 minutes, on June 6.

(The following Members (at the request of Mr. MCNULTY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PANETTA, for 60 minutes, on June 6.

Mr. RUSSO, for 60 minutes, on June 18.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DORNAN of California, on H.R. 1, in the Committee of the Whole today.

Mr. BROOKS to revise and extend his remarks prior to the vote on the Michel substitute in the committee today.

(The following Members (at the request of Mr. SANTORUM) and to include extraneous matter:)

Mr. CAMPBELL of California.
Mr. GOODLING.
Mr. LAGOMARSINO in two instances.
Mr. RHODES.
Mr. GILMAN in two instances.
Mr. BILIRAKIS in two instances.
Mr. KOLBE.
Mrs. MORELLA.
Mr. GEKAS.
Mr. BEREUTER.
Mr. WELDON in two instances.
Mr. GALLEGLY in two instances.
Ms. ROS-LEHTINEN.
Mr. MACHTLEY.
Mr. ROBERTS.
Mr. MICHEL.
Mr. DUNCAN.
Mr. GREEN of New York.
Mr. FIELDS.
Mr. MCEWEN in three instances.
Mr. SANTORUM.

(The following Members (at the request of Mr. MCNULTY) and to include extraneous matter:)

Mr. BEILENSON.
Mr. LANTOS in two instances.
Mr. BONIOR.
Mr. SISISKY.
Ms. SLAUGHTER of New York.
Mr. BROOKS.
Mr. CLAY.
Mr. SWETT.
Mr. DE LUGO.
Mr. CONYERS.
Mr. WISE.
Mr. ROE.
Mr. LUKEN.
Mr. MCMILLEN of Maryland.
Mr. ROSTENKOWSKI.
Mr. YATRON.
Mr. HOYER.
Mr. RANGEL.
Mr. NEAL of Massachusetts.
Mr. REED in two instances.
Mr. DIXON.
Mr. BILBRAY.
Mr. LIPINSKI.
Mr. KILDEE.
Mr. SMITH of Florida.
Mr. ENGEL in two instances.
Mr. WEISS.
Mr. DYMALLY.
Mr. WAXMAN.
Mr. BRYANT.

BILLS PRESENTED TO THE PRESIDENT

Mr. ROSE, from the Committee on House Administration, reported that that committee did on the following date present to the President, for his approval, bills of the House of the following titles:

On June 3, 1991:

H.R. 831. An act to designate the Owens Finance Station of the United States Postal Service in Cleveland, OH, as the "Jesse Owens Building of the United States Postal Service."

H.R. 232. An act to amend title 38, United States Code, with respect to veterans programs for housing and memorial affairs, and for other purposes.

H.R. 2251. An act making dire emergency supplemental appropriations from contributions of foreign governments and/or interest for humanitarian assistance to refugees and displaced persons in and around Iraq as a result of the recent invasion of Kuwait and for peacekeeping activities, and for other urgent needs for the fiscal year ending September 30, 1991, and for other purposes.

ADJOURNMENT

Ms. PELOSI. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 28 minutes p.m.), the House adjourned until Wednesday, June 5, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1446. A letter from the General Counsel, Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to authorize the Secretary concerned to transport the remains of a dependent of a retired member of the Armed Forces when the dependent dies in a military medical treatment facility; to the Committee on Armed Services.

1447. A letter from the Director, Office of Thrift Supervision, transmitting the Office's report on the preservation of minority savings institutions, pursuant to Public Law 101-73, section 308 (103 Stat. 353); to the Committee on Banking, Finance and Urban Affairs.

1448. A letter from the Chairman, Consumer Product Safety Commission, transmitting the Commission's report on "Indoor Air Quality," pursuant to Public Law 101-608, section 202 (104 Stat. 3122); to the Committee on Energy and Commerce.

1449. A letter from the Department of Energy, transmitting the Department's report pursuant to section 120(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]; to the Committee on Energy and Commerce.

1450. A letter from the Secretary of Education, transmitting the semiannual report of the inspector general for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1451. A letter from the Secretary of Health and Human Services, transmitting the semiannual report of the inspector general for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2515, 2526); to the Committee on Government Operations.

1452. A letter from the Secretary of Transportation, transmitting the semiannual report of the office of inspector general for the period ended March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1453. A letter from the Chairman, Consumer Product Safety Commission, transmitting the semiannual report of activities of the inspector general covering the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1454. A letter from the Department of Justice, transmitting the semiannual report of the inspector general for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2515, 2526); to the Committee on Government Operations.

1455. A letter from the Administrator, General Services Administration, transmitting the semiannual report of the inspector general for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1456. A letter from the Director, Office of Personnel Management, transmitting the semiannual report of the inspector general and the management response for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2515, 2526); to the Committee on Government Operations.

1457. A letter from the Inspector General, U.S. Information Agency, transmitting the semiannual report of the inspector general covering the period October 1, 1990 through March 31, 1991, pursuant to Public Law 99-399, section 412(a); to the Committee on Government Operations.

1458. A letter from the U.S. Soldiers' and Airmen's Home, transmitting the annual report under the Federal Managers' Financial Integrity Act for fiscal year 1990, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Operations.

1459. A letter from the Deputy Assistant Secretary, Department of the Interior, transmitting a draft of proposed legislation to provide for increases in authorization ceilings for land acquisition and development in certain units of the National Park Service and for operations of the Volunteers in Parks Program, and for other purposes; to the Committee on Interior and Insular Affairs.

1460. A letter from the Federal Prison Industries, Inc., Department of Justice, transmitting the fiscal year 1990 annual report of the board of directors of Federal Prison Industries, Inc., pursuant to 18 U.S.C. 4127; to the Committee on the Judiciary.

1461. A letter from the Secretary, the Foundation of the Federal Bar Association, transmitting a copy of the association's audit report for the fiscal year ending September 30, 1990, pursuant to 36 U.S.C. 1101(22), 1103; to the Committee on the Judiciary.

1462. A letter from the Assistant Secretary, Civil Works, Department of the Army, transmitting the report on the feasibility of navigation improvements for the York and Pamunkey Rivers, VA; to the Committee on Public Works, and Transportation.

1463. A letter from the Assistant Secretary, Civil Works, Department of the Army, transmitting a copy of a report entitled, "A Review of the U.S. Army Corps of Engineers Selection and Evaluation Process for Water Resources Development Projects"; to the Committee on Public Works and Transportation.

1464. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to extend expiring laws authorizing the Department of Veterans Affairs to establish nonprofit research corporations, to contract for alcohol or drug treatment services, to make State home grants, to contract for the care of United States veterans in the Philippines, to furnish adult day health care services, and for other purposes; to the Committee on Veterans' Affairs.

1465. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to authorize the Secretary of Veterans Affairs to remove any restrictions and

conditions on land conveyed by the VA to Temple Junior College, Temple, TX; to the Committee on Veterans' Affairs.

1466. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to authorize the Secretary of Veterans Affairs to accept gifts for the benefit of all Departmental programs; to the Committee on Veterans' Affairs.

1467. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to improve the collection of special occupational taxes from retail dealers in distilled spirits, wines, and beer; to the Committee on Ways and Means.

1468. A letter from the Secretary of Labor, transmitting the Department's annual report on black lung benefits during calendar year 1989, pursuant to 30 U.S.C. 936(b); jointly, to the Committee on Education and Labor and Ways and Means.

1469. A letter from the Nuclear Waste Technical Review Board, transmitting the Board's finding, conclusions, recommendations relating to high-level radioactive waste or spent nuclear fuel, pursuant to 42 U.S.C. 10268; jointly, to the Committee on Energy and Commerce and Interior and Insular Affairs.

1470. A letter from the Assistant Secretary of State for Legislative Affairs; transmitting a report on the transfer of property to the Republic of Panama under the Panama Canal Treaty of 1977 and related agreements, pursuant to 22 U.S.C. 3784(d) jointly, to the Committee on Foreign Affairs and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ASPIN: Committee on Armed Services. H.R. 2038. A bill to authorize appropriations for fiscal year 1992 for intelligence activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 102-65, Pt.2). Referred to the Committee of the Whole House on the State of the Union.

Mr. MURTHA: Committee on Appropriations. H.R. 2521. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes (Rept. 102-95). Referred to the Committee of the Whole House on the State of the Union.

Mr. FASCELL: Committee on Foreign Affairs. H.R. 2508, a bill to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate the act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes (Rept. 102-96). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HUGHES:

H.R. 2520. A bill to provide that law enforcement officers and other Federal employees in southern New Jersey be treated, for purposes of certain pay provisions of the Federal Employees Pay Comparability Act of 1990, in the same manner as if they were serving in the New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area; to the Committee on Post Office and Civil Service.

By Mr. MURTHA:

H.R. 2521. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes.

By Mr. BRYANT:

H.R. 2522. A bill to provide that the compensation paid to certain corporate officers shall be treated as a proper subject for action by security holders, to require certain disclosures regarding such compensation, and for other purposes; to the Committee on Energy and Commerce.

By Mr. CAMPBELL of California (for himself, Mr. GINGRICH, Mr. LEWIS of California, and Mr. DELAY):

H.R. 2523. A bill to ensure the competitiveness of the United States in the world economy, jointly, to the Committees on Ways and Means and Education and Labor.

By Mr. CONYERS (for himself, Mr. BROOKS, and Mr. HAMILTON):

H.R. 2524. A bill to provide accountability in the use of Presidential directives, and for other purposes; to the Committee on Government Operations.

By Mr. MONTGOMERY (for himself and Mr. STUMP):

H.R. 2525. A bill to amend title 38, United States Code, to codify the provisions of law relating to the establishment of the Department of Veterans Affairs, to restate and reorganize certain provisions of that title, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MRAZEK:

H.R. 2526. A bill to award congressional gold medals to Frank Capra, James Stewart, and Fred Zinnemann; to the Committee on Banking, Finance and Urban Affairs.

By Mr. RANGEL:

H.R. 2527. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of Blue Cross and Blue Shield organizations; to the Committee on Ways and Means.

By Mr. RINALDO (for himself, Mr. ROYBAL, Mr. MICHEL, Mr. GINGRICH, Mr. LEWIS of California, Ms. OAKAR, Mr. ARCHER, Mr. LENT, Mr. HUGHES, Mr. EDWARDS of Oklahoma, Mr. HUNTER, Mr. DELAY, Mr. WOLF, and Mr. SMITH of New Jersey):

H.R. 2528. A bill to amend the Internal Revenue Code of 1986 to encourage the coverage of older Americans by private long-term care insurance; to the Committee on Ways and Means.

By Mr. ROBERTS:

H.R. 2529. A bill to amend title 23, United States Code, to provide for a maximum speed limit of 65 miles per hour on all highways located outside of urbanized areas; to the Committee on Public Works and Transportation.

By Mr. SANDERS:

H.R. 2530. A bill to assist and encourage the development through the States of a system of universal comprehensive health care; jointly, to the Committees on Energy and Commerce and Ways and Means.

By Mr. SAWYER:

H.R. 2531. A bill to amend title XI of the Higher Education Act of 1965 in order to encourage urban educational institutions to form partnerships to use their knowledge and resources for the solution of severe urban problems; to the Committee on Education and Labor.

By Mr. STALLINGS:

H.R. 2532. A bill to amend the Internal Revenue Code of 1986 to permit certain trusts to be shareholders in subchapter S corporations; to the Committee on Ways and Means.

By Mr. SWIFT:

H.R. 2533. A bill to increase and index the Presidential Election Campaign Fund income tax check off amounts, to clarify and realign the priority of expenditures from such fund, and for other purposes; jointly, to the Committees on Ways and Means and House Administration.

By Mr. CARDIN:

H.R. 2534. A bill to amend title XVIII of the Social Security Act to impose standards relating to the prevention of fraud and abuse on suppliers of durable medical equipment under part B of the Medicare program, and for other purposes; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. WAXMAN:

H.R. 2535. A bill to amend the Social Security Act to assure universal access to health insurance for basic health services in the United States through qualified employer health plans and a public health insurance plan, to contain costs and assure quality in the provision of health services, to reform the provision of health insurance to small employers, and for other purposes; jointly, to the Committees on Energy and Commerce, Ways and Means, and Education and Labor.

By Mr. HUCKABY (for himself, Mr. ENGLISH, Mr. EMERSON, Mr. ALEXANDER, Mr. ANTHONY, Mr. COMBEST, Mr. HATCHER, Mr. HAYES of Louisiana, Mr. HOLLOWAY, Mr. MCCRERY, Mr. PARKER, MR. SKELTON, Mr. TANNER, and Mr. TAYLOR of Mississippi):

H.R. 2536. A bill entitled the "Disaster Assistance Act of 1991"; to the Committee on Agriculture.

By Mr. MORAN:

H.R. 2537. A bill to ensure that law enforcement officers and agencies are responsive to the public by establishing minimum standards designed to promote effective and responsible policing and to provide for the rights of law enforcement officers and citizens in alleged cases of police misconduct; to the Committee on the Judiciary.

By Mr. PETERSON of Florida:

H.R. 2538. A bill to amend the Federal Water Pollution Control Act; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. SMITH of New Jersey:

H.R. 2539. A bill to designate the Federal Building and U.S. Courthouse located at 402 East State Street in Trenton, NJ, as the "Clarkson S. Fisher Federal Building and U.S. Courthouse"; to the Committee on Public Works and Transportation.

By Mr. STUDDS (for himself, Mr. BEILENSON, Mr. HERTEL, Mr. MANTON, Mrs. UNSOELD, Mr. JEFFERSON, Mr. COSTELLO, Mr. FRANK of Massachusetts, Mr. GEJDENSON, Mr. GORDON, Mr. JOHNSTON of Florida, Mr. KOSTMAYER, Mr. MFUME, Mr. PETERSON of Florida, and Mr. WILSON):

H.R. 2540. A bill to promote the conservation of wild exotic birds by ending imports of exotic birds for the pet trade; jointly, to the Committees on Ways and Means, Energy and Commerce, and Merchant Marine and Fisheries.

H.R. 2541. A bill to promote the conservation of exotic wild birds by curtailing im-

ports of wild caught birds for the pet trade; jointly, to the Committees on Ways and Means, Foreign Affairs, Merchant Marine and Fisheries, Agriculture, and Energy and Commerce.

By Mr. TORRICELLI:

H.R. 2542. A bill to amend title 23, United States Code, to require States to adopt the uniform system for handicapped parking established by the Secretary of Transportation and recognize the parking stickers for certain individuals with disabilities of other States; to the Committee on Public Works and Transportation.

By Mr. TRAFICANT:

H.R. 2543. A bill to amend the Trade Agreements Act of 1979 to authorize the U.S. Trade Representative to rescind any waiver of requirements of the Buy American Act with respect to products purchased from foreign countries that discriminate against certain domestically produced products; to the Committee on Ways and Means.

By Mr. HOYER (for himself, Mr. PORTER, Mr. FASCELL, Mr. FEIGHAN, Mr. RICHARDSON, Mr. RITTER, Mr. SMITH of New Jersey, Mr. WOLF, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ANNUNZIO, Mr. BEREUTER, Mr. BERMAN, Mr. BLILEY, Mr. BONIOR, Mr. DEFAZIO, Mr. ECKART, Mr. ENGEL, Mr. FOGLIETTA, Mr. GILMAN, Mr. GUARINI, Mr. HERTEL, Mr. HOCHBRUECKNER, Mr. HORTON, Mrs. JOHNSON of Connecticut, Mr. JONES of Georgia, Mr. KOLTER, Mr. LAFALCE, Mr. LEHMAN of Florida, Mr. LENT, Mr. MAVROULES, Mr. OWENS of Utah, Mr. PAYNE of New Jersey, Mr. RANGEL, Mr. ROE, Ms. SLAUGHTER of New York, Mr. SWETT, and Mr. HUGHES):

H.J. Res. 264. Joint resolution designating August 1, 1991, as "Helsinki Human Rights Day"; jointly, to the Committee on Post Office and Civil Service and Foreign Affairs.

By Mr. HUCKABY:

H.J. Res. 265. Joint resolution proposing an amendment to the Constitution of the United States to provide that expenditures for any fiscal year shall not exceed receipts for the fiscal year; to the Committee on the Judiciary.

By Mr. HOYER:

H. Con. Res. 162. Concurrent resolution to express the sense of the Congress that the President should consider certain factors in 1992 before recommending extension of the waiver authority under section 402(c) of the Trade Act of 1974 with respect to the Union of Soviet Socialist Republics; to the Committee on Ways and Means.

By Mrs. BOXER:

H. Res. 164. Resolution expressing the sense of the House of Representatives that the Congress should act now to end the AIDS epidemic; to the Committee on Energy and Commerce.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

162. The SPEAKER presented a memorial of the Senate of the State of Louisiana, relative to England Air Force Base; to the Committee on Armed Services.

ADDITIONAL SPONSORS

Under clause 4 or rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 53: Mr. ACKERMAN.

H.R. 123: Mr. ERDREICH, Mr. PARKER, Mr. MCCRERY, and Mr. DORNAN of California.

H.R. 289: Mr. FALEOMAVAEGA, Mr. FROST, Ms. KAPTUR, Mr. LEWIS OF GEORGIA, Mr. MFUME, Mr. MRAZEK, and Mr. WALSH.

H.R. 290: Mr. COSTELLO, Mr. FEIGHAN, Mr. JACOBS, Ms. WATERS, and Mr. WEISS.

H.R. 291: Mr. BENNETT, Mr. COSTELLO, Mr. EMERSON, Mr. FROST, Mr. HERGER, Mr. JEFFERSON, and Mr. SCHEUER.

H.R. 292: Ms. WATERS.

H.R. 300: Mr. RIGGS.

H.R. 303: Mr. ORTIZ, Mr. RAMSTAD, and Mr. HOCHBRUECKNER.

H.R. 304: Mr. KILDEE, Mr. LAGOMARSINO, Mr. RAMSTAD, Mr. FAZIO, and Mr. JOHNSON of South Dakota.

H.R. 310: Mr. HERTEL, Mr. INHOFE, Mr. PACKARD, and Mr. CAMPBELL of Colorado.

H.R. 317: Mr. SHAYS and Mrs. COLLINS of Michigan.

H.R. 327: Mr. PETERSON of Florida.

H.R. 373: Mr. BILBRAY, Mr. CLAY, Mr. DELLUMS, Mr. DIXON, Mr. ESPY, Mr. EVANS, Mr. GRAY, Mr. JONES of Georgia, Mr. RANGEL, Ms. NORTON, Mr. PAYNE of New Jersey, Mr. SAVAGE, Mr. SERRANO, and Mr. TORRES.

H.R. 381: Mr. MOODY, Mr. LAFALCE, Mr. PAXON, Mr. SMITH of New Jersey, and Mr. ASPIN.

H.R. 576: Mr. WOLPE, Mr. MCMILLEN of Maryland, Mr. BOUCHER, and Mr. BORSKI.

H.R. 642: Mr. JENKINS and Mr. LUKEN.

H.R. 643: Ms. SLAUGHTER of New York.

H.R. 739: Mr. GILLMOR.

H.R. 766: Mr. MINETA.

H.R. 786: Mr. MARKEY and Mr. MACHTLEY.

H.R. 816: Mr. JONTZ.

H.R. 951: Mr. CLEMENT, Mr. BACCHUS, Mr. MARLENEE, and Mr. SOLOMON.

H.R. 999: Mr. KOLTER, and Mr. TAYLOR of Mississippi.

H.R. 1007: Mr. OWENS of Utah, Mr. FRANKS of Connecticut, Mr. LIPINSKI, Mr. MCMILLEN of Maryland, and Mr. ESPY.

H.R. 1048: Mr. BEVILL.

H.R. 1067: Ms. SNOWE, Mr. AUCOIN, Mr. DUNCAN, Mr. SAXTON, Mr. ROSE, Mrs. LOWEY of New York, Mr. BATEMAN, Mr. WALSH, Mr. SAVAGE, Mr. BRUCE, Mr. COX of Illinois, Mr. RHODES, Mr. PORTER, Mr. FEIGHAN, Mr. PACKARD, Mr. BROWDER, Mr. NAGLE, Mr. FAZIO, Mr. UPTON, Mr. HANSEN, Mr. COSTELLO, Mr. EVANS, Mr. SOLARZ, Mr. MCNULTY, Mr. SENSENBRENNER, Mr. HAYES of Illinois, Mr. SOLOMON, and Mr. BACCHUS.

H.R. 1072: Mr. JEFFERSON, Mr. MACHTLEY, and Mr. DIXON.

H.R. 1073: Mr. JEFFERSON, Mr. MACHTLEY, and Mr. DIXON.

H.R. 1120: Mr. OWENS of Utah.

H.R. 1128: Mr. FEIGHAN and Mr. JACOBS.

H.R. 1129: Mr. BEREUTER, Mr. CARPER, Mr. FEIGHAN, and Mr. JACOBS.

H.R. 1155: Mr. RAVENEL and Mrs. BENTLEY.

H.R. 1168: Mr. GORDON and Mr. ARMEY.

H.R. 1188: Mr. TAYLOR of Mississippi, Mrs. UNSOELD, Mr. GINGRICH, Mr. FRANK of Massachusetts, and Mr. FISH.

H.R. 1222: Mrs. LOWEY of New York, Mr. BROWN, and Mr. HOCHBRUECKNER.

H.R. 1325: Mr. BRUCE, Mr. ANTHONY, Mr. JONTZ, and Mr. ENGLISH.

H.R. 1341: Mr. HOYER.

H.R. 1346: Mr. RIGGS, Mr. NEAL of North Carolina, Mr. SERRANO, and Mr. MORAN.

H.R. 1360: Mr. LAFALCE, Mr. PETERSON of Florida, Mr. JOHNSON of South Dakota, Mr. MACHTLEY, Mr. MARKEY, and Mr. KOSTMAYER.

H.R.1363: Mr. LIVINGSTON.

H.R. 1406: Ms. LONG, Mr. SANGMEISTER, Ms. ROS-LEHTINEN, Mr. CAMP, Mr. KOPETSKI, Mr. WOLPE, Mr. WALKER, Mr. NEAL of North Carolina, Ms. NORTON, Mr. RAVENEL, Mr. BUSTAMANTE, and Mr. TANNER.

H.R. 1418: Mr. HOBSON.

H.R. 1450: Mr. SHARP, Mr. VALENTINE, Mr. CONDIT, and Mr. ASPIN.

H.R. 1454: Mr. MURPHY, Mr. MINETA, Mr. JOHNSON of South Dakota, Mr. JONES of Georgia, Mr. BRYANT, Mr. DARDEN, Mr. MCMILLEN of Maryland, Mr. BUSTAMANTE, and Mr. MATSUI.

H.R. 1458: Mr. SOLOMON.

H.R. 1473: Mr. MATSUI, Mr. BROWDER, and Mr. GALLEGLY.

H.R. 1516: Mr. GILLMOR, Mr. JONES of Georgia, Mr. WILLIAMS, and Mr. HEFNER.

H.R. 1531: Mr. GEJDENSON and Mr. MOORHEAD.

H.R. 1539: Mr. BILBRAY, Mr. CONDIT, Mr. ESPY, and Mr. JONTZ.

H.R. 1541: Mr. WALSH.

H.R. 1552: Ms. DELAURO.

H.R. 1566: Mrs. JOHNSON of Connecticut, Mr. LIGHTFOOT, Mr. THOMAS of Georgia, Mr. JONES of Georgia, Mr. PETERSON of Florida, Mrs. UNSOELD, Mr. LEHMAN of Florida, Mr. BEREUTER, and Mr. GEJDENSON.

H.R. 1573: Mr. BACCHUS, Mr. JOHNSTON of Florida, Mr. ROGERS, Mr. ESPY, Mr. MYERS of Indiana, Mrs. LLOYD, Mr. JONES of Georgia, and Mr. JONES of North Carolina.

H.R. 1599: Mr. BONIOR, Mr. LEWIS of Florida, Mr. JENKINS, Mr. MCCANDLESS, and Mr. DINGELL.

H.R. 1635: Mr. STALLINGS, Mrs. MORELLA, and Mr. PANETTA.

H.R. 1643: Mr. BILBRAY and Mr. LIPINSKI.

H.R. 1669: Mr. WHEAT and Mr. CAMPBELL of Colorado.

H.R. 1694: Mr. JONTZ, Mr. TRAFICANT, Mr. HOCHBRUECKNER, Mr. ANDREWS of New Jersey, Mr. SANDERS, Ms. NORTON, Mr. FROST, and Ms. KAPTUR.

H.R. 1707: Ms. DELAURO, Mr. GRANDY, Mr. MARTINEZ, Mr. DWYER of New Jersey, and Mr. INHOFE.

H.R. 1717: Mr. SMITH of Florida.

H.R. 1771: Mr. ANDREWS of New Jersey, Mrs. COLLINS of Illinois, Mr. COLEMAN of Missouri, Mr. FAWELL, Mr. GILLMOR, Mr. HENRY, Mr. HUBBARD, Mr. KOLTER, Mr. KOPETSKI, Mr. LANCASTER, Mr. MCEWEN, Mrs. MINK, Mr. OXLEY, Mr. RAHALL, Mr. TAUZIN, and Mr. THOMAS of California.

H.R. 1774: Mr. DIXON and Mr. STAGGERS.

H.R. 1791: Mr. EMERSON, Mr. FROST, Mr. MILLER of Ohio, and Mr. ECKART.

H.R. 1809: Mr. SHAYS, Mr. FIELDS, Mr. ANDERSON, Ms. ROS-LEHTINEN, Mr. INHOFE, Mr. BILBRAY, Mr. GILLMOR, and Mr. LIGHTFOOT.

H.R. 1900: Mr. TAYLOR of Mississippi, Mr. SANGMEISTER, and Mr. JENKINS.,

H.R. 2029: Mr. VENTO, Mr. KENNEDY, and Mr. REED.

H.R. 2030: Mr. KOLTER.

H.R. 2086: Mr. DAVIS, Mr. FRANK of Massachusetts, Mr. JEFFERSON, and Mr. BORSKI.

H.R. 2089: Mr. DWYER of New Jersey and Mr. JOHNSTON of Florida.

H.R. 2109: Mrs. BYRON, Mr. MACHTLEY, Mr. LOWERY of California, Mrs. UNSOELD, Mr. SCHEUER, and Mr. FALEOMAVAEGA.

H.R. 2114: Mr. VENTO and Mr. SERRANO.

H.R. 2152: Mr. CONDIT.

H.R. 2197: Mr. ANDREWS of New Jersey and Mr. KLUG.

H.R. 2246: Mrs. BOXER and Mr. FROST.

H.R. 2248: Mr. MARKEY and Mr. MILLER of Washington.

H.R. 2258: Mr. ABERCROMBIE, Mr. HUGHES, and Ms. LONG.

H.R. 2280: Mr. PETERSON of Florida.

H.R. 2336: Mr. SENSENBRENNER, Mr. MCEWEN, and Mr. DWYER of New Jersey.

H.R. 2387: Mr. GILCHREST.

H.R. 2407: Mr. ZIMMER, Mr. MCCLOSKEY, Mr. BROWDER, Mr. BEVILL, Mr. SLAUGHTER of Virginia, Mr. DORNAN of California, Mr. COLEMAN of Texas, Mr. HAYES of Louisiana, Mr. ANDREWS of New Jersey, Mrs. UNSOELD, Mr. CONDIT, Mr. PICKLE, Mrs. MEYERS of Kansas, Mr. MARKEY, Mr. FISH, Mr. DWYER of New Jersey, Mr. STAGGERS, Mr. MINETA, Mr. BILIRAKIS, Mr. DELAY, Mr. DARDEN, Mr. RINALDO, Mr. BREWSTER, Mr. ANDREWS of Texas, Mr. MONTGOMERY, and Mr. LUKEN.

H.R. 2408: Mr. LIPINSKI.

H.R. 2448: Mr. ANNUNZIO, Mr. BROWDER, Mr. BROWN, Mr. BUSTAMANTE, Mr. CHANDLER, Mr. DOWNEY, Mr. ENGEL, Mr. EVANS, Mr. FIELDS, Mr. FROST, Mr. GORDON, Mr. INHOFE, Mrs. KENNELLY, Mr. LANTOS, Mr. LEWIS of California, Mr. MATSUI, Mr. MCCOLLUM, Mr. MCMILLAN of North Carolina, Mr. PENNY, Mr. PICKLE, Mr. SKAGGS, Mr. SUNDQUIST, Mr. VOLKMER, Mr. YOUNG of Alaska, and Mr. JOHNSON of South Dakota.

H.R. 2463: Mr. DEFAZIO, Mr. WILLIAMS, and Mr. JEFFERSON.

H.J. Res. 23: Mr. BARNARD, Mr. BENNETT, Mr. BORSKI, Mr. DE LA GARZA, Mr. DICKINSON, Mr. DYMALLY, Mr. EARLY, Mr. FORD of Tennessee, Mr. GRANDY, Mr. HENRY, Mr. JOHNSON of South Dakota, Mr. MCCLOSKEY, Mr. MCCOLLUM, Mr. MICHEL, Mr. MILLER of Washington, Mr. NEAL of Massachusetts, Mr. PACKARD, Mr. RAVENEL, Mr. RAY, Mr. ROE, Mr. ROSE, Mr. SAWYER, Mr. SHARP, Mr. WELDON, and Mr. WHITTEN.

H.J. Res. 28: Mr. GOODLING, Mr. RAVENEL, and Mr. WILSON.

H.J. Res. 69: Mr. TORRES, Mr. NAGLE, Mrs. LOWEY of New York, Mr. COX of California, Mr. RAMSTAD, Mr. WYLIE, and Mr. LEACH.

H.J. Res. 91: Mr. FAWELL, Mr. CALLAHAN, Mr. EMERSON, Mr. POSHARD, Mr. HERTEL, Mr. LEACH, Mr. LEWIS of California, Mr. MCDADE, Mrs. MEYERS of Kansas, Mr. KLUG, Mr. MCCOLLUM, Mr. SHARP, Mr. YATRON, Mr. MARTIN, Mr. SWIFT, Mrs. VUCANOVICH, Mrs. COLLINS of Michigan, Ms. HORN, Mr. CHANDLER, and Mr. KILDEE.

H.J. Res. 95: Mr. JACOBS, Mr. PALLONE, Mr. PURSELL, Mr. DYMALLY, Mr. DIXON, Mrs. COLLINS of Illinois, and Mr. PETERSON of Florida.

H.J. Res. 106: Mr. SOLOMON.

H.J. Res. 123: Mr. SKELTON, Mr. NEAL of Massachusetts, Mr. KLECZKA, Mr. MAVROULES, and Mr. RIGGS.

H.J. Res. 130: Mr. MARKEY, Mr. TRAXLER, Mr. GRANDY, Mr. CARDIN, Mr. LUKEN, Mr. AUCOIN, Mr. ROSE, and Mr. LAUGHLIN.

H.J. Res. 180: Mr. ABERCROMBIE, Mr. CALLAHAN, Mr. CAMP, Mr. DICKINSON, Mr. HAMMERSCHMIDT, Mr. HANSEN, Mr. HUTTO, Mr. MAVROULES, MR. MCCLOSKEY, Mrs. MORELLA, Mr. PORTER, Mr. RAY, and Mr. ROSE.

H.J. Res. 219: Mr. JONTZ, Mr. ANDREWS of Maine, Mr. AUCOIN, Mr. COUGHLIN, Mr. FROST, Ms. HORN, Mr. WAXMAN, Mr. DE LA GARZA, Mr. SAWYER, Mr. HUTTO, Mr. STARK, Mr. JOHNSON of South Dakota, Mr. BEVILL, Mr. BORSKI, Mr. BREWSTER, Mrs. COLLINS of Michigan, Mr. ERDREICH, Mr. HATCHER, Mr. EDWARDS of Texas, Mr. SYNAR, Mr. SKAGGS, Mr. WELDON, Mr. SOLARZ, Mr. HENRY, and Mr. DEFAZIO.

H.J. Res. 242: Mr. SPRATT, Mr. TALLON, Mr. THOMAS of Wyoming, Mr. TRAFICANT, Mr. VALENTINE, and Mr. YATRON.

H.J. Res. 257: Mr. BILBRAY, Mr. BOUCHER, Mr. CHANDLER, Mr. DELLUMS, Mr. DE LUGO, Mr. EMERSON, Mr. ERDREICH, Mr. FASCELL, Mr. GEKAS, Mr. HEFNER, Mr. JONTZ, Mr. KOLTER, Mr. LIPINSKI, Mr. MCMILLEN of Maryland, Mr. MFUME, Ms. MOLINARI, Ms. OAKAR, Mr. PAXON, Ms. PELOSI, Mr. PURSELL, Mrs. ROUKEMA, Mr. STARK, Mr. STOKES, Mr. TALLON, and Mrs. VUCANOVICH.

H. Con. Res. 35: Mr. NEAL of North Carolina.

H. Con. Res. 43: Mr. GONZALEZ.

H. Con. Res. 65: Mr. SMITH of New Jersey.

H. Con. Res. 105: Mr. ECKART, Mr. HARRIS, Mr. MACHTLEY, and Mr. PORTER.

H. Con. Res. 146: Mr. GILLMOR and Mr. LANCASTER.

H. Res. 87: Mr. BALLENGER, Mr. DANNEMEYER, Mr. TRAFICANT, and Mr. EDWARDS of Oklahoma.

H. Res. 116: Mr. GONZALEZ, Mrs. LOWEY of New York, Mr. NAGLE, Mr. VENTO, and Mr. FISH.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 392: Mr. MCNULTY.

H.R. 1790: Mr. GLICKMAN.

EXTENSIONS OF REMARKS

TRIBUTE TO ETHEL L. PAYNE

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. DYMALLY. Mr. Speaker, I rise today with a great deal of sadness as I mourn the death of Ms. Ethel Payne. Ethel Payne is considered by many to be the "first lady" of the black press. I can recall reading her articles in the Chicago Defender and the Pittsburgh Courier. These black publications were the major sources of news for the black community.

Mr. Speaker, to say that Ethel Payne was a seasoned journalist is indeed an understatement. Ethel Payne was literally on the front line when African-American journalists weren't recognized in standard journalistic circles. In fact, she was the first black women to serve as a commentator to appear on network television. Ms. Payne covered two wars and the administrations and campaigns of six Presidents. She was particularly known for her sensitive handling of international affairs. Ms. Payne reported from 30 countries and interviewed leaders on 6 continents.

Mr. Speaker, fortunately the written works of Ethel Payne continue to live. Her papers are found in collections in the New York Library system and Howard University. Her spoken words were recorded by the Washington Press Club Foundation for their oral history project.

Ms. Payne was a native of Chicago and a graduate of Northwestern University. She has served as a visiting professor of journalism at Fisk University and Jackson State University and was a former Ford Foundation fellow. She is a past president of the prestigous Capitol Press Club.

Ms. Payne will always be remembered for her elegance and her strong sense of commitment to helping those who couldn't help themselves. Ms. Payne proudly served on the Board of Africare, an organization dedicated to relief on the Continent of Africa.

Mr. Speaker, I'm glad to have been privleged enough to know Ethel Payne and our society is better because she passed this way.

I express my deepest sympathies to the family and friends of Ethel Payne. Although she is gone, the quest for equality continues. Ethel, we won't give up the fight.

JUNE 4, 1991: HEALTH CARE RECRUITER RECOGNITION DAY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mrs. MORELLA. Mr. Speaker, I am pleased to rise today to join the National Association for Health Care Recruitment in proclaiming today, June 4, 1991, Health Care Recruiter Recognition Day.

As we all know, the quality of our Nation's health care depends on much more than the technology and the material resources which we put into it. Rather, it depends on those individuals who dedicate their professional lives to medicine; nurses, physicians, physical therapists, pharmacists, occupational therapists, and other professionals. These are the individuals on whom we have come to depend for efficient and effective health care.

Recruiting bright, motivated professionals to the health care field is thus of crucial importance. In this regard, the National Association for Health Care Recruitment, under the leadership of Gail Glasser, has been especially important. NAHCR, which is composed mainly of registered nurses, has been extremely active and highly successful in its efforts to attract the most qualified individuals to the health care profession.

This year, NAHCR's 16th, has been proclaimed "The Year of the Recruiter." It is a year in which we celebrate the skill, motivation, and dedication of health care recruiters across the country. Without them, our health care system would certainly suffer I am grateful to all of the individual recruiters who have worked so diligently during the past year, and I am pleased to salute them all on National Health Care Recruiter Recognition Day.

A SALUTE TO THE ANGELES NATIONAL FOREST

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GALLEGLY. Mr. Speaker, it is an honor to rise today to honor our national forests during their centennial year, and to pay special recognition to the Angeles National Forest, California's first national forest.

As many of my colleagues know, after Congress established the Forest Reserve Act, the Yellowstone Park Timber Land Reserve was established just outside Yellowstone National Park on March 30, 1891. That reserve is now part of the Shoshone and Teton National Forests. A year later, the San Gabriel Forest Reserve, now Angeles National Forest, was established.

Today, the 155 national forests around the Nation indeed serve as lands of many uses. Millions of Americans each year camp, hike, fish, ski, and picnic in our forests. In addition, the timber from these forests—harvested carefully and scientifically—has gone into millions of homes. And through the careful management of the U.S. Forest Service, watersheds and wildlife have been protected and allowed to flourish.

Because of the foresight of Americans a century ago, these forest lands are here today for all of us. I am confident that they will be here a century from now as well, continuing to benefit our grandchildren and great-grandchildren as they have enriched our lives in so many ways.

Open houses will be held in the Angeles National Forest on June 14, 15 and 16 to mark the centennial and to demonstrate how the forest is protected and what animal and plant species live there. I ask my colleagues to join me in honoring our forests and in celebrating 100 years of use and enjoyment.

PRAISING THE TESTIMONY OF DR. JAMES RENIER, CHAIRMAN AND CEO OF HONEYWELL, INC., BEFORE THE COMMITTEE ON WAYS AND MEANS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. RANGEL. Mr. Speaker, I would like to share with the House the very perceptive and forward thinking testimony given today before the Committee on Ways and Means by one of our Nation's prominent business leaders, Dr. James Renier, chairman and CEO of Honeywell, Inc. Dr. Renier was testifying during hearings to examine factors affecting U.S. international competitiveness. He made it abundantly clear that our Nation cannot be competitive without recognizing that we must invest in our children. It is not enough to improve our schools, Dr. Renier declared we must insure a foundation for that education. I hope that all my colleagues will read Dr. Renier's testimony and give heed to his plea:

STATEMENT BY DR. JAMES J. RENIER, CHAIRMAN AND CEO, HONEYWELL, INC.

Mr. Chairman, I appreciate the opportunity to testify on the ability of American companies to compete successfully in world commerce. I appear in two capacities: as the Chairman and CEO of one of those companies, Honeywell, headquartered in Minneapolis; and as a Vice Chairman of the Committee on Economic Development and Chairman of its Subcommittee on Education and Child Development.

I can speak for a broad segment of business in thanking the committee for taking up this critical issue. You have observed, Mr. Chairman, that there was a time when "there was little reason to focus on opening foreign markets and encouraging domestic firms to sell abroad." But, as you said, "Those days are gone forever."

Speaking for Honeywell, we are a stronger international competitor today as a result of fundamental restructuring that began in 1986. But we are concerned about the strength of American industry in general. In my own industry, for example, domestic competition has changed considerably. Bai-

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ley Controls is now owned by IRI, an Italian firm. Robertshaw, Foxboro and Barber-Coleman have been acquired by Siebe of the U.K. And others are now owned by foreign interests.

My education and much of my business experience is in technology, and I can best contribute to the Committee's investigation by offering some observations on the function of technology in international competition.

Global competitors, like Honeywell, depend on at least five leverage points: cost of capital, productivity, scale of production, global distribution and technology. Our ability to compete in terms of capital and production relies heavily on our ability to take a long-term view of the development, protection and utilization of technology.

Let me begin with utilization. America is still a world leader in computer-aided engineering, artifical intelligence, software engineering, computer-integrated manufacturing. These technologies, and others, can produce competitive gains if we utilize them effectively. That requires skilled people who can work in this high-tech environment.

Today's jobs require a median of 12.5 years of education. But jobs created during this decade will require 13.5 years. And by the year 2000, a third of all jobs will require a college degree. The Committee is well aware that we are falling short of these requirements, and that the data—with few exceptions—promises slight chance of competing with the well-educated Asians and Europeans.

Earlier this year, the subcommittee I chair on the Committee for Economic Development published a report on U.S. education titled "The Unfinished Agenda." It sounded a warning: The education goals of the president and the nation's governors will not be reached unless we first solve serious social problems that face our children and our schools. Too many of our children are sent to school too hungry, too ill, too angry and too frightened to even think about learning. If you take poverty, neglect, living environment and minority status together, almost 40 percent of the nation's children go to school with a disadvantage that may have them beaten before they start.

Teachers say they can teach only when children are ready to learn. Before they can start the academic program, they have to help their students work through the learning handicaps of poor health, meager social development, low emotional stability and a lack of curiosity.

In Minnesota, we think our education is pretty good. But even there, we see the same problems as the rest of the country. We have more children living in poverty than we had 10 years ago, more children born to single parents, more children subject to abuse and neglect. Teachers say they are forced to deal with "unsettling and sometimes chaotic family situations".

The result is that Minnesota education is taking the national trend. Our dropout rate has been climbing for a decade and our ACT scores and SAT scores have been going down. It has reached the point where business is genuinely worried. In the past 10 years, we have doubled state spending on education. But today less than half of Minnesota business people think education now meets their needs. And in high-tech companies only about 25 percent of them are even somewhat satisfied.

Today, when you go into a school in Minnesota and schools all across the country, you were them struggling with new social responsibilities that have been thrust upon them.

Teachers have to spend too much of their time dealing with social problems rather than teaching. And this means that neither the social nor the academic needs of the children are being adequately met. One superintendent told me of 52 services which schools must provide: drug education, day care, training for teenage parents, suicide prevention and others. Many of these are mandated by law and many are unfunded.

In Minnesota we have the additional problem that our school year is among the shortest in the country. So with the schools' social responsibilities and students' social activities, there is even less time for learning.

We often hear the phrase "restructuring the nation's schools." But in my state and the other 49, the schools have already been restructured once; the plight of poor families has forced public schools to accept a new mission. Schools used to exist almost solely to provide an academic education. Now they have also become institutions for administering social services. They no longer have time to deliver a sufficient curriculum.

We have an ad hoc system that is too preoccupied with filling students' personal needs to do a good job of teaching—but lacks the resources, the staff and the administrative flexibility to carry out the social mission successfully.

The change in the schools has been caused by a change in the family. The traditional, cohesive family unit not represents only eight percent of American families. Today, the typical family is a looser, laxer arrangement that is too often unable to provide adequate learning readiness. Unless we recognize the way we have distorted the traditional school system to meet this change, and unless we redesign the school system to meet both the academic and social agendas, we are asking for trouble. If we want the schools to become surrogate families, and take on the responsibility of preparing children to learn—in addition to taking them through the learning process—then we must design a school system that can carry out this mission.

Unless we are prepared to do that I doubt that we will have the workforce to support our technical goals. I doubt we can compete effectively with the better educated and single minded workers in many other leading industrial countries.

In the final analysis, the success of our education program rests with our states and communities. But federal programs such as Head Start and the Supplemental Food Program for Women, Infants and Children can make an important contribution to learning readiness. Programs like these, along with the educational R&D programs announced by President Bush, are a proper function—what I would call the corporate role—for the federal government. The business and community leaders I talk with appreciate the support Congress has given these programs. And we would urge the Congress to work toward giving them full funding. At CED we estimate the cost at an additional $10 billion in new federal, state and local funding. This is slightly more than double present federal funding, and will have to be phased in over several years.

But it is an investment that should not be postponed. Head Start was begun in 1965, but has never had funding to serve all eligible youngsters. If the program had been available to all eligible children, today, 25 years later, we would have a full generation of young adults more likely to be self-sufficient, participative citizens, making important contributions to productivity and to the competitive strength of the United States.

Our public education system is the bedrock of future competitiveness. We must not let ignorance or denial of the new social realities lead to its destruction.

I want to move now to the necessity of protecting the U.S. technology base. Long-term, risky and expensive investments in technology developments are made on the assumption that, if successful, investors will enjoy a long-term return on the investment, and build on its initial success.

But sizeable investments can be jeopardized by patent infringements and other violations of intellectual property rights, as I can personally attest. Patent infringements have cost our company many millions of dollars. When suit is brought, it may be years before it goes to trial. And under these circumstances, it is possible for technologies to become obsolete before disputes are resolved.

Given this experience, Honeywell places a premium on establishing effective, enforceable intellectual property rules through the Uruguay Round and other trade negotiations. It is important, however, that the negotiations do not result in a weakening of the protection now provided by section 337 of U.S. trade law.

Another protection issue is whether our international competitiveness is affected by foreign investments in high technology companies. Overall, foreign investment is a positive force in our economy and Honeywell supports the open investment policies which have been maintained by the government.

We should be especially alert, however, to the long-term potential risks associated with foreign control or ownership of critical technologies. It is simply responsible to consider the implications. Will foreign investment increase our vulnerability in these technologies? Will the commitment to these technologies be sustained by the new owners? Will the loss of some firms affect our ability to sustain a viable critical technology base?

The interagency Committee on Foreign Investment in the United States (CFIUS), in concept at least, performs a valuable review function. But are we satisfied that they have been stringent enough?

I understand the Committee has been notified of 540 foreign investment cases since 1988, that only 12 cases have undergone a formal investigation and that only one was blocked. The Committee does not make its deliberations public—but it's somewhat surprising that only one-fifth of one percent of these cases had serious national security implications.

As the CEO of a high-tech company, making decisions on technology investments every day, it is important for me to know how concerned Congress is about this issue.

I would like to close with a few words about the development of technology.

Right now, we are congratulating ourselves on the power that U.S. technology exhibited in the Gulf war. But many of these smart weapons were developed in the 1960s and '70s. According to a recent analysis of scientific papers, the quality of American research dropped during the 1980s in key manufacturing technologies. Another analysis reports that while our patent strength has increased by about 30 percent since 1983, Japan's strength has increased 100 percent.

Development of technology cannot be turned off and on like a faucet. It requires a long-term commitment. For example, Honeywell, with the U.S. Navy, began R & D on the Ring Laser Gyro—a gyro for aircraft navigation that uses laser beams instead of moving parts—in 1962. It has since become

the standard of the industry, worldwide, but it did not become profitable until 1985.

In the midst of long-term development programs like this, a company is subject to risk. There is always a technical risk; your invention may not work. But we also have to weigh every dollar in R&D against the drain on earnings per share, the other business opportunities lost, and the impact on financial performance.

Yet, these investments are vitally important—not just to the company, but to the whole nation. The Laser Gyro is part of a superior navigation system, which is part of a superior aircraft. One industry in which the U.S. retains world leadership is aircraft production—thanks, in part, to two decades of investment in the Laser Gyro. It took a lot of know-how, resources and patience. And frankly, given the present short-term environment, I wonder if we would undertake such a development today.

Mr. Chairman, I would hope you believe as I do that our key technologies are national assets, not just corporate properties, and that they should be treated as such by the nation.

What concerns me is that, just as we have reacted with ad hoc response to changes in the education area, we seem to be reacting to changes in technological competition in a similar ad hoc fashion. Governments of industrial countries provide support for the development of critical technologies—support we have historically received in this country from the Department of Defense. Like it or not, much of this nation's electronics and control technology has come from defense R&D programs. This support is likely to decrease, however, with the cost pressures facing the DOD.

Like the utilization and protection of technology, advances in the state of the art will not happen automatically. Industry must see the potential gain in the enterprise, and must be confident that Congress understands and considers industry needs.

I thank the chairman and the committee for the opportunity to express these observations.

ROBERT MAXWELL ON THE IMPORTANCE OF WESTERN ASSISTANCE TO THE SOVIET UNION

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LANTOS. Mr. Speaker, Robert Maxwell's rise to the top is the stuff on Horatio Alger novels.

Known to New Yorkers as the person who saved the New York Daily News, Maxwell is a man of considerable talent and drive. His achievements in the field of publishing are numerous and impressive, but his interests are as varied as they are fascinating. Mr. Maxwell wears many hats. Besides being a newspaper, book, and magazine publisher, Mirror and Pergamon Press, he is a television and film producer. He is also the chairman of sporting clubs and events. Mr. Maxwell heads up Britain's National AIDS Trust fundraising effort. From A to Z, Mr. Maxwell makes his mark.

Born in Czechoslovakia, Robert Maxwell has had extensive experience in international matters. At the age of 16, he fought in the Czech underground. By the end of the Second World War, he was commissioned in the field as a British army officer and was awarded Britain's Military Cross. After the war, Maxwell was responsible for maintaining a free press in the British sector of Berlin, thus beginning his distinguished publishing career.

Robert Maxwell has had a special relationship with a number of leaders of the Soviet Union and the former Communist countries of Eastern Europe. Although Robert Maxwell is a dedicated democrat, with a small "d", he brings to the question of relations with the Soviet Union and Eastern Europe a special experience and understanding.

Mr. Speaker, it is because of Robert Maxwell's unusual perception of the Soviet Union that I call to the attention of my colleagues the editorial which appeared in yesterday's edition of the New York Daily News. It calls for Western assistance to the Soviet Union, and it was signed by Mr. Maxwell, himself.

In view of the current importance of the debate on this issue in the United States and among our Western allies, I ask that Robert Maxwell's editorial be placed in the CONGRESSIONAL RECORD, and I urge my colleagues to give it the careful and thoughtful attention that it deserves.

WE MUST INVITE GORBACHEV

(By Robert Maxwell)

It is the economic, political and military interests of the United States and Europe, that Mikhail Gorbachev remain the most powerful leader in the East. A favor to him is a favor to us.

That's why it is right for President Bush to strongly support the invitation for Gorbachev to join in next month's London economic summit, at which Prime Minister John Major of Britain will play host.

It is why it will be equally right to put our hands in our pockets for the Soviet Union. In the end it would save us money.

President Mitterrand of France and Chancellor Kohl of Germany were enthusiastic about the invitation. President Bush and John Major hestitated, but now following the Primakov mission to Washington they know it makes sense. Only the Japanese, as short-sighted as they are rich, still hold out.

Gorbachev needs for his country no less than a new Marshall Plan minded by the rich nations attending the London summit, a plan of the kind that restored the prosperity of Western Europe after the war.

After 75 years of communisim the Soviet Union is a gray monument to failure—weary waiting lines, dreary prospects, rationing, shortages, rampant corruption and inflation.

But it remains a mighty nuclear power, with its missiles still pointing toward New York, Washington, Chicago, Los Angeles, London, Paris, Rome, Bonn and Tokyo. And we still spend billions updating our missiles targeting Moscow, Lenigrad, Vladivostok, etc., etc.

Gorby needs our cash, technology and management know-how. We need his political survival at home and his political help abroad. The victory in Desert Storm could not have happened without his political support.

He can aid mightily in achieving a Middle East settlement of the kind desired by President Bush and Israel. He can help with the early release of our long-suffering hostages. He can make real and deep arms cuts possible to the benefit of all.

Gorbachev must have a success. Inviting him to the summit table is a start. He is too proud to come with a begging bowl, but we must make sure his plate isn't left empty.

THE 50TH ANNIVERSARY OF U.S. PARTICIPATION IN WORLD WAR II

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GILMAN. Mr. Speaker, yesterday I enjoyed the distinct priviledge of participating in the kick-off ceremonies marking the "Week For the National Observance of the 50th Anniversary of World War II." This week-long celebration commences the commemoration of the 50th anniversary of U.S. participation in the Second World War, which will stretch from this coming December 7 until 1995.

Mr. Speaker, I am honored to serve on the National Archives World War II Commemorative Committee. I am 1 of 83 veterans of World War II who are current of former Members of Congress who serve on this committee.

A National Archives traveling exhibition will open near the Lyndon B. Johnson Presidential Library in San Antonio, TX, on December 7, 1991, and then travel throughout the Nation until the 50th anniversary of V–J Day in 1995. We are hopeful that millions of Americans will take advantage of this opportunity to share in the commemoration of one of the seminal events in American history.

Mr. Speaker, I was pleased to have been one of the original cosponsors of the resolution calling for this commemoration. Census figures tell us that a vast majority of Americans today have no first-hand memory of World War II. Those of us who did experience the events of those years owe it to future generations to pass on the lessons learned during that time. Only those of us who experienced life and combat during a "total" war can appreciate the importance of ensuring that it never happen again. Only those of us who lived through the horror of being attacked by those who perceived us as weak can understand the importance of maintaining our strength. Only those of us who witnessed the horrors of the holocaust and the devastating inhumanity of ruthless totalitarianism can understand the need for universal human rights.

We on the National Archives World War II Commemorative Committee are especially grateful to the Archivist of the United States, Don W. Wilson, for the outstanding service he has performed in putting this program together. His service in assisting Americans to remember World War II, and collecting the memories and the archives of that struggle before they are lost forever to the mists of time, are truly extraordinary, and he deserves our commendation.

Likewise, we salute Brig. Gen. Robert F. McDermott, U.S. Air Force, retired, the chairman and chief executive officer of the United Services Automobile Association for helping collect the corporate funds and individual donations which make this exhibit possible and for effectively planning this exhibit.

Mr. Speaker, after our Commemorative Committee briefing yesterday, we participated

in a public ceremony. Michael P.W. Stone, our Secretary of the Army, delivered extremely inspirational remarks which underscored the significance of World War II on all our lives. He accurately pointed out how any war—but most especially a total war such as World War II—changes every aspect of our society in ways that neither friend nor foe can anticipate.

Our keynote speaker was the co-chairman of the National Archives World War II Commemorative Committee, Senator ROBERT DOLE of Kansas. Himself a hero of World War II, the Senator articulately explained the significance of World War II in words that cannot be improved upon.

So impressed was I by the Senator's comments that I ask that they be read into the CONGRESSIONAL RECORD at this point, so that they can be shared with all our colleagues and all of our constituents:

WW II NATIONAL OBSERVANCE

(Remarks of Senator Bob Dole)

Whatever else you say about old soldiers, they never forget. Today, we assemble at this shrine of democracy to insure that they are never forgotten.

We recall an earlier war, even as we commemorate the quick and successful completion of another conflict halfway around the world. Later this week, Washington will welcome home the men and women of Desert Storm. It's hard to believe, but some people question this outpouring of national pride. Maybe they are embarrassed by the cheering and the chants—the flagwaving and the unabashed love of country that inspired America's volunteer Army and that sustained it in the bleak deserts of Arabia.

Surely no one can mistake this week's observances as a glorification of war—least of all the soldier, who must suffer the scars and terrors of battle. No: What we celebrate this week are the human qualities that lend nobility to the battlefield. The courage and selflessness. The sacrifice and the professionalism. Qualities exhibited by American fighting men and women on the road to Kuwait and on the sands of Iwo Jima.

Chiseled into the front of this building is the phrase, "What is past is prologue." If the Smithsonian is America's attic, then the National Archives is America's strongbox. Here are enshrined the charters of our nationhood. The declaration that made us independent. The Constitution that made us whole. And the Bill of Rights, which after two centuries remains a guidepost in humanity's age old struggle to be free.

There is not a way of putting a value on such documents—or on the national character they define. Wars shape character. They also express it. Fifty years ago, Americans from every walk of life stopped what they were doing on a Sunday afternoon in December. I was in college at the time, waiting tables in a University of Kansas frat house. Truth is, I didn't take the world very seriously before December 7, 1941.

Nor was I alone. For most of us, the events in Europe existed dimly in radio broadcasts or newspaper stories. The news from half a world away served to remind Americans of why we had abandoned the old world 300 years earlier. After all, why should we worry about a continent that seemed bent on self-destruction? Weren't we protected from harm's way by two oceans, gigantic moats behind which even the largest country could take shelter?

All that changed on December 7, 1941, when American isolation was blasted along with the Navy outpost at Pearl Harbor. In a single afternoon, the term "national security" was redefined to read "international obligations." Soon, ten million of us went off to fight a total war against dictators for whom a declaration, a constitution, or a bill of rights would be anathema.

Many never came back. They rest on foreign soil: In the chalkfields of northern France, the jungles of Asia, or on the floor of the deep Pacific. Some came home physically or psychologically scarred for life. To this day, they wear their injuries as proudly as their medals, because both were earned in a noble cause. Still others returned to a very different land from the one they left to avenge the boys of Bataan and Pearl Harbor. For if the war changed those who fought it, it changed America even more.

This, too, is part of the 50th anniversary observance that begins this week. A war that shattered artificial barriers of race and sex. A war that took American women out of the home and ushered them into the workforce. A war that paved the way for the modern women's movements, a quiet revolution that insists, "We, the People" who wrote a constitution, must live up to the promises of equal treatment that it contains.

World War II was an equal opportunity conflict. The enemy shot equally at white, black, or brown targets. On a battlefield, the blood of black soldiers and white all flows together, in a crimson stream of mutual valor.

Fortunately, the young G.I.'s who returned home to America in 1945 could not reconcile the fight against Hitler with acceptance of Jim Crow. So in defeating the scourge of Nazi racism, we also declared war on bigotry—beginning in our own backyard.

During the next four and a half years, millions of war stories will be told. Some of the most moving will form the heart of a major traveling exhibit opening December 7 in San Antonio. For making it possible for today's Americans to experience an earlier generation's rendezvous with destiny, we are all indebted to the United States Automobile Association, and to the exhibit planners of the National Archives.

Between now and 1995, we will examine what has been called "the last good war." At special exhibits, conferences, reunions, film festivals, educational workshops, and a shot of other events, we will remember the war and those who fought it. Not only giants like Eisenhower, Patton, MacArthur, and Bradley—but the nameless heroes who went to their deaths known only to God.

We will recall places like Casablanca, Anzio, Normandy, and Midway. We will marvel over a Nation united in defense of all that we hold most sacred. But we will not forget the abuses that occurred when wartime emotions ran amuck and some of our own people were punished for the simple fact of their national ancestry.

Hopefully, we will draw lessons from the war before the war—from that intense battle of words waged between those who thought it was possible in the 1930's to isolate America from global mainstream and those who accepted the responsibilities that accompany international leadership.

Great nations measure their greatness in the obligations they honor and in the ideals they uphold. America is no exception.

Fifty years later, for example, we all wish that nations would leave their neighbors undistrubed. We wish the world might build fewer tanks so it could spend more fighting poverty and disease. We wish that no young American would ever again be forced to leave his loved ones and take up arms in some far off killing field.

Yet if these past fifty years have taught us anything, it is the danger of wishful thinking. In the modern world, wishes are no substitute for will. That is something we learned at terrible cost in fighting what Winston Churchill called the most unnecessary of all wars.

And because we learned it, we were willing and able to respond quickly when an Iraqi dictator tried to swallow a tiny neighbor. Like the warriors of my day, the troops of Desert Storm fought, not for territory but for justice, not for plunder, but for righteousness. The ideals for which they fought have yet to be implemented in every American home. But then, that's what sets us apart. Thanks to the documents displayed in this building's rotunda, we are a Nation that has never become, but it is always becoming.

The people of the National Archives know that where you come from says a lot about where you're going. So if you want another reason to remember the war that began fifty years ago, consider this: By recalling a world at war, we might hasten a world where children recall only peace.

That could be the greatest of all legacies from the citizen soldiers who rescued civiliation itself from a long, starless, night of the soul.

INTERNATIONAL COMPETITIVENESS

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. ROSTENKOWSKI. Mr. Speaker, today the Committee on Ways and Means began a series of hearings on factors affecting U.S. international competitiveness. Over, the next few months, we will examine a wide range of issues—from tax and trade policy to education and training—that can help to determine whether America is adequately prepared to participate in the global economy we will face in the next century. We were privileged this morning to begin the hearings with testimony from the Speaker of the House. Speaker FOLEY gave us an excellent overview of the challenges before us. For the benefit of all Members, the text of his prepared remarks follows:

STATEMENT OF SPEAKER THOMAS S. FOLEY

I. INTRODUCTION: THE REALITIES OF THE NEW WORLD ORDER

In the past four decades, the United States has the proud achievement, along with its allies, of having defended the values of political and economic freedom with remarkable success. These victories include the defeat of communism as a military threat in Western Europe and the triumph and exposition of democratic values in Eastern Europe. By forging a multi-state coalition against the aggression of Saddam Hussein and leading the military operation, we reaffirmed our great influence in world affairs.

In the aftermath of the Persian Gulf conflict, however, the United States is in a sobering position. After World War II, we found ourselves in an international community as the one preeminent victorious combatant and economic power. Today, we are surrounded by economic powers, some growing and some already giants, in a global environment of competition and fast-paced progress.

We now face serious domestic problems, and the fundamental challenge of how to regain our relative international economic competitive advantage.

While the problems we face are serious, we should place the issues in proper perspective. The United States is still the world's leading economy, with resources, technology, and a $5 trillion GNP unequaled by any other country. The GNP of our nearest competitor, Japan, is only about half the size of ours. However, since 1980, our economy has declined in relative terms.

The consensus of economists point to the decline in productivity as the principal cause of the relative erosion of the United States' traditional global economic leadership. During the 1980's, for instance, Japan achieved a productivity growth of about 3 percent per year, as opposed to a 1 percent figure for the United States, at the same time as Japan's overall GNP grew by an average of approximately 4 percent compared to less than 3 percent for the United States.

While a number of factors may account for our lagging productivity, many economists are now singling out three recent governmental policies as serious structural impediments to our economic growth and international competitiveness. The first finding has been the critical importance of public infrastructure investment to the long-term productivity growth of the American economy, and the lack of such investment by the United States relative to other nations. The second factor, in this age of increasing globalization of capital and technology, is our declining investment in human capital, namely the education and training of our citizens, probably the most significant investment we can make to boost our economy and its ability to compete globally in the 1990's and the next century. Thirdly, we have been deficient in encouraging the levels of research and development needed to maintain the American lead in technology.

II. REBUILDING AMERICA'S COMPETITIVE EDGE: INFRASTRUCTURE

Our nation's core infrastructure—our streets and highways, mass transit systems, airports, water and sewer systems, and electrical and gas facilities—is an essential component to a competitive economy. It affects the cost of all goods and services, thereby having a direct relation to the productivity of our workforce. Poor infrastructure increases the costs in making and transporting goods, which translates into a less productive and efficient economy. On the other hand, a quality system of infrastructure using the latest technologies will decrease the ultimate cost of goods and services.

Since the 1960's, our country's net investment in our basic infrastructure has nearly come to a halt, dropping from well over 2 percent of GNP in the 1960's to less than .5 percent during the mid-1980's. Japan and West Germany, on the other hand, have averaged spending 5 percent and about 2.5 percent of their GNP, respectively, for infrastructure during the period 1973 through 1985.

Recent studies by economists demonstrate this decline in spending has caused a corresponding decline in the growth rate of productivity in the United States, while those other nations have seen their growth rates accelerate. One well-known study by a former Federal Reserve economist attributed as much as 80 percent of America's decline in productivity since the early 1970's solely to the decline in infrastructure investment.

During the highpoint in our nation's infrastructure building, President Kennedy recognized the critical importance of infrastructure investment in world competitiveness. "Affecting the cost of every commodity we consume or export," pronounced Kennedy, "[our transportation system is] vital to our ability to compete abroad. It influences both the cost and the flexibility of our defense preparedness, and both the business and recreational opportunities of our citizens." Kennedy, at that time, proposed raising taxes on diesel fuel, tires, and heavy trucks to cover the large expenditure needed to finish the interstate system. He also took a political risk by asking Congress to prevent a planned reduction in the gasoline tax.

We must readopt President Kennedy's attitude and fiscal commitment towards our infrastructure. Simply put, infrastructure investment has been all talk and no action during the 1980's. At the same time, we were building a $22 billion surplus in unspent highway trust funds. We ought to begin spending the surplus for its intended reason. Furthermore, dedicating a greater part of an increased gasoline tax to infrastructure spending will also spark the rebuilding that we need.

Moreover, infrastructure investment does not simply mean increased resources for our roads, but also critical investment in new technologies. For instance, the United States needs to encourage the installation and development of fiber optic networks, as these will form the basis of 21st century information and communications links. Japan, again, is currently implementing a $10 billion program to install fiber optics in every home and business.

We could use high speed rail systems to decrease the strains on our highways and roads. Germany and France are currently using such trains as an environmentally sound and efficient mode of transport. As another example, the ground-based air traffic control system in the United States has not been revamped since the 1960's, resulting in an inefficient use of airspace and needless delays. Use of global satellite navigation systems would significantly reduce traffic buildup, decrease delays and accidents.

III. EXPANDING AMERICA'S MARKETABLE SKILLS: EDUCATION

Today, we live in a truly international marketplace. The world's leading corporations, including American multi-nationals, compete globally, while the movement of both capital and technology are not confined to national borders. In this environment, a nation's competitive advantage comes to depend principally on its will and ability to expand and mobilize the marketable skills of its citizens.

Like infrastructure, the quality of our educational system is directly related to our ability to compete and maintain a premier role in world affairs. Only by developing the minds and talents of our people can we expand the pool of skills needed to research, design, and produce marketable products and services, and, equally as important, to maintain an active electorate upon which our nation's political and governmental foundations have been built.

As with our nation's investment in infrastructure, our financial commitment to education and training during the 1980's was one of little action. In seven of eight years in the Reagan Administration, the President asked Congress to make large cuts in education, almost 34 percent less in one year alone. Congress resisted, increasing education spending by 13 percent during that decade. But it is grossly insufficient to our needs. During the 1970's, federal spending on education increased 37 percent, and even that was inadequate.

While higher education remains a successful and well financed venture in this country, primary and secondary education is in need of serious attention. When studies indicate that half of 17 year-olds in the United States cannot easily read or even understand a newspaper editorial, we have a real crisis for the future of our country, not only in economic terms but also for the future of a democracy that depends upon an educated electorate.

Japan's educational system, by comparison, lavishes attention to the primary and secondary schools rather than the schools of higher learning. At the same time, the system is geared towards the average child rather than the exceptional one.

To be a teacher in Japan is a high honor, and by addressing someone as "Sensei", or teacher, you pay them the highest compliment. We must provide American teachers with the same respect, although this will involve changing long settled attitudes. Clearly, Congress must set an example, even if a small one, legislatively. Congress should expand the federal role in training and recruiting teachers. We must in particular consider affording significant scholarships to students choosing to teach in disadvantaged areas or teaching subjects in which skilled teachers are lacking, such as science and math. A federal board to certify teachers with outstanding skills is another idea worthy of consideration.

We must also recognize that education does not simply start in formal schools. Early intervention through Head Start and other successful federal programs begins the education process—a process that is not neglected in Europe and Japan.

Even with the successes of higher education in the United States, only about one quarter of our population ever graduates from a college or university. Germany and other European countries have adopted youth apprenticeship programs in conjunction with the business community which provide valuable on-the-job training to non-college bound students. A cooperative skill-based training program between the schools and businesses increases the productivity of the workforce, at the same time decreasing the rapidly growing gap between college graduates and high school graduates. German employers, for example, believe their training system provides a major competitive advantage over firms in other countries. About 70 percent of young Germans enter the job market through their apprenticeship program. Only six months after passing the German apprenticeship examination, over 68 percent of graduates were working in occupations for which they are trained. German executives attribute much of their business success to their sophisticated workforce, largely trained directly by them under the apprenticeship program.

I am not advocating a wholesale adoption of another country's system of learning. But we must recognize and consider characteristics of other systems that will improve education generally here in the United States. Unfortunately, we have difficulties changing or implementing educational policies in the United States because we have, rightfully, sought local control over the policy of our educational institutions at the primary and secondary level. As a consequence, there are almost 15,000 school boards in the United States. Although I do not point to this example as a model for our nation, the Minister of Education in France can sign an order on

one day that will directly affect the next day 54,000 elementary and secondary schools.

Another difficult educational problem we face is the need to develop better programs to retrain workers who lose their jobs. For example, twenty-nine years ago when Congress took up the Trade Expansion Act, this Committee adopted a forward looking recommendation by President Kennedy to establish a special program, called trade adjustment assistance, to ensure that the theory of free trade helping everyone would always be, in fact, a reality. President Kennedy was very clear about the program he had in mind, stating "This cannot be and will not be a subsidy program for governmental paternalism. It is instead a program to afford time for American initiative, American adaptability, and American resiliency to assert themselves."

Unfortunately, the United States has never achieved a successful dislocated worker program either in trade adjustment assistance or in the Job Training Partnership Act. But just because the task is difficult does not mean we can give up. A program to retrain workers is absolutely essential if the United States is to draw full benefits from the dynamism of world trade.

It is not simply enhancing capital formation that increases productivity, but enhancing labor and its skills has, according to many economists, a direct link to overall productivity growth. As another example, greater management/labor cooperation—having employees more involved in workplace decisions—has led to stunning productivity increases in those companies that have embarked on such a course.

The education of, and commitment to, our workforce at all stages of development—whether it be at the primary or secondary level, or at a point where a job is lost—is crucial to our future competitiveness. By combining the best elements of our educational system and those of our competitors, and allowing for job retraining to rechannel our resources, we can expand the skills of our workforce and our ability to meet global challenges.

IV. INCREASING AMERICA'S INNOVATION: TECHNOLOGY

Our country continues to be the world's leading source of new technologies. But we have fallen behind in supporting much-needed research and development. Germany, for example, now spends 136 percent more in non-military research than we do in proportion to GNP. America has discovered new technologies, such as the VCR, but, in a matter of a few years, has lost the markets for such technologies to overseas competitors. Whether it be investment in new infrastructure technologies or the development of commercial products, only by encouraging research will the United States keep its leading edge in innovative technologies and, equally as important, in keeping a hold on the everdeveloping markets for these technologies.

V. SHARING THE BURDEN OF INTERNATIONAL AFFAIRS

Rising to our domestic challenges is not the only key to maintaining our nation's international competitiveness. It will be incumbent on other nations to come forward with a more supportive role in confronting international challenges. The United States cannot continue to bear the preponderant cost of meeting the post-war world problems in the same sense and proportion that we have borne them in the past four decades, and at the same time meet the domestic problems of its own society. If Germany and Japan as they are today were present at the founding of the United Nations, strong members of the international community in good standing, they would most likely be permanent members of the UN Security Council. If we are to ask such countries to share an expanding role in international affiars, we must be willing to ensure that they are recognized proportionately within various international bodies.

VI. CONCLUSION

Although still the leading economic power in many respects, the United States cannot ignore its relatively declining edge in world markets. At least three structural impediments must be removed in order for us to reverse this trend. First, we must commit resources to improve our infrastructure and related technologies. Second, we must reshape and improve our educational system, including the creation of a job training system. Finally, we must encourage more non-military research and development.

I am delighted to have had the opportunity to testify before the Ways and Means Committee on such a timely topic, and wish these hearings the greatest success in coming forward with constructive solutions. Thank you.

DON EDWARDS ON CIVIL RIGHTS IN NEW YORK TIMES

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BROOKS. Mr. Speaker, our distinguished colleague from California, DON EDWARDS, has worked long and hard on the issue of civil rights throughout his 29 years in the U.S. House of Representatives. There is probably no one in this body who is more knowledgable on the subject, nor more committed to protecting the rights of all Americans and wiping out racial intolerance, than he is. Today, as we consider the civil rights bill of 1991, I believe it is important that his extremely well-written letter to the editor of the New York Times—in today's edition—be brought to each Member's attention. Following is the text of the letter:

[From the New York Times, June 4, 1991]

MORE RACISM FROM THE G.O.P.

(By Don Edwards)

WASHINGTON.—When the landmark Civil Rights Act of 1964 was passed by the Congress, Republicans voted for it 4 to 1. But in considering the Civil Rights Act of 1991, the G.O.P. seems less interested in a civil rights bill and more interested in reviving race as a campaign issue for 1992. This is part of a consistent pattern.

In 1988, the Bush-Quayle campaign exploited racial fears in the shameless Willie Horton ads. In the 1990 elections, the party successfully exploited the civil rights bill with race-based TV ads misrepresenting the bill and pandering to racist fears. The party now seems intent on continuing this policy. Republican leaders have repudiated David Duke, the Republican Louisiana legislator and former Ku Klux Klansman, yet the President's men do not shrink from using the very code words—like "quotas"—that Mr. Duke uses to spread paranoia about blacks' taking jobs from whites. The phony smoke screen of "quotas," fanned by a slick and expensive public relations campaign, has obscured the debate about the bill's real goals.

The Democratic leaders' bill, which has bipartisan support, will not create quotas. It merely reverses 1989 Supreme Court decisions that weakened anti-discrimination laws in employment that had worked fairly and effectively for nearly 20 years. In fact, the bill explicitly makes quotas illegal, permitting a quota victim to sue for damages.

The Democratic bill would bring consistency to civil rights damage suits. Existing law allows compensatory and punitive damages for intentional discrimination based on race; the bill extends this right to people intentionally discriminated against because of sex, disability or religion.

Today, the House is to vote on three bills: a bipartisan compromises sponsored by the Judiciary Committee chairman, Jack Brooks, and the committee's senior Republican, Hamilton Fish; the strong version written by the House Education and Labor Committee last year, and President Bush's substitute.

The compromise will be approved overwhelmingly. It includes understandings reached in discussions between civil rights and business leaders—discussions scuttled by White House intimidation, on Mr. Bush's orders, with Bush aides saying the quota issue must be kept alive for future elections.

The Brooks-Fish bill limits punitive damages for intentional discrimination to $150,000, a provision many of us have fought for two years but whose inclusion is essential if we are to approach the two-thirds vote needed to override a promised Bush veto. Last year's bill will be offered so members of both parties can vote for a stronger "pure" bill that does not limit punitive damages.

Attorney General Dick Thornburgh calls the Brooks-Fish substitute a "hoax." He is wrong. It is the Administration's substitute that is a hoax. It fails to reverse most of the Supreme Court cases the compromise bill seeks to overturn. It makes it easy for businesses to justify practices that, have discriminatory effects.

The phoniest part of the Bush bill pretends to provide additional remedies to victims of harassment but actually places more obstacles in their way. The bill would even legalize harassment if the worker did not file a complaint with the employer's in-house grievance system within 90 days.

Enactment of the Democrats' bill would signal an end to the diminution of our rights by a Supreme Court now controlled by a Reagan-Bush majority. The bill would return to ordinary working people procedural rights like a reasonable time period for filing a complaint, equitable rules on proving discrimination and protection against discrimination in employment contracts.

In restoring these rights, the bill would give all workers—whites, racial and religious minorities, women, men and people with disabilities—a fair chance at fighting discrimination, and the right to seek damages. It is unworthy of the President to play racial politics to defeat it.

IT IS TIME TO ESTABLISH CONGRESSIONAL OVERSIGHT ON WHITE HOUSE NATIONAL SECURITY DECISIONS

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. CONYERS. Mr. Speaker, today I am introducing, on behalf of myself and Mr. BROOKS, chairman of the Committee on the Judiciary and former chairman of the Committee on Government Operations, and Mr. HAMILTON, chairman of the Subcommittee on Europe and the Middle East, the Presidential Directives and Records Accountability Act.

The purpose of this bill is to establish a routine process for congressional oversight on the issuance of national security directives. This bill seeks to bring these critical decision documents under the control of the law and provide for increased public accountability.

National security decision directives, now called NSD's or NSDD's under prior administrations form a significant body of national law and policy. They may regulate anything from the war on drugs, to policy governing space exploration, to nuclear proliferation, to actions in the Persian Gulf. They are, however, cloaked in secrecy. They are not called to the attention of anyone outside the executive branch, even after they are declassified. This legislation would bring them under an appropriate level of congressional oversight.

This is intended to treat NSD's the same manner as other Presidential directives. If the President issues an Executive order or other proclamation, that directive must be registered pursuant to the terms of the Federal Register Act. However, directives such as NSD's are not covered. This bill would extend the coverage of the Federal Register Act to any Presidential directive which establishes policy, directs the carrying out of law or policy, authorizes or requires the use of appropriated funds or other resources—including personnel, or otherwise asserts or appears to assert an authority of the President.

I believe that the excesses of recent years are a clear warning that secret policymaking is dangerous to our national government. Under our Constitution, the Congress is an equal partner in the creation and development of national policy. All too often we have discovered that the executive branch has been carrying out policies of which Congress has not been informed. On occasion, particularly during the Iran-Contra affair, the executive branch has acted despite the law. We all remember that the Iran-Contra scandal was launched by Presidential directives not shared with Congress because the authors of this criminal act knew the Congress would know better.

During the past year, as chairman of the Government Operations Committee, I have been engaged in an ongoing dialog, with General Scowcroft, the President's National Security Adviser. The White House has refused to provide even a list of NSD's issued by the Bush administration. I did not seek the actual NSD's themselves, just a numbered list with the titles and a brief summary of each.

It is interesting to note that the National Security Adviser and his legal counsel insist that they do provide to the appropriate congressional committees information about relevant policies when asked to do so. Unfortunately, there is no way for congressional committees to know about the existence of these executive policy directives when they are cloaked in secrecy. Similarly, when Congress is not informed, how can it know of new directives which replace old policies or which break new ground?

This bill would place no restrictions upon the President's authority to establish and carry out national policy. It would only require that such policies be numbered and registered with the Office of the Federal Register and that copies of each such directive be transmitted to the Speaker of the House and the President of the Senate. If necessary for reasons of national security, they could be classified.

If such a practice had been in effect during the decade of the eighties, Congress would have had an early-warning system which might have permitted us to escape the disastrous consequences of the failed Iran hostage policy.

Until recently the executive branch claimed the need for such excessive secrecy about national policy because of the exigencies of the cold war and the Soviet threat. That threat has now evaporated. It is time for the executive to recognize that the Congress is not an adversary from whom its policies must be concealed.

The text of the bill follows:

H.R. —

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 "Presidential Directives and Records Accountability Act".

SEC. 2. CONTROL OF THE USE OF EXECUTIVE DIRECTIVES.

(a) DEFINITION OF EXECUTIVE DIRECTIVE.—Section 1501 of title 44, United States Code, is amended—

(1) by designating the 4 indented paragraphs thereof in order as paragraphs (1), (2), (3), and (4);

(2) in paragraph (3), as so designated by striking "and" after the semicolon at the end;

(3) in paragraph (4), as so redesignated, by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(5) 'Executive directive' means any written instrument, other than a Presidential proclamation or Executive order, that—

"(A) is signed or endorsed by, or is issued at the direction of, the President, or an appointee in the Executive office of the President; and

"(B)(i) establishes policy, (ii) directs the carrying out of law or policy, (iii) authorizes or requires the use of appropriated funds or other resources (including personnel), or (iv) otherwise asserts or appears to assert an authority of the President;

except that such term does not include a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422).".

(b) FILING AND REGISTRATION OF EXECUTIVE DIRECTIVES.—Section 1503 of title 44, United States Code, is amended—

(1) by inserting "and directives" after "Filing documents" in the heading of such section;

(2) by designating the text of such section as subsection (a); and

(3) by adding at the end the following new subsection:

"(b)(1) The original and 3 duplicate originals or certified copies of each Executive directive shall be filed with the Office of the Federal Register on the next business day following the date the Executive directive is issued. The Archivist of the United States shall cause to be noted on the original and copies of each such Executive directive the day and hour of the filing and shall number such filings sequentially in the order filed. The original of all Executive directives shall be permanently retained as a part of the Archives of the United States.

"(2) Upon filing, one copy of each Executive directive shall be immediately transmitted by the head of the Office of Records Management to each of the Speaker of the House of Representatives and the President pro tempore of the Senate. In the case of directives which contain information which may be withheld from disclosure under section 552(b)(1) of title 5, such copies shall be transmitted and maintained in the manner required by the rules and procedures of the House of Representatives and the Senate, respectively, to protect the information therein from improper disclosure.".

SEC. 3. PROTECTION OF PRESIDENTIAL AND OTHER FEDERAL RECORDS.

(a) INFORMING EMPLOYEES OF PRESIDENTIAL RECORDS ACT REQUIREMENTS.—Chapter 22 of title 44, United States Code, is amended by adding at the end the following new section:

"§ 2208. Informing Employees of Requirements

"(a) Each officer or employee who is appointed or detailed to, or otherwise employed in, a position in the Executive Office of the President or Vice President, or on the immediate staff of the President or Vice President, shall receive, and shall at the time of employment sign a receipt for, a notice describing the requirements of this chapter and of the procedures for controlling, managing, and preserving Presidential or Vice Presidential records.

"(b) Each such officer or employee shall, at the time of vacating any such position, receive a copy of the notice required by subsection (a) shall be prepared jointly by the Archivist and the counsel to the President.".

(b) ESTABLISHMENT OF OFFICE OF RECORDS MANAGEMENT.—Chapter 22 of title 44, United States Code, is further amended by adding at the end the following new section:

"§ 2209. Office of Records Management.

"There shall be in the Executive Office of the President an Office of Records Management. The Office shall be responsible for securing compliance with the requirements of this chapter and for carrying out such other functions as may be assigned by the President. The Office shall consult with the Archivist before making any significant change in the practices or procedures used to secure such compliance.".

(c) AUTHORITY OF THE ARCHIVIST TO DEFINE RECORD.—Section 3301 of title 44, United States Code, is amended by adding at the end the following: "The Archivist of the United States shall have final authority in the Executive branch to determine what constitutes such a record for purposes of chapter 21 through 33 of this title and may issue such rules, regulations, and guidelines as may be necessary for such purposes.".

(d) CONFORMING AND TECHNICAL AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for chapter 22 of title 44, United States Code, is amended—

(A) by striking out the item pertaining to section 2205 and inserting the following:

"2205. Exceptions to restricted access."

and

(B) by inserting after the item pertaining to section 2207 the following:

"2208. Information employees of requirements.

"2209. Office of Record Management.".

(2) TECHNICAL CORRECTION.—Section 2201(3) of title 44, United States Code, is amended by striking "thereof" and inserting "thereof".

MEMORIAL DAY AT GETTYSBURG

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GOODLING. Mr. Speaker, Memorial Day is a holiday whose significance sometimes becomes vague and distant. On Monday, May 27, 1991, Memorial Day, I was afforded the honor to participate in a very special ceremony in Gettysburg, PA, within my 19th Congressional District. The meaning of this day was once again made vivid to me as I joined with others in a funeral procession led by a riderless black stallion, a solemn symbol of the fallen soldier.

Gettysburg usually celebrates Memorial Day with a parade and other activities, but this year's celebration included an especially memorable interment ceremony of unidentified remains of Civil War soldiers from both the North and South who died at the Battle of Gettysburg, Antietam, and Chancellorsville. The ceremony was held at the Gettysburg National Cemetery following a procession through the town which included a memorial service conducted by clergy of the common faiths present in the Civil War period. The impressive 3d U.S. Infantry, or "Old Guard" who maintain the 24-hour vigil at the Tomb of the Unknown Soldier, also participated in this notable event, their first excursion outside of Washington, DC, and Arlington National Cemetery.

Frank Bracken, Deputy Secretary of the Interior, served as the event's keynote speaker. Mr. Bracken stressed the importance of rememberance of those who have fallen in war when he said, "It is for this we honor them: The cause they believed in, their devotion, and their sacrifice." His closing remarks included the endorsement of world peace and harmony.

The burial and ceremony to honor those who have sacrificed in war can only repay a part of the great debt we owe. They fought to protect the freedom we enjoy, thus we must work to preserve that freedom and see that this Nation continues to adhere to the principles upon which it was founded. Though firsthand experience is necessary for full appreciation, I was very impressed by Gettysburg's ceremony and hope to share the experience.

THE BENS PRINCIPLES ON CRITICAL TECHNOLOGIES

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GILMAN. Mr. Speaker, I rise today to direct my colleagues' attention to a new initiative that opposes the spread of nuclear, chemical, and biological weapons as well as the missile delivery systems that are used to launch these weapons. Business Executives for National Security [BENS] has designed a set of principles which all nations should adhere to. The BENS principles address the moral and ethical aspects of exporting materials that could be used in the construction of these weapons of mass destruction.

These principles are not designed to replace U.S. laws governing exports. They are designed to complement the existing set of laws and regulations by not only questioning whether or not a given export sale is legal but also whether that sale is a right decision. In this respect, the principles are similar to the Sullivan principles which for a long period dealt with business practices in South Africa.

We cannot hope to stop all of the harmful, or potentially harmful sales of components for weapons of mass destruction simply by passing new laws. It is necessary to establish an export control regime which would permit and even encourage legitimate exports, while simultaneously preventing those sales that have the potential of presenting danger to the world at large. This undertaking will require the active cooperation of the business community. Accordingly I am pleased to see that the BENS principles were initiated by an organization of leading business executives.

I invite my colleagues to review and support these principles and I request that the full text of the principles be inserted at this point in the CONGRESSIONAL RECORD:

THE BENS PRINCIPLES: GUIDELINES FOR EXPORTS

Business Executives for National Security (BENS), a national, nonpartisan trade association, believes that the proliferation of weapons of mass destruction and terror, and the technology to deliver them, is an urgent problem requiring immediate attention. BENS recognizes the importance of not unduly disrupting trade, but believes that American business should place first its responsibilities toward national security. Therefore, in addition to complying with all statutory and treaty restrictions, business should base its commercial activities on moral and ethical considerations.

(1) This company is committed to halting the spread of nuclear, biological, or chemical weapons, or missile delivery systems.

(2) This company will support the letter and spirit of current and future laws against the proliferation of such weapons.

(3) This company will not knowingly export products or technologies likely to be used in the unlawful or unconscionable development of such weapons.

(4) This company will make every effort to discover and document the ultimate destination and use of its products.

(5) This company will urge domestic and foreign businesses to abide by these principles.

Each signatory should develop its own methods to advance these principles in the operation of its domestic and foreign subsidiaries. Special emphasis should be focused on "choke point" exports, such as raw material and machinery used in producing nuclear weapons and missile technology. Senior management should cooperate with BENS, proliferation experts, and government agencies to determine appropriate action regarding suspect countries and projects.

WAIVER OF JACKSON-VANIK FOR THE U.S.S.R. IS AN IMPORTANT STEP TOWARD NORMALIZATION OF TRADE RELATIONS

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BEREUTER. Mr. Speaker, yesterday President George Bush informed Congress of his intention to waive Jackson-Vanik for Czechoslovakia, Bulgaria, Mongolia, and most important, the Soviet Union. The waiver for the Soviet Union is particularly significant, for it is the first step in the long-waited normalization of trade relations. This Member would like to take a moment to commend the President for his decision.

Clearly, the Soviet Union continues to pursue policies that are objectionable to the United States. It denies true self-determination to the people of the Baltic States, and the democracy movement in many regions is under attack by reactionary forces. It is altogether proper that the United States should press to advance the cause of human rights in the Soviet Union. We should seek to ensure that the people of Latvia, Lithuania, and Estonia are permitted to determine their own future. But we should not hold trade hostage to these efforts.

Over the years the United States has fought to promote the rights of Soviet minorities, particularly the Jewish minority, to emigrate. The Jackson-Vanik amendment to the 1974 Trade Act has been instrumental in pursuing this policy. And Jackson-Vanik has now achieved its objective. Last month the Supreme Soviet voted final approval to a comprehensive emigration law. In short, the Soviet Union appears to have addressed the concerns raised in Jackson-Vanik. It is time now to recognize and reward these Soviet efforts by a waiver of Jackson-Vanik.

In the next few weeks the State Department will be examining the new Soviet emigration law. If, as appears likely, the law is judged to satisfy the concerns raised in Jackson-Vanik, then the granting of normal tariff status, or the so-called most-favored-nation trade status, will most certainly be forthcoming. The granting of MFN, which really confers normal tariff status, is an important step if commerce between the United States and the Soviet Union is to grow.

Mr. Speaker, this Member applauds President Bush for his decision to waive Jackson-Vanik for the Soviet Union, and would urge him to move as rapidly as possible to confer the normal trade status of MFN. This Member urges the Congress, would urge this body to work closely with the executive branch in

order to speed the granting of normal tariff status for the Soviet Union.

HONORING AILEEN E. BURNS

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. ENGEL. Mr. Speaker, this week, the Westchester Irish Committee is holding its annual cocktail party-buffet during which it honors individuals who have worked tirelessly to improve the local community. I wish to particularly recognize one of the honorees, Aileen Burns, a life-long resident of the city of Yonkers in my congressional district.

Aileen has demonstrated a concern for issues that effect her fellow Irish-Americans, as well as a dedication to serving the community. She currently is the employment manager at St. John's Riverside Hospital in Yonkers, and she is working toward continuing her health care career by pursuing a masters of science in Health Services at Iona College.

Aileen has also been an active member of the American-Irish Association for the past 10 years, including a stint as the first woman president of the organization. She has served on the Scholarship, Heritage Day and Journal Committees for the Association, and she also serves on the Yonkers Mayor's Irish Advisory Board.

In short, Aileen Burns is the type of young woman of whom we can all be proud. She has remained true to her heritage and served her community and country well. It is a pleasure to join the Westchester Irish Committee in recognizing her outstanding accomplishments.

A NOTEWORTHY ACHIEVEMENT

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. MICHEL. Mr. Speaker, I take this opportunity to introduce to my colleagues a fine and talented group of musicians—the Georgetowne Middle School Band of North Pekin, IL. These young men and women of note will perform a concert on the Ellipse of the White House this Thursday at 10 a.m. I know that this performance will delight its audience with the high level of competence and quality for which the Georgetowne Middle School Concert Band and Jazz Band are known.

I join with the Marquette Heights-North Pekin communities in offering my congratulations on this fine accomplishment and wish the musicians continued success.

At this time, Mr. Speaker, I would like to insert the resolution passed by the Tazewell County Board proclaiming June 6 as Georgetowne Middle School Band Day.

PROCLAMATION

Whereas, on June 4th thru June 8th, the Marquette Heights-North Pekin Georgetowne Middle School Concert Band will be traveling to Washington, D.C.; and

Whereas, they will perform a concert on the Ellipsis of the White House on Thursday, June 6th at 10:00 a.m.; and

Whereas, the District 102 Concert Band will be exemplary ambassadors of their parents, the Marquette Heights-North Pekin communities, Tazewell County, and the Peoria area; and

Whereas, Congressman Robert Michel understands the significance of this event and plans to share these memories into the Congressional Record;

Therefore be it resolved that the Tazewell County Board proclaim June 6th to be recognized in the beloved community of Marquette Heights-North Pekin, Tazewell County, Illinois, and proclaim said day as being Georgetowne Middle School Band Day.

THE SOVIET BID FOR WESTERN AID

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. McEWEN. Mr. Speaker, I rise to bring to the attention of my colleagues this column from the Cincinnati Enquirer by Robert Webb. Many in Washington and some of our allies argue that the West should provide massive financial aid to prop the ailing Soviet system to shore up support from President Gorbachev. But Robert Webb cautions that "any Western economic aid to the Soviet Union * * * should be conditioned on the firmest possible guarantees of a free-market economy. Any such aid, moreover, should be mainly in the form of loans guaranteed by the Soviets' immense natural resources, including gold."

Mr. Speaker, I commend it to my colleagues.

At this point, please enter into the CONGRESSIONAL RECORD the attached column, "The Soviet Bid for Western Aid":

THE SOVIET BID FOR WESTERN AID

The portrait of a Soviet Union near economic death may be vastly overdrawn. Its gold reserves alone may be worth $34 billion. None knows the precise value of its oil reserves, but they must be immense. And its diamond assets are by no means meager.

Yet Soviet President Mikhail Gorbachev is calling for $100 billion in economic aid from the West. He wants to lay his case before the approaching London economic summit of the United States and six other industrial nations. No Soviet leader has ever before made such a plea and certainly not to that forum. That Gorbachev would suggest the gravity of his, if not his country's, position.

Gorbachev has long been on the political ropes, suffering from the failures of perestroika. Russians and other Soviet peoples have tasted or sensed enough of life in the West to convince them that much has gone wrong in their country. They blame the Communist Party, which Gorbachev continues to defend despite the sharp drop in his popularity.

YELTSIN POPULARITY

Yet Soviet poet Yevgeny Yevtushenko, member of the Supreme Soviet parliament who visited Cincinnati recently, cautions that the popularity of Russian Republic President Boris Yeltsin, Gorbachev's main political rival, may be partly because he is not at the nation's helm. Yevtushenko, who represents Cincinnati's Soviet sister city, Kharkov, has a point.

Those most in charge of their nations often lose much of the popularity they had before their ascent to power. It happened to U.S. President Lyndon B. Johnson and to former British Prime Minister Margaret Thatcher, not because of any corruption but because of their decisions. Johnson's were connected with the Vietnam War, Mrs. Thatcher's mainly with her unflagging support of a poll or head tax.

Tough decisions, especially when widely perceived as wrong, diminish popularity. But popularity should be no leader's primary aim. That aim should be the right decisions, whatever the cost in popularity. It all too often doesn't work that way, and any nation suffers to the extent it doesn't.

Gorbachev would be less than human, perhaps, if he wasn't concerned about the depths to which his popularity has sunk. Even in a society still centrally controlled and largely undemocratic, it must hurt to be as widely disliked as the polls show him. This isn't to suggest that's why he wants massive economic aid from the West. He may well believe only such a funds infusion can prime the Soviet pump toward the freer economy he promises in exchange.

Given the menace of a militarized, Stalinist-type Soviet Union, the option Gorbachev seems now to favor would be worth almost any price to the West. NATO wouldn't have agreed on a cut of at least 50% in U.S. forces in Europe, for example, if Moscow hadn't changed as much as it has already. That cut should mean huge U.S. tax savings eventually. Further reductions could come with the pullback of Soviet troops enabling NATO to count on three months or more warning for any ground attack by Moscow. A world largely unthreatened by the Soviet Union is treasure to behold.

But Bruce D. Porter, Bradley senior research associate of the Olin Institute for Strategic Studies at Harvard University, makes a strong case in the spring issue of the National Interest for not underrating the Russian Republic, far and away the Soviet Union's largest, richest and best armed. In a June Harper's excerpt, Porter recalled Alexis de Tocqueville's prediction in Democracy in America (published in 1835) that Russia was also destined for U.S.-type greatness. Porter sees Russia's resurgence "both as a global power and as a continuing obstacle to Western interests."

"By the turn of the century, Moscow will still be in the seat of some kind of government," Porter wrote. "That government—whether communist, democratic, fascist, nationalist or autocratic—will control at least the current territory of the Russian Republic . . . and probably the Ukraine, Byelorussia, and Kazakhstan as well. If it succeeds in holding together this 'Slavic core,' it will have inherited nearly 92% of the territory and over 80% of the population of today's Soviet Union." He said such a residual union would still possess most of Moscow's current military capacity, "including the biggest, best-equipped army in Europe and the largest nuclear arsenal in the world."

GUARANTEES NECESSARY

Any Western economic aid to the Soviet Union, then, should be conditioned on the firmest possible guarantees of a genuine shift to political freedom and a free-market economy. Any such aid, moreover, should be mainly in the form of loans guaranteed by the Soviets' immense natural resources, including gold.

But most Western aid should be in expertise, cultural exchanges and trade, as in the Cincinnati-Kharkov model. Americans and other Westerners, moreover, have much to learn from as well as teach a country incalculably rich in its ethnic diversity, talent and natural resources.

THE POLICE ATHLETIC LEAGUE

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Ms. LEHTINEN. Mr. Speaker, I am proud to announce the unveiling of the Metro Dade Police Department's Police Athletic League. The league will consist of youth programs in basketball, baseball, bowling, swimming, boxing, dance and WRAP, an anti-drug program for youths.

WRAP, an acronym for Winning Recreation Alternative Program, will include supervision of neighborhood parks by police officers. In fact, most of the Police Athletic League consists of off-duty police officers volunteering their time to help children.

Many officers are to be thanked for this wonderful endeavor. Among them are Sgt. Al Bonanni, the director of the P.A.L.; Officer Rodney Polite; Officer Myron Williams; Sgt. Jim Dibenardo; Officer Ted Peterson; Officer Angelo Singleton; Lt. Harold Hasenback; Sgt. Joe Delancy; and Officer Jim Colongelo.

In its first year of existence, the league also has one of the most comprehensive summer camps in the State with one of the best dance programs in the country. Its baseball team will consist of some of the best Dade County athletes with off duty police officers as coaches.

Much of the $150,000 required to support the League will come from money seized from drug dealers. It is truly heartwarming to know that money formerly directed at corrupting our youths will now be put into educating them.

The Police Athletic League will soon be counseling children throughout all of Dade County and thereby promoting our safe and productive future. It is with great pride that I call this organization to the attention of the House and the American public.

COMMENCEMENT ADDRESS OF PHYLLIS KAMINSKY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LAGOMARSINO. Mr. Speaker, I recommend to my colleagues the following commencement address given by Phyllis Kaminsky to the Utica College of Syracuse University. I have the privilege and honor to serve with Phyllis Kaminsky on the board of directors of the National Republican Institute for International Affairs. The institute, one of the core grantees of the National Endowment for Democracy, has played a very instrumental role in assisting Democratic political parties around the globe struggling to realize representative forms of government in countries where development has been stunted by command economies and monopolistic political structures. The institute has been active in Latin America, Africa, Asia, the Middle East and, of course, Eastern and Central Europe. Phyllis Kaminsky has helped guide the institute and has participated directly in many of its programs. Most notably, she has served as leader and resident-expert on the complex and tense situation in Yugoslavia.

Phyllis' address revolving around the issue of responsibility in leadership and citizenship as the final burden of freedom is very insightful and warrants the close attention of my colleagues.

COMMENCEMENT ADDRESS DELIVERED BY PHYLLIS KAMINSKY

Chancellor Eggers, President Simpson, Members of the Utica College Foundation Board and National Alumni Council, Utica College Faculty and Staff, Family and Friends of the Graduating Seniors, and the Graduating Seniors of the Class of 1991:

RESPONSIBILITY: THE FINAL BURDEN OF FREEDOM

Not surprisingly, my remarks today are about the future—your future and our country's future. As Charles Kettering said: "We shall all be concerned about the future because we will have to spend the rest of our lives there."

The past 20 years—for most of you the span of your lifetimes—has been a period of relative peace and prosperity in this country. You leave Utica College today to become part of the generation that will lead this country into the 21st century, a challenging and exciting prospect that will demand the best of each and every one of you.

When you depart the halls of campus today, you will begin writing a new chapter in the book of your lives. This new chapter will build on the portions of the story you have already written, using the knowledge you have gained here and reflecting the people and events that have had an influence on you.

But all of you are part of a bigger story—you are part of the "great American experience"—a chronicle of a democracy that is a little over two hundred years old. A.M. Rosenthal recently wrote in the New York Times "Democracy does not guarantee happiness. It just gives people the chance to pursue it—an inspiration upon which America was created."

There is much that needs to be done for our country and, by example, for those in the world who look to the United States for global moral and political leadership. It is up to Americans to strengthen America from within, to preserve our unique experiment in freedom and to passionately guard against those who would divide us against each other.

America is a country of many blessings.

Former Prime Minister Margaret Thatcher recently said: "Americans and Europeans alike forget how unique is the United States of America. No other nation has been built upon an idea—the idea of liberty. No other nation has successfully combined people of different races and nations within a single culture.

Both the founding fathers of the United States and successive waves of immigrants to your country were determined to create a new identity. Whether in flight from persecution or from poverty, the huddled masses with few exceptions welcomed American values, the American way of life and American opportunities. And America herself has bound them to her with powerful bonds of patriotism and pride."

America is a country of possibility—the possibility of making things happen, of turning possibility into opportunity. And America is also a nation with many complex and pervasive problems.

The problems are familiar to all of us—persistent budget and trade deficits, increasing violence and homelessness in our cities, an unrelenting drug problem, a crumbling infrastructure, and deteriorating public schools, those institutions which are the very foundation of our democracy—our American way of life.

A few short months ago, we were a deeply divided and pessimistic nation worried about economic decay and political paralysis. And then we followed our President into a war against aggression and a quick, brilliantly-executed military victory. Victory was followed by a surge of patriotic rallies and flag-waving unmatched by anything in this generation. As an extraordinarily diverse society, the United States is not unified along lines of race, religion or culture. An external threat is the one thing with the power to bond our nation into a unified whole. Now that the threat has receded, we need to redirect this unanimity and solidarity to build for a future without war.

It would be tragic, indeed, if the nation's pride in our recent military success overseas diverted it from tackling the enormous problems at home—the internal threat. It should be possible to exercise international leadership while at the same time harnessing the same unity of purpose and commitment in a comprehensive effort to renew and rebuild our country and its inner cities, to restore its economic growth, and replenish its wealth. We should be guided by the words spoken on June 22, 1989 by President Bush. He said: "From now on in America, any definition of a successful life must include serving others."

At the same time that we Americans grapple with our domestic challenges, slowly, perhaps very slowly, the world around us is demanding more and more freedom. We are witnessing an unparalleled explosion of ethnic self-discovery and a strong assertion of popular will—from Kurdistan to Lithuania—from Quebec to Kashmir—from Tibet to Solvenia—from Sri Lanka to Northern Ireland.

Our democracy and free-enterprise economy were the beacons of light that freedom fighters followed in Eastern Europe and the Soviet Union. In this "democracy" revolution our political and economic system is the model for the world.

Having participated in a number of election observation missions to Central Europe, where people were voting for the first time in a free multiparty election, I could not help but be moved by the enthusiasm and determination of these new voters as they participated in the democratic process. And now, after the birth of democracy and the establishment of the rule of law to replace the whim of dictators, Eastern European nations will experience severe economic hardship over the next few years before their democratic reforms begin to bear fruit.

A couple of months ago a city worker in Moscow when asked him how his life had changed now that this country had embarked on the road to democracy. His answer was: "We may be worse off today than we were five years ago, in every material way. But I don't care, because at least we have got a little air to breathe. We must never forget how stifling, how dead it was before."

In contrast to our nation which was founded upon an idea, Eastern Europe is defined not by ideology but by national character. The difficulty of the transition from communism to democracy appears to have been grossly underestimated both by the East Europeans themselves and by the West.

Casting ballots was simple compared with the task of setting up a society in which different people and different groups respect each other's rights, including the right to govern, the right to disagree and the right to be different. European societies lack the social flexibility and openness of the United States. The melting pot still works here, as Margaret Thatcher points out.

And, even closer to our shores, in Central America, voters line up at the polling stations gambling to participate in a democratic process, while knowing full well that they could lose their lives by doing so—by receiving a bullet rather than a ballot. The long lines of voters that stretched for miles in El Salvador, Guatemala, Honduras, and Haiti remain vivid images for all of us.

In Africa, the seeds of democracy are being planted and the Continent is awakening—bringing to the African peoples for the first time the possibility of free expression, economic opportunity and political participation.

And in Asia, we must never forget the Goddess of Democracy—the Statue of Liberty of the courageous Chinese students in Tiananmen Square or the poignant plea for assistance by the Dalai Lama of Tibet when he visited Washington recently—a reminder from a gentle people engaged in a largely forgotten struggle for their freedom.

Ordinary people are the true heroes of our time. Ordinary people tore down the Berlin Wall. Ordinary people ousted the dictators. Ordinary people demanded their rights in Latin America and Eastern Europe. And ordinary people are enduring the harsh sacrifices in the painful transition to a free and open society.

Americans have a special responsibility to reinforce these ordinary heroes in every way we can. They seek their freedom and risk the danger because they are convinced there is a strong America willing to protect them.

In a June 1982 address to the British Parliament several years before the dramatic events of 1989, then President Reagan said: "Let us now begin a major effort to secure the best—a crusade for freedom that will engage the faith and fortitude of the next generation. For the sake of peace and justice, let us move toward a world in which all people are at last free to determine their own destiny."

Each day, the U.S. Government hosts dozens of foreign visitors who have come to the United States to study our system and our great documents—the Declaration of Independence, the Constitution, the Bill of Rights. It is very possible that they know them even better than perhaps we ourselves do.

In his address to a joint session of Congress, Vaclav Havel, President of Czechoslovakia, said of those documents:

"They inspire us all. They inspire us despite the fact that they are over 200 years old. They inspire us to be citizens."

His words should reinspire us to be good citizens—to renew our commitment to learning and participation—the very things people around the globe are risking everything to achieve. The warning signs of complacency have already appeared in the U.S. when barely half of the eligible voters participate in our national elections, and even fewer bother to participate in congressional races.

American citizens are required to exercise their rights of citizenship—through the voting booth, the census form and tax returns. And now, more than ever, Americans are declining to do so.

And the group of citizens between the ages of 18 and 25 represent the largest number of "democracy dropouts". It is indeed ironic that at a time when democracy is flourishing around the world, it is in danger of losing its foothold in this country.

Those nations seeking to learn from us demonstrate that we have much to learn from them. They teach us to appreciate the freedoms we enjoy and they revitalize the principles which we honor, yet take for granted.

Democracy in the final instance depends upon an informed and involved population, citizens able to evaluate and then play a role in the course of international affairs. The diploma you receive today symbolizes the hope that you will use the knowledge and communications skills you acquired to ensure that our democracy endures for your children and their children.

The world is inspired by the powerful meaning of documents written over two hundred years ago because our founding fathers left us a legacy of confidence in the citizen—a social contract that constitutes our greatest political and moral strength. In return, the citizen was granted the greatest gift of all-personal freedom.

President Bush has appointed me to serve as a member of the Board of Visitors of the U.S. Air Force Academy. While out in Colorado Springs recently, I talked with a first year Academy cadet who was reflecting on his new life in the military and the rigorous demands on him since his enrollment at the Academy. He told me about a prisoner of war during Vietnam who had inspired him to serve his country and develop a true appreciation for the freedom that our country stands for.

As the cadet tells it, the POW, in desperation, scrawled the words "Freedom has a certain taste to it" on the wall of the caves before he died. Like the POW, the cadet had also known the freedom of the outside world beyond the Academy and he understood the prisoner's burning desire to taste it once again. It helped him understand the struggles that people go through to protect freedom and why Americans, both young and old, risk their lives in far-off places to preserve freedom for those who don't even comprehend its significance.

Some generations are tested more severely than others. The Utica College Class of '91 will be called upon to apply what they have learned in a complicated and highly charged international environment, to live in an interdependent world and be part of the information society—to be the "builders of democracy" and "make the world safe for diversity" as President Kennedy said in 1963. May you approach these challenges with an appreciation of what we are and have achieved as a nation and a vision of what we can become.

As you record your chapter in the chronicle of America, I hope that you will ensure for future generations a strengthened America, a responsible and unfettered democratic process, a government that adheres to the rule of law based on justice for all, and a pluralistic society that respects and protects all ethnic traditions. That is the essence of this special place—the United States of America—the inspiration for the lyrics of the song that many of you know well, "I'm proud to be an American where at least I know I'm free".

For the first time since Vietnam, American historians are referring to a Second American Century, a century when American leadership will truly be able to shape and define the world—a global experiment in democracy, with America leading the way. Individual freedom, equal opportunity and cultural diversity are the most precious commodities of this noble experiment. The Second American Century will be shaped by people who have confidence in themselves and who inspire confidence in our nation and its institutions. The Second American Century must also begin at home.

If Americans want it, there can and will be a Second American Century, one in which we assure the ultimate triumph of our democratic ideals and direct the tides of change into channels that will benefit all mankind, not just a select few.

In my election observation travels in Hungary, Czechoslovakia and 4 republics of Yugoslavia, I made it a point, in each case, to talk directly with voters outside the polling stations. The common thread that ran through their comments was their willingness, in fact, their eagerness to participate and be held accountable for their vote. They were determined to exercise their newly-won right and prepared to pay the price of democracy.

These voters have sent us a message—a message we cannot ignore. It is time for Americans to roll up their sleeves, recharge their batteries and assume the "final burden of freedom" as President Bush has said—the dual responsibility of leadership and citizenship.

Good luck to you all.

SACRED HEART HOSPITAL—CHAMPIONS

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WELDON. Mr. Speaker, I wish to congratulate the Sacred Heart Hospital Medical Center in Chester, PA, for being honored as a statewide finalist of the Pennsylvania Hall of Fame Champions of Older Workers.

This project seeks to identify, promote, and honor Pennsylvania employers who have made noteworthy efforts to hire older workers and to increase employment opportunities for people 55 or older. The hospital located in the city of Chester, just outside of my district, was nominated by the senior employment program of the Delaware County Services for the Aged.

Sacred Heart Hospital aims to utilize the experience and wisdom of older workers. These older workers have a great deal to offer our community. Their experience, reliability, and pride in their work is unmeasurable. By utilizing our older citizens, Sacred Heart reaps the benefits of a largely untapped resource of our work force. In addition to the great service they provide to others, our senior citizens receive gratification for performing this much-needed public service.

Mr. Speaker, not only does this hospital offer an outstanding opportunity for older workers, Sacred Heart also has an excellent reputation for servicing the "poorest of the poor". By employing these older citizens, Sacred Heart has established an economically

efficient system to give medical attention to all our citizens regardless of ability to pay. Sacred Heart's enlightened employment practices should serve as a role model for all employers.

Mr. Speaker, on behalf of the Seventh District of Pennsylvania I applaud the Sacred Heart Medical Center for their excellent service commitment to our community.

THE 100th ANNIVERSARY OF MOVIEMAKING AND AMERICAN FILM

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WEISS. Mr. Speaker, in 1993 moviemaking will celebrate its 100th anniversary. To mark this occasion, I have introduced a resolution to honor this treasured American art form and distinctively American innovation.

The art and science of moving pictures was developed through the work of numerous creators in the United States—including Thomas Edison—and was perfected through many American inventions. But while America has contributed to the technology involved in moviemaking, it has left its indelible mark on the moving picture art and has indeed transformed this art form.

Films have reached every one of us—each of us has favorite pictures and beloved stars. America is home to unforgettable icons, from Charlie Chaplin and the Marx Brothers to Bogie and Bacall, John Wayne, and the thousands of larger-than-life men and women both of past years and in the present who command the silver screen both home and abroad.

Movies are more than an entertaining art form; they are also a successful creative enterprise. Moreover, they are America's ambassador to the world, conveying American values and beliefs, styles and attitudes. Their images and messages help convey the goals and aspirations of not only Americans but of people in every corner of the globe.

This resolution recognizes this wonderful American art form and calls for a nationwide celebration of the motion picture centennial through exhibitions, festivals, educational programs, and other activities. The resolution recognizes the American Film Institute [AFI]—whose founding legislative mandate is to help preserve the heritage of American film—and its role in helping to coordinate these activities. It also calls upon the AFI to join with regional entities and other interested groups throughout the country in related activities.

Hopefully, this resolution will assist in helping all Americans to celebrate an art form which has touched generations of Americans, which continues to not only entertain but inspire, and which has written a living history of our Nation's cultural heritage.

Mr. Speaker, I insert the text of the resolution in the RECORD:

H. CON. RES. —

Whereas in the late 19th century inventors around the world focused on discovering a means of artificially reproducing movement so that it appeared to viewers that they were actually seeing the movement as it occurred;

Whereas this discovery led to the emergence of the art and science of motion pictures through the work of many creators in the United States and other countries;

Whereas during this period the technology necessary to create motion pictures was perfected in a series of exciting American inventions, which included the development of the kinetograph and kinetoscope by Thomas Edison and W.K.L. Dickson, and the perfection of strip film by George Eastman;

Whereas the cycle of invention, innovation and improvement continued without pause during the 1890's with the construction of Thomas Edison's first film studio, dubbed the "Black Maria", and in 1893 a series of technological innovations marked a turning point in the development of the motion picture;

Whereas the first commercial presentation of Edison's kinetoscope by the Holland Brothers in New York City demonstrated the public's fascination with motion pictures, and as the demand for kinetoscope films grew, Edison's invention was marketed internationally;

Whereas motion pictures have the power to touch our hearts, souls, and imaginations, and shape our hopes, dreams, and even our national consciousness;

Whereas the motion picture serves as America's ambassador to the world, conveying American values, beliefs, styles, and attitudes, transforming world culture with its potent images and making the global village a reality;

Whereas motion picture production is not only art but also one of America's most successful creative enterprises;

Whereas the motion picture has entrenched our cultural heritage with unforgettable characters who have become American icons, from Harold Lloyd, Charlie Chaplin, and the Marx Brothers to the immortal Garbo and the eternal Lillian Gish, from Bogie and Bacall, John Wayne, Sidney Poitier and Cicely Tyson to Indiana Jones, E.T., and the thousands of other larger-than-life men and women who commanded the silver screen, and from these legends are precious film moments that are forever etched in our memories and imaginations;

Whereas in 1965 President Lyndon Johnson signed the legislation leading to the formation of the American Film Institute and proclaimed that the Institute's mandate would be to recognize the moving image as an art form, preserve the heritage of film and television, and identify and train the next creative generation;

Whereas on September 26, 1989, at a ceremony which celebrated the motion picture as the art form of the 20th century, President and Mrs. Bush honored the American Film Institute and reaffirmed its role as the national organization devoted to advocating, nurturing, and preserving the art of film and video;

Whereas the American Film Institute is a national leader in film and video arts and is devoted to advocacy for and preservation of the art of film, television and video; and

Whereas the American Film Institute is poised to spearhead the nationwide celebration of film's centennial during 1993: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that—

(1) all Americans should have the opportunity to celebrate the 100th anniversary of film in 1993 with exhibitions, festivals, educational programs and other forms of observance; and

(2) the American Film Institute has a leadership role in implementing and coordinating the national centennial celebrations and in joining with regional entities and other interested parties in organizing other events relating to the 100th anniversary of this great American art form.

SIERRA CLUB RESOLUTION HONORING SIL CONTE

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WAXMAN. Mr. Speaker, the Sierra Club's board of directors recently adopted a resolution honoring our former colleague Silvio Conte. The Sierra Club resolution is a fitting tribute to Sil and a reminder to all of us of his extraordinary commitment and his lasting accomplishments. I am delighted to include the resolution in today's RECORD:

SIERRA CLUB BOARD OF DIRECTORS RESOLUTION

The Sierra Club Board of Directors deeply regrets the passing of Representative Silvio Conte, a true public servant and friend of the environment. Representative Conte fought for the public interest during his 32 years in Congress. He introduced and advocated significant environmental initiatives which had far-reaching national, as well as local, impacts, benefiting the people of Massachusetts and all Americans.

Representative Conte was a true leader in the fight to cut sulfur and nitrogen oxide emissions which cause acid rain. His decade-long fight to stop acid rain culminated in the passage of the Clean Air Act of 1990, which includes a strong acid rain control program. This victory was due to this persistent, tireless fight to protect our lakes, trees, and lungs from acid rain.

Representative Conte fought to protect wetlands from wasteful agricultural development by introducing the Swampbuster Improvement Act. He advocated the restoration of drained wetlands because he understood the delicate balance between this unique ecosystem and the health of its surrounding environment. He championed legislation to prohibit mineral exploration and development in pristine and fragile Antarctica. Representative Conte also worked to stop pork barrel projects such as the Garrison Diversion Project, which threatened critical fish and wildlife habitats.

His leadership for environmental protection will be sorely missed. Sierra Club will honor Silvio Conte's memory and contributions by working to effectively implement the Clean Air Act, and by fighting to maintain nature's delicate balance.

REMEMBERING TIANANMEN SQUARE

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LANTOS. Mr. Speaker, 2 years ago today, the world was shocked by the image of brutality and violence in Tiananmen Square. It was on this day that the decrepit leadership of

China stooped to the use of force in order to maintain its illegitimate grip on power. Today, the congressional human rights caucus held an event to commemorate this sad anniversary. We remembered the massacre of those freedom-loving students and we reaffirmed our commitment to fight for the cause for which they died.

How sadly ironic it is, then, that the debate over most-favored-nation [MFN] trading status for China will reach a fevered pitch this week. The anniversary of the democratic uprising and its brutal repression underscores just how regrettable the President's call for MFN status really is.

With all due respect to the President, his position on China is dead wrong. His policy both fails its stated purpose and is completely devoid of moral direction.

The President argues that a policy of economic engagement with the Chinese dictators is the best policy the United States can follow. Through trade with China, the President maintains, we stand a better chance of influencing the policies of that Communist nation. The facts, however, tell another story.

In the 2 years since the massacre, what has the administration to show for this policy? What has been the great payoff for pursuing this strategy of business as usual? What will it take before we realize that the administration's policy is bankrupt?

In the name of imports and exports, the administration seems willing to ignore the principles upon which this Nation was founded. There are many of us, however, who believe with all our might that respect for democracy and observance of individual human rights throughout the world is this Nation's most important export.

During today's congressional human rights caucus event on the steps of the Capitol, I recalled other such events when we demanded reform from brutal governments around the world. From those same marble steps, we called for the freedom of Nelson Mandela. Today he is free. We called for the Waterloo of the tyrant Nicolae Ceausescu of Romania. Today the Romanian people have shed the yoke of his repression and are light years closer to joining the brotherhood of free nations.

Today, we called for the end of repression in China. That day, too, will come.

Today, June 4, 1991, Tiananmen Square is teeming with security forces wielding cameras and sticks to intimidate anyone who might go to that great monument to democracy's struggle. Those hooligans might succeed in keeping those who love freedom from placing white flowers of remembrance where blood once stained the square. But they are incapable of stomping out the spirit of China's democratic movement. That spirit is inexorable. It will soon rise up and strike at the old men of Beijing. It will defeat them.

When a statue is erected in Tiananmen Square honoring those young heroes of democracy who gave their life for its cause, I pray the United States will be on the moral side of history. But if that day comes tomorrow, history will not judge the policies of this Nation kindly.

HONORING HELEN ANN HENKEL

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. ENGEL. Mr. Speaker, today I wish to pay tribute to Helen Ann Henkel, a distinguished member of the Slavic community in Yonkers, who is being honored with the Book of Golden Deeds Award by the Exchange Club of Yonkers.

The Book of Golden Deeds Award is a prestigious honor given to an outstanding individual who has provided many years of service and dedication to the Yonkers community. Helen Henkel certainly fits this description. As chief clerk in the Yonkers Department of Public Works, she has coordinated many essential city services. In addition, she serves as vice chair for the Yonkers Board of Ethics, second vice president for Big Brothers and Big Sisters of Yonkers, and on the board of directors of a host of other important civic organizations.

The Exchange Club of Yonkers, which was founded in 1937, has a long history of raising funds for the improvement of the community. It is a group that judiciously bestows its honors on those rare individuals who have given freely and selflessly to the people of Yonkers. Helen Henkel is only the ninth recipient of the Golden Deeds Award in the 54 years of the Exchange Club of Yonkers, and she is the first local female recipient of the award.

As the granddaughter of Polish and Ukrainian immigrants who came to this country at the turn of the century, Helen Henkel has carried on the rich traditions of her heritage while also giving generously to her community and country. I salute her today along with the Exchange Club of Yonkers.

OUR TOPSY-TURVY CHINESE POLICY

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. McEWEN. Mr. Speaker, I rise to bring to the attention of my colleagues a column from the Cincinnati Enquirer by Thomas Gephardt. At a time when our Government is considering extending China most-favored-nation status, this insightful piece reminds us that Communist China's "history is an unbroken record of violence against human rights." I commend it to my colleagues.

At this point, I enter into the CONGRESSIONAL RECORD the attached column: "Our Topsy-Turvy Chinese Policy."

[From the Cincinnati Enquirer, June 2, 1991]

Our Topsy-Turvy Chinese Policy

President Bush interrupted his Memorial Day weekend to pick up an honorary degree at Yale University and to defend most-favored-nation trade status for the People's Republic of China. The president's position is at sharp odds with the view of many congressional Democrats who have not forgotten China's crackdown on pro-democracy dissidents in Beijing's Tiananmen Square two years ago this week.

The continuing debate about U.S. relations with the Chinese is another illustration of the topsy-turvy nature of U.S. politics. It's no wonder Americans are confused about who's on first.

PARROTING THE DEMOCRATS

President Bush is saying today substantially what the Democrats were saying prior to 1972, when President Nixon stunned the world with his personal trip to Beijing to begin the process normalizing diplomatic relations.

Congressional Democrats, by the same token, are saying today substantially what conservative Republicans were saying prior to 1972.

From the time the Communists achieved control of the Chinese mainland in 1949 to the moment of the Nixon initiative of 1972, Democrats were arguing that the United States simply couldn't ignore a billion Chinese.

Those were also years in which the Republicans were saying that the Communists had installed an oppressive government whose tenets were so contrary to America's historic principles that recognition would be unconscionable.

Now we find President Bush parroting the pre-1972 Democratic line: If we isolate China, we abandon all hope of influencing its domestic behavior. And we find Democrats saying substantially what the pre-Nixon Republicans were saying: Cordial relations with the Chinese only reinforce the authority of those hard-liners in Beijing who were the authors of the Tiananmen Square crackdown in which some 5,000 Chinese students died.

The irony of it all is that anyone was surprised by what happened in Tiananmen Square two years ago. That massacre was wholly consistent with China's 40-year tradition of handling political dissent. If anything, Tiananmen Square was a tame replay.

Between 1949 and 1952, China's new Communist government seized all farmland and put between 50,000 and several million landlords to death.

Between 1953 and 1957, agriculture was collectivized, and peasants were brutally forced to combine their landholdings into cooperatives.

China's Great Leap Forward, which began in 1958, was a nationwide campaign to increase industrial and agricultural output at a ferocious human cost.

In 1966 came the Cultural Revolution, which saw Chinese young people organized into semimilitary units to crush suspected counterrevolutionaries and to drive professionals and intellectuals into the countryside to perform menial labor.

China's genocidal campaign against Tibet killed a full sixth of the Tibetan people and drove thousands more into exile.

ATROCITIES IGNORED

No one knows how many Chinese were brutalized and murdered during these years of consolidation. There were, after all, no television cameras to record the carnage. But just because these outrages were not recorded by the U.S. television networks doesn't mean they didn't happen.

Communist China's history is an unbroken record of violence against human rights. If, notwithstanding that record, the existence of the Chinese nation could not be ignored in the 1950s and '60s, why is it so easy for congressional Democrats to ignore it today?

TRIBUTE TO SHELDON S. SOLLOSY

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. REED. Mr. Speaker, I rise today to pay tribute to Sheldon S. Sollosy, who will this week be named recipient of the Providence Rotary Club's 1991 Rhode Island Distinguished Citizen Award. Mr. Sollosy, who has since 1954 served as president of Manpower, Inc. of Providence, has long distinguished himself as an activist in Rhode Island's business and Jewish communities, and has consistently devoted considerable time and effort to various charities. I join thousands of Rhode Islanders in praising his worthy selection for this award.

The impressive range of Mr. Sollosy's community involvement reflects his devotion to business, education, faith, and his fellow Rhode Islanders. He is vice chairman for the Government Affairs Council of the Greater Providence Chamber of Commerce, vice president of the Providence Public Library, and a member of the Workers Compensation Advisory Council, the board of the Public Education Fund, and the Governor's Small Business Council. He is also chairman of religious practices for the Jewish Home For The Aged, and a director of the Genesis School, the Jewish Federation of Rhode Island, Leadership Rhode Island, the Turks Head Club, and the Providence Performing Arts Council.

In recent years, Mr. Sollosy has served as president of the Rhode Island Chamber of Commerce, honorary president of Temple Torat Yisrael and Providence Hebrew Day School, a delegate to the White House Conference on Small Business, and chairman of the Rhode Island March of Dimes during the last outbreak of polio.

For his efforts, Mr. Sollosy has been named Small Business Leader of the Year by the Greater Providence Chamber of Commerce, recipient of the distinguished Amudim Award by Providence Hebrew Day School, and recipient of Brandeis University's Distinguished Community Service Award.

Mr. Speaker, I ask you and my fellow colleagues to join me in saluting distinguished Rhode Island citizen Sheldon S. Sollosy. Thousands of Rhode Islanders, like myself, have been touched by Sheldon's many gestures of compassion, enthusiasm, and innovation, and I am proud that he has undertaken much of his work in my representative district. I join family and friends who next week celebrate his many contributions.

EAGLE SCOUT BRIAN M. LAMARSH HONORED

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. REED. Mr. Speaker, I rise today to salute a distinguished young man from Rhode Island who has attained the rank of Eagle Scout in the Boy Scouts of America. He is Brian M. Lamarsh of Troop 49 in the Lakewood section of Warwick, and he is honored this week for his noteworthy achievement.

Not every young American who joins the Boy Scouts earns the prestigious Eagle Scout Award. In fact, only 2.5 percent of all Boy Scouts do. To earn the award, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. He must earn 21 merit badges, 11 of which are required from areas such as citizenship in the community, citizenship in the Nation, citizenship in the world, safety, environmental science, and first aid.

As he progresses through the Boy Scout ranks, a Scout must demonstrate participation in increasingly more responsible service projects. He must also demonstrate leadership skills by holding one or more specific youth leadership positions in his patrol and/or troop. These young men have distinguished themselves in accordance with these criteria.

For his Eagle Scout project, Brian Lamarsh led a group of Scouts in landscaping the House of Hope temporary shelter in Warwick.

Mr. Speaker, I ask you and my colleagues to join me in saluting Eagle Scout Brian Lamarsh. In turn, we must duly recognize the Boy Scouts of America for establishing the Eagle Scout Award and the strenuous criteria its aspirants must meet. This program has through its 80 years honed and enhanced the leadership skills and commitment to public service of many outstanding Americans, two dozen of whom now serve in the House.

It is my sincere belief that Brian Lamarsh will continue his public service and in so doing will further distinguish himself and consequently better his community. I am proud that Brian Lamarsh undertook his Scout activity in my representative district, and I join friends, colleagues, and family who this week salute him.

AFRICA'S EXPLODING POPULATION

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. CLAY. Mr. Speaker, Africa's population is at an all-time high today, and is rapidly increasing each year. Africa's current population includes 661 million people, experts say that Africa is on course to double in just 24 years, and approach 1.5 billion by the year 2020. There appears to be no way to provide such a vast majority of people with the basic necessities of life. These necessities include food, shelter, and jobs, not to mention education and health services. Action must be taken immediately to deal with this situation and to see that it does not get any worse. The most helpful organizations seems to be the voluntary family-planning programs. It seems apparent that more support for family planning in Africa should be provided by the United States and other developed countries. We must all work together to solve this problem. An editorial by Mr. Werner Fornos recently appeared in the St Louis Post-Dispatch. It offers an excellent analysis of the population crisis in Africa, and I commend it to my colleagues.

[From the St. Louis Post-Dispatch, Apr. 12, 1991]

EXPLODING POPULATION, EXPLODING PROBLEMS

(By Werner Fornos)

Deprivation, poverty and hunger are so commonly associated with Africa that it is only natural to wonder if and when so many nations on that beleaguered continent will ever be free from the specter of imminent catastrophe.

A brief comparison between the state of Missouri and the African nation of Senegal brings home the brutal disparities between the developed and developing worlds. Missouri and Senegal are about the same size. There, however, the similarities end, Missouri has a population of 5 million. Senegal's population of 7.4 million will double in only 26 years. The nation is already experiencing the deadly toll that rapid population growth takes on the health of a nation's people particularly women and young children. In Senegal, 128 infants died for every 1,000 live births. In Missouri the figure is 9.9. The statistics for the rest of Africa are no less grim.

A recent example is the Human Development Index, by which the United Nations Development Program measures the quality of life in 130 countries. The index tries to determine purchasing power required for a decent living standard in different countries. It combines life expectancy and adult literacy with gross domestic product per capita, weighted according to price levels. Of the 20 countries with the lowest human development rating, 17 are in Africa.

An exporter of food only 30 years ago, sub-Saharan Africa today is more greatly dependent on imports than any other region of the world. Children under 5 account for 50–80 percent of its total mortality, compared to only 3 percent for the same age group in Europe. In Mali, the desert has advanced 220 miles south in only two decades.

Meanwhile, the global focus on the Persian Gulf crisis and the extrication of Eastern Europe from the Soviet yoke has shoved to the back pages in the news of famine in Sudan and Ethiopia. But perhaps editors no longer consider famine in Africa to be news. After all, didn't Sudan and Ethiopia just have a major drought five or six years ago?

They did. But from all indications, the present famine will be as devastating as the drought of 1984–85 and probably worse, affecting about 10 million people.

A recent visit to Africa reinforced my long-held belief that the very survival of countries in this fastest-growing region of the world hinges upon a vast reduction of population growth. Projections of the continent's human numbers are astounding, offering little cause of optimism about the region's future.

Africa's population of 661 million is on course to double in only 24 years and approach 1.5 billion by 2020, while the per capita gross national product for the region is only $600. Nigeria, Africa's largest country with a population of 118.8 million, expects 42 million more people by the end of the century and a total population of 273.2 million by 2020.

These spiraling human numbers can only lead to unthinkable socioeconomic problems. There is simply no way to provide such a rapidly growing population with food, shelter and jobs, let alone education and health services.

From every conceivable indication, much of Africa will have to rely on foreign assist-

ance well into the 21st century. But more and more countries of the region are arriving at the conclusion that voluntary family planning programs are the best hope of providing any light at the end of this long, dismal tunnel.

Zimbabwe has established a national family planning program that is a model for sub-Saharan Africa. In a continent where national percentages of couples who use modern birth control methods flounders in single digits, Zimbabwe has a 36 percent acceptance rate. A $15 million family planning information and communication effort by the U.S. government aims to increase that rate to 50 percent within the next six years.

At the same time, Zambabwe shows signs of progress in development that should be the envy of its neighbors. It should certainly be apparent by this time that rapid population growth erodes economic advancement. Though bringing down fertility rates does not necessarily guarantee prosperity, few countries with high population growth—other than a smattering of Middle East oil sheikdoms—have any hope at all of improving their quality of life.

It is true that Zambabwean women are still averaging 5.7 children during their reproductive lifetime, but 10 years ago they were having seven. If other countries of sub-Saharan Africa where seven children per women are the norm can replicate Zambabwe's success in lowering its growth rate—and the pace can be significantly accelerated—the region may still be able to balance its population with its resources. If not, Africa must continue its reliance upon foreign aid, which has along, with every other commodity, a saturation point.

THE CORPORATE PAY RESPONSIBILITY ACT

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BRYANT. Mr. Speaker, today I am introducing a bill to give stockholders a voice in the way executive pay is set by their corporations. In an economic system based on capitalism, it is hard to believe that such a law is necessary.

Lately, news stories have carried numerous examples of ever-increasing executive pay. Business Week stated that the pay levels were mind numbing. Time magazine headlined its article on executive pay: "CEO's: No Pain, Just Gain." Forbes magazine stated in red letters—on its' cover—that the current pay system "doesn't make sense."

The average pay for a CEO is over 100 times the average pay of the average worker. Even the great financier J.P. Morgan said no executive should make more than 20 times the average pay of the average worker.

As recently as 10 years ago our pay ratios were close to that target, but this is no longer the case. Other countries of the world are much closer to the mark. A Japanese CEO earns about 17 times more than the average worker; in Germany the figure is about 23 times. But here in America, our gap is now 100 times—sometimes much more.

I believe it is one thing to have extraordinary pay for spectacular performance. It's another to have fabulous pay for dismal or even mediocre performance. Yet such extraordinary pay for poor performance is becoming the norm in corporate America.

Recently, newspapers reported that although Eagle-Picher Industries filed for bankruptcy in January of this year, last year its top five executives got a raise of more than 30 percent.

I am sure everyone will concede that 1990 was a difficult year for business in this country. But as corporate management was asking average workers to tighten their belts, decisions made in too many corporate boardrooms led to enormous pay raises—without the stockholders having any say in the matter.

The facts are that CEO pay in America vastly exceeds CEO pay in other countries; that increases in CEO pay in America exceeds the pay of our other workers; and that CEO pay in America has continued to rise in the face of falling company profits.

In the 1960's and 1970's, the pay of our schoolteachers, engineers, factory workers, and corporate CEO's was increasing at about the same rate. In the 1980's CEO pay increased in an unbalanced proportion to workers salaries.

In the history of our country, there has never been such a wide pay gap between the earnings of our CEO's and average workers.

The spectacular CEO pay increases and widening pay gap of the 1980's were not linked to increased profitability at American companies. Just the opposite is true: Executive pay rose at the same time corporate profits stagnated or dropped.

The 1980's saw CEO pay shoot up past the inflation rate, while the hourly wages of other employees failed to keep up with inflation, and company profits dropped well below inflation. This trend appears to be continuing: In 1990, I understand that CEO pay rose another 7 percent while corporate profits fell by the same amount.

In short, CEO pay increases are outpacing inflation, the pay of other American workers, the pay of CEO's in other countries, and company profits. Several compensation experts have characterized CEO pay as spiraling out of control.

A similar story applies to the members of corporate board—the people who are charged with setting the CEO's pay. Those directors of the corporation have also seen their pay skyrocket, to an average of $45,000 for the equivalent of about 2½ weeks' work. Some receive as much as $94,000. That cash payment is on top of such benefits as insurance, travel expenses and pensions.

It seems to me that in boardrooms across America, the directors and the CEO's are getting rich together, even when their companies are losing money.

A witness at a hearing held a few weeks ago by the Governmental Affairs Oversight Subcommittee, chaired by Senator LEVIN, stated that:

"[T]the board members are dependent upon and thus beholden to just one person, the CEO, for their positions, pay, and perks. So it doesn't surprise me a bit that there is not a lot of argument when it comes to the day where the board approves the CEO's pay. It is a you-scratch-my-back, I'll-scratch-yours system of corporate governance. Under the system, the executives are doing exactly what we would expect. They are increasing their pay year after year regardless of performance:

Believe it or not, Federal Government regulations actually hinder any stockholder efforts to curb executive pay.

A ruling by the Securities and Exchange Commission allows corporations to ignore stockholder proposals on pay and prevent those proposals from being put to a shareholder vote.

The SEC regulation—the Shareholder Proposal Rule—states that any shareholder who has held 1,000 dollars' worth of stock for at least a year is eligible to submit a shareholder proposal to a corporation. The corporation then has to circulate the proposal in its proxy statement and put it to a shareholder vote, unless the proposal falls into one of the SEC's exceptions.

The SEC rule considers proposals on pay to be an exception. So corporations can simply ignore stockholder proposals on executive and director compensation.

Another SEC regulation controls the disclosure of compensation information, and, despite SEC efforts to require clear disclosure, all too often, even knowledgeable investors are at a loss to figure out complex pay packages spread over multiple pages in annual proxy statements.

Nowhere in an annual report is there one list that adds all compensation and gives the bottom line in pay and perks for each executive and director. Nor is there any easy way to compare current pay to past years or to project the future costs of the very intricate pay packages that are common today.

Finally, there is no mechanism which allows shareholders to nominate directors and include them in the corporation's proxy statement and ballot. As a Senate witness testified:

We know the theory of the corporation. The shareholder elects the board to represent their interests, and then the board's job is to choose the management and set the compensation package. But, in reality, this theory is turned completely upside down, because the way the process works, the management appoints the board. . . . And whether the shareholders vote for the management's slate, against the slate, or whether they vote at all, they get the management slate. There is no competition for board seats. Worse yet, there is no mechanism for the shareholder to nominate an alternative board member.

As long as shareholders are barred from the nomination process, directors will have only a weak sense of loyalty and accountability to stockholders. And directors simply won't have an incentive to confront the CEO or each other about their runaway pay.

Shareholders have made it clear that they are angry about excessive pay and angry about SEC practices which block shareholder attempts to do something about it. One Senate witness testified that skyrocketing CEO pay, unrelated to corporate performance, is the "smoking gun that proves the lack of meaningful accountability of managements of large American corporations today."

The witnesses also testified that these practices threaten American competitiveness. They explained that executives who receive huge pay increases when the company is doing

poorly not only lose their incentive to improve corporate performance, but also damage the morale of workers far down the pay scale and damage investor interest in buying American stock.

That is why I am introducing the Corporate Pay Responsibility Act. Senator CARL LEVIN has authored and introduced the same bill in the Senate—based on his subcommittee's extensive research on the issue and the hearings testimony he heard last month.

The purpose of our legislation is to get the Federal Government out of the way of stockholders who are angry about runaway pay and want to hold their corporations accountable for it.

The bill would reduce the Federal barriers to effective stockholder action on excessive executive pay.

First, it would allow stockholders to vote on proposals addressing how a corporation should set executive and director pay.

Second, it would require corporations to provide clearer and simpler disclosure of executive and director pay packages.

Third, the bill would allow shareholders with not less than $1 million or 3 percent of a corporation's stock to nominate directors and include their nominees in the proxy statement and ballot.

Finally, the bill would provide for confidential voting of proxies and require the SEC to support shareholder access to a corporation's stockholders when this access is otherwise authorized by law.

Mr. Speaker, the owners of the corporations—the stockholders—ought to have the right to question inappropriate executive pay at their annual shareholder meetings. They ought to have the right to propose changes in their corporation's compensation policies, criteria and methods for setting CEO and director pay. After all, it is their money.

By increasing shareholder participation in compensation policies and practices, the Corporate Pay Responsibility Act would provide some CPR to revive American competitiveness.

I invite my colleagues to join me in removing the Federal Government's stumbling blocks to shareholders who want to increase corporate performance and stop runaway executive pay.

SUMMARY OF CORPORATE PAY RESPONSIBILITY ACT

The Corporate Pay Responsibility Act would reduce federal barriers to stockholder actions on corporate policies and methods which determine the pay of executives and directors.

If enacted into law, the Act would amend the Securities Exchange Act of 1934 to:

(1) allow stockholders, for the first time, to obtain a stockholder vote on proposals recommending changes in corporate policies, criteria and methods used to determine and provide compensation to the CEO and directors;

(2) require clearer and simpler disclosure of executive and director compensation packages, including a bottomline dollar figure on the total compensation paid to each individual, and a table comparing this compensation to the 2 previous years and 5 succeeding years;

(3) require the Securities and Exchange Commission (SEC), for the first time, to specify a method for calculating the present value of stock options and other deferred or contingent compensation and require this compensation cost to be reflected in corporations' earnings statements;

(4) allow stockholders with not less than 3% or $1 million of the corporation's voting equity shares to nominate directors and include their nominees in the corporation's proxy statement and ballot;

(5) allow stockholders' access to the corporation's list of stockholders and impose monetary penalties on corporations who refuse this access; and

(6) provide for confidential voting of proxies and tabulation of vote results by an independent third party.

H.R.—

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 "Corporate Pay Responsibility Act".

SEC. 2 CORPORATE OFFICER COMPENSATION.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(h) CORPORATE OFFICER COMPENSATION.—

"(1) SECURITY HOLDER PROPOSALS.—For purposes of this Act and the rules and regulations issued by the Commission under this Act, recommendations, proposals, or statements on the policies, criteria, or methods to be used in determining or providing the compensation to be paid to the directors or the chief executive officer of an issuer shall be considered proper subjects for action by its security holders. If such recommendations, proposals, or statements otherwise meet the requirements of this section and the rules and regulations of the Commission, an issuer may not omit such recommendations or proposals or any statement in support thereof otherwise required by this section from its proxy statement.

"(2) DISCLOSURE INFORMATION.—Pursuant to the rules and regulations of the Commission, an issuer shall include in its proxy statement, clear and comprehensive information concerning the compensation paid to each director and senior executive, including—

"(A) a single dollar figure representing the total compensation paid to such person, including deferred, future, or contingent compensation, by the issuer during the year to which such proxy statement pertains;

"(B) the estimated present value, represented by a dollar figure, of any forms of deferred, future, or contingent compensation provided during such year; and

"(C) a graphic representation of—

"(i) the compensation referred to in subparagraph (A);

"(ii) comparable figures for the total compensation paid to such person by the issuer during each of the 2 years prior to the year to which such proxy statement pertains; and

"(iii) comparable figures for the estimated total compensation to be paid to such person by the issuer in each of the succeeding 5 years.

"(3) PRESENT VALUE CALCULATIONS.—For purposes of paragraph (2) of this subsection, the Commission shall-

"(A) specify the method for estimating the present value of stock options and other forms of deferred, future, or contingent compensation paid to the directors of senior executives of an issuer; and

"(B) require the issuer to reduce its earnings, as reflected in its earnings statements to its security holders, by the estimated present value of such compensation.".

SEC. 3. SHAREHOLDER NOMINATIONS.

(a) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsections:

"(i) CORPORATE OFFICER NOMINATIONS BY SECURITY HOLDERS.—

"(1) SECURITY HOLDER NOMINEES.—Subject to the rules and regulations of the Commission, a person or group that is the beneficial owner of voting equity securities representing—

"(A) not less than 3 percent of the voting power of such issuer's securities, or

"(B) not less than $1,000,000 in market value,

may nominate persons for election to the board of directors of the issuer.

"(2) INCLUSION IN PROXY STATEMENT.—Subject to the rules and regulations of the Commission, such nominations shall be included in the issuer's proxy statement and form of proxy, and the person or group making such nominations may provide descriptions or other statements with respect to such nomination to the same extent as the board of directors or management of such issuer, and to the same extent as provided with respect to other nominations.

"(j) AVAILABILITY OF SECURITY HOLDER LIST.—Upon receipt of a written request, an issuer shall promptly deliver its list of security holders of record and any list of beneficial owners used by or available to it to any person entitled to obtain such list under applicable laws. An issuer that fails to promptly provide the list required by this subsection shall be subject to a monetary penalty imposed by the Commission, pursuant to rules or regulations established by the Commission.

"(k) CONFIDENTIALITY.—The Commission shall, by rule or regulations—

"(1) require that the granting and voting of proxies, consents, and authorizations, be confidential; and

"(2) require the tabulation of votes to be performed by an independent third party, certified in accordance with such rules and regulations; and

"(3) provide for the announcement of the results of a vote following such tabulation.

Nothing in this subsection shall be construed to authorize any person to withhold information from the Commission or from any other duly authorized agency of the Federal Government or a State government that is otherwise required by law.".

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall become effective 1 year after the date of enactment of this Act.

(b) COMMISSION ACTION.—The Commission shall promulgate final rules and regulations necessary to carry out this Act not later than 1 year after the effective date of this Act.

ADDRESS BY C.L. SHARMA, DEPUTY DIRECTOR-GENERAL FOR MANAGEMENT, UNESCO

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. TORRES. Mr. Speaker, today I rise to bring to the attention of my colleagues an im-

portant message of progress made by the United National Educational, Scientific, and Cultural Organization [UNESCO].

When the United States made, what I consider to be, a misguided step and withdrew from UNESCO in December 1984, it made a threefold indictment of this international body: First, the organization was badly managed; second, it was embarked on excessive budgetary growth; third, its activities had become highly politicized and divisive.

Since 1984 UNESCO has made clear and undeniable progress in implementing dramatic reforms in its management, budget, personnel policy, and programs. Credit for this progress is in great part due to the leadership of UNESCO's Director-General, Federico Mayor.

Mr. Mayor recently asked his deputy for management, C.L. Sharma, to undertake a mission to Washington, to brief myself and a number of my esteemed colleagues on recent developments in UNESCO. To this point, I would like to share with my colleagues the address given by Mr. Sharma upon the occasion of his visit to Washington on April 22, 1991.

It is particularly timely that this progress report on UNESCO be brought to your attention. My esteemed colleague, the gentleman from Florida, Mr. DANTE B. FASCELL, has informed me that H.R. 1415, authorizing appropriations for fiscal years 1992 and 1993 for the Department of State, includes language mandating a report by the Secretary of State on the activities of UNESCO, to be submitted to the Congress not later than 60 days after the enactment of the legislation.

With this in mind I ask that my colleagues judge for themselves whether UNESCO has successfully addressed the issues raised by our Department of State. In addition, I would ask whether it is time for the Congress of the United States to instruct the Department of State to permit this country to rejoin the international scientific, cultural, and academic communities which are now linked so successfully in common democratic purposes through UNESCO.

ADDRESS BY C.L. SHARMA, DEPUTY DIRECTOR-GENERAL FOR MANAGEMENT, UNESCO

President Werner Furnos, of the Conference of Washington Representatives of the United Nations, thank you for this invitation. I would also like to thank Congressman Esteban Torres for his sponsorship of this luncheon, as well as the Americans for the Universality of UNESCO.

It is a great honour and pleasure for me to be able to spend this afternoon at lunch with you here on Capitol Hill today. Congressman Torres, who as you know, was the United States' Permanent Delegate to UNESCO in the latter 1970s, is a man of rare vision. He has consistently supported international co-operation in UNESCO's fields for many years and he has been largely responsible with his friends in the Congress, for placing the UNESCO question on the agenda of the Government. We greatly value his support and, of course, we also welcome the questions and, if I may say so, the very hard questions that he often puts to us about the reform process at UNESCO.

The United Nations Association in this country, in its Chapters and in its national organization both here in Washington and in New York, have been a force for "thinking globally and acting locally" which we at UNESCO value very highly. The UNA as we all know, has been a force for rigorous and careful analysis on UNESCO questions. Its studies, which include its independent panel's review of UNESCO and its independent work with the Sierra Club on the environment, have all helped to focus attention on those things that UNESCO has been accomplishing under its Director-General, Mr. Federico Mayor, and on the programme matters of high priority like the environment, in which UNESCO plays so important a role in the UN system. We know that the United Nations Association of the United States has played a courageous and sometimes a lonely role. It has consistently been a voice of fair play and has stood up with a great deal of courage and consistent commitment to finding out the truth about UNESCO at times when it was subjected to unfair criticism and even attack by very powerful forces. I would like to pay tribute here, at this luncheon on Capitol Hill, to the leadership of the United Nations Association of this country and particularly to Mr. John Whitehead whom I had the pleasure of meeting in New York last week, and to Secretary Elliot Richardson and to Jeff Laurenti, who has unstintingly worked to bring the image of UNESCO and its reality into focus both within the UN Association and here in the hall of Congress.

About a year ago, Secretary of State Baker issued a report on UNESCO which frankly, we found to be factually confusing, and consequently leading to biased conclusions. There had obviously been a failure to consult relevant branches of the United States Government and specialists in UNESCO's fields of education, science, culture and communication in reaching these conclusions. Many of the so-called facts presented in this report were not facts at all but mere unfounded suppositions. However, that is a matter of the past now. I believe the time has now come for the United States Government to review this matter afresh, particularly in the light of the current process of change at UNESCO. I base my arguments not on intentions or plans to reform this or that aspect of UNESCO's programme or management or budget—the need for reforms in these areas having motivated the United States' withdrawal in 1984—rather, I speak at this time of what has actually been done and of the Director-General's detailed proposals for the coming biennium (1992-93) which will go to the Organization's Executive Board meeting next month for its observations and recommendations to the General Conference which will meet in the fall.

At its last session, UNESCO's Executive Board recommended that the Organization should try to achieve substantial programme concentration, appropriate changes in the structure of the Secretariat, and a negative budget growth aimed primarily at administrative and support services, while ensuring the strengthening of programme actions in areas of vital interest. This follows on the far-reaching decisions of the last General Conference to eliminate contentious and politicized content from the programme and to focus UNESCO's actions on the catalytic pursuit of priorities in education, science, culture and communication.

My role as Deputy Director-General for Management, is to assist in the process of careful and continual change to improve the Organization's ability to "deliver the goods" to its Member States in such key areas as Literacy and Basic Education, Higher Education, Environment and Basic Scientific Research, Preserving the Cultural Heritage—both physical and non-physical, Promoting the Free Flow of Information and working for improved international co-operation in the Social Sciences and the Humanities with particular emphasis on Human Rights. All this, of course, is within UNESCO's proper sphere of action. Thus, under the overall guidance of the Director-General, and with the Deptuty Director-General for Programme, the effort has been both substantive and administrative to put more of UNESCO's resources to work on those precise things where the Organization can make a difference.

The focus on efficient programme implementation, and on moving forward to the frontiers of knowledge and skill would not have been possible if UNESCO had remained an arena for empty political rhetoric. In establishing a better dialogue with the governing bodies, in assisting them in the exercise of their full constitutional responsibilities, the Director-General has not flinched from insisting on an end to the controversies of the past. This crucial but delicate task was accomplished at the twenty-fifth session of the General Conference, held in 1989, when it definitively ended the debate on the New World Information and Communication Order and unanimously adopted a new policy dedicated to the free and uninhibited flow of information both within and among societies. This was a positive endorsement of the role of a pluralistic and private press and media throughout the world. For more than a year now that policy has taken practical form in a series of East-West and North-South press meetings dedicated to supporting independent media through direct co-operation between professional organizations in this and other countries with newborn media in Central Eastern Europe and parts of the developing world. The Warsaw School of Journalism has just opened its doors as a result of this public and private co-operation co-ordinated, encourage, and brought to fruition by UNESCO.

Similarly, UNESCO's work in Human Rights and Peace Research is rigorously focused on education and scientific research with specific emphasis on individual rights and in particular on an Apartheid-free South Africa.

As most of you know, this year will see a General Conference at UNESCO, when the Programme and Budget for the coming biennium (1992-93) will be proposed by the Director-General along with the recommendations of the Executive Board. In preparing this document, it has been our aim to concentrate the programme around important initiatives in which UNESCO can contribute to efforts by the UN system as a whole to solve problems old and new that threaten the stability and quality of lives. For example, the proposed programme will significantly increase resources dedicated to world-wide efforts to provide Basic Education For All (in co-operation with the World Bank, the United Nations Development Programme and UNICEF within the UN system and with, by the way, the United States Agency for International Development here, in Washington). It will also build on the World Climate Conference toward the 1992 UN Conference on Environment and Development (in co-operation with UNEP, WMO and the non-governmental International Council of Scientific Unions). It is important to note that both of these co-operative ventures in the vital fields of education and environment, were initiated by the Director-General of UNESCO as part of a general policy of forging more and more cost-effective linkages with the international community in addressing priority issues. The same holds true for work in

Population Education, and the fight against AIDS and drug abuse in which UNESCO's work is financially and programmatically linked to the relevant agencies of the UN system.

From a management perspective, you may be interested in knowing that the budget, which we intend to present to the Executive Board next month will represent a 2.6% decrease from what it would have been, had the standard zero growth budget which has been the recent norm in the UN system been adopted. We will probably be the first Organization of the system to come up with a reduced budget. This represents a reduction of 11 million dollars over the previous biennium's figures re-costed for inflation. This reduction of 11 million dollars in our proposed budget is being achieved through the abolition of posts, as many as 62, mainly in administrative and support services. Other areas include curtailment of meetings and documentaion including those of the governing bodies, staff travel and other administrative expenses. The result is that, despite the overall 11 million dollar reduction, we will be able actually to increase programme funds substantially for major program areas. This increase is 3.7 percent.

At the same time, UNESCO's personnel and management systems are undergoing considerable reform. Based on the recommendations of a Commission which we had appointed headed by Mr. Knut Hammarskjold of Sweden and the advice of a Panel chaired by Austrailia's Ambassador to the United Nations, Mr. Peter Wilenski, we have adopted a new system of personnel evaluation under which all staff clearly know their expected tasks, and performance appraisal is done objectively and rigorously. This is to ensure that excellence is rewarded and that under-productivie staff can be reassigned or sanctioned. Moreover, despite the limited financial resources, we have been inducting young probationers into the Secretariat to rejuvenate it and to ensure that an inverted age-pyramid begins to turn around. Concerning previous criticisms that UNESCO is top-heavy, it should be mentioned here that we are eliminating a number of posts at Director-level and above in UNESCO, and the number of such posts even now is proportionately lower than in the other comparable agencies of the UN system.

On a micro-level, which is none the less symbolic of our efforts, the self-financing activities like the UNESCO Commissary and the Restaurant Services, which used to be in deficit until recently, are now turning significant profits.

Assuming that the United States' departure from UNESCO was a temporary separation and not a permanent divorce, it may be worth while going through the reasons which led to this separation and which were summarized in various reports prepared by your Government at the time of withdrawal and thereafter. Remarkably, the State Department Report of April last year, did not cover these issues as rigorously or as completely as it should have. Since this was not done, it might be useful for me to do it very briefly now.

1. In 1984, and as recently as a year ago, the State Department felt that the New World Information and Communication Order made UNESCO potentially a party to restricting press freedom. Certainly, this is not the case now. The New World Information Order is no longer in UNESCO's programme and it has been completely replaced by a strategy which places due emphasis on the private, pluralistic and independent sources of news.

2. The State Department in 1984, looked askance at what it considered to be an overconcentration on People's Rights which was viewed as a step back from the defense of individual human rights. I can tell you that since the last General Conference the reverse is the case.

3. The State Department also felt that UNESCO was hostile to the private sector. Our cooperation with private media and business is fully demonstrable, vital to our programme, and is bearing fruit.

4. Work on peace and disarmament was felt to overlap with other bodies of the UN system. In these fields, as well as those I have discussed above, UNESCO is cooperating fully with the system and has set up mechanisms to avoid any overlap.

5. UNESCO's budget was considered excessive at a time when other agencies were keeping to zero-growth policy. UNESCO is the only Agency today which has come up with a reduced budget proposal, as I mentioned earlier.

6. UNESCO was considered inefficient and overly contralized both in the powers of its Director-General and in staff and initiative at Headquarters. Decentralization, individual initiative and accountability are the order of the day at UNESCO with a collegial decision-making process in the Directorate, and a gradual shift of staff, programme and project responsibilities out to the field. UNESCO has modernized its communication systems and its reporting system. Several Field Officers which were hitherto performing primarily liaison functions have now been converted to offices performing intersectoral programme activities.

Finally, UNESCO's programme was considered to be overly dispersed with too few resources going to too many small programme actions. The new Budget, now provides clear and quantifiable evidence that personnel and finances are being focussed around priority clusters of activities. As a result, in the Programme and Budget proposals i.e. the 26 C/5, the number of sub-programmes is reduced from 51 to 43 and the number of programme actions has been reduced from 151 to 114, a 25% reduction.

Ladies and gentlemen, the process of reform is never complete in any organization and certainly not one as complex as UNESCO. There will always be room for further improvement. So is the case with us. However, as the above quick recount shows, genuine and sustained efforts are bearing fruit now, and the time has come to redouble our efforts to work together, toward a goal of eliminating an unnatural situation which has existed for the last few years. By that I mean the U.S. absence.

After all, as democracy tries to take root in Central Eastern Europe, Latin America and now Africa, can the United States with its commitment to freedom everywhere, hold back from rejoining an organization which is totally dedicated to its initial Constitutional missions and which is doing everything within its means to function more effectively in the pursuit of these goals which involve individual human rights, freedom and what our Director-General calls, the culture of democracy?

Let us work together to fix that. As T.S. Elion wrote in *The Choruses in the Rock*: "And all that is ill, you may repair if you walk together . . . And all that was good you must fight to keep with hearts as devoted as those of your fathers who fought to gain it."

TRIBUTE TO REV. MSGR. VINCENT P. COBURN, J.C.D. ON THE 50TH ANNIVERSARY OF HIS ORDINATION

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. ROE. Mr. Speaker, it with the greatest pride that I rise today to pay special tribute to a very special member of our clergy in my Eighth Congressional District Msgr. Vincent P. Coburn who will celebrate the 50th anniversary of his ordination to the priesthood at the 12 noon Mass at St. Thomas the Apostle Church of Bloomfield, NJ. A reception in his honor will be held immediately following the Mass in Herron Hall, St. Thomas the Apostle School, located adjacent to the reactory.

Mr. Speaker, Monsignor Coburn was born September 15, 1915, in Newark, NJ, the eighth child of John J. Coburn and Grace Theresa Mullin, who were married in St. James Church, Newark, NJ in 1899. He was baptized Vincent in St. Rose of Lima Church in the Roseville section of Newark on September 23, 1915. He entered first grade at St. Rose of Lima Parochial School in September 1921, received his first Holy Communion in the spring of 1922 and the Sacrament of Confirmation the same day in the old Church at St. Rose, became a member of the first boys choir and graduated from the eighth grade in 1929. He entered Seton Hall Preparatory School in September 1929 and graduated in June 1933. He was accepted at Seton Hall College for the fall term of 1933 and graduated with a degree of bachelor of arts in 1937. The previous year, as was the custom then, he was accepted at the seminary of the Immaculate Conception at Darlington, NJ and was ordained to the holy priesthood on June 7, 1941. His first priestly assignment was to study canon law at the Catholic University of America in Washignton, DC, entering in September 1941. After receiving the degrees of bachelor and licentiate in canon law in the next 2 years, he received the degree of doctor of canon law on May 17, 1944. The title of his published doctoral thesis was "Marriages of Conscience".

During summers while studying in Washington, he began the revision of the ecclesiastical tribunal of the archdiocese of Newark. Upon completion of his studies, he was assigned to temporary parish posts for a year because of the shortage of priests due to the duration of the Second World War. On June 1, 1945, he was designated as assistant chancellor, and advocate-notary of the tribunal, with residence at St. Patrick's Pro-Cathedral in Newark, NJ. At St. Patrick's he also served as youth director, moderator of the Boy Scouts, and was involved in various other parish endeavors. In 1948 Father Coburn's teenage boys basketball team won the archdiocesan Catholic Youth Organization championship.

A neighboring parish plant, St. Bridget's, had burned to the ground in great part in July 1953. In September 1954, Father Coburn was directed to rebuild and revitalize that parish. This was done, and in 1955 Centers for the Blind, Deaf, and Retarded were established at St. Bridget's as part of the work of the Mount

Carmel Guild of the archdiocese. An apostolate for the Spanish-speaking was started at the same time in the parish. On August 26, 1968, Monsignor Coburn was made pastor of the parish of St. Thomas the Apostle, Bloomfield, NJ, where he remained until his retirement on September 10, 1985.

Paralleling his work in the above parishes, Father Coburn was directed in 1945 by the archbishop to organize and develop the court system of the tribunal. When completed in January 1953, he was appointed officialis, or presiding judge of the tribunal for all cases and causes in first instance and for appeals from the other dioceses of the State of New Jersey. He was named a papal chamberlain to his holiness, Pope Pius XII, with the title of very reverend monsignor in 1954, and elevated to the rank of domestic prelate with the title of right reverend monsignor in 1958. Monsignor Coburn resigned as presiding judge of the Newark tribunal in 1973, but has remained as a judge in the Newark tribunal and as a part-time judge in the tribunal of the diocese of Palm Beach, FL.

Monsignor Coburn has fulfilled a number of other archdiocesan assignments over the years. He was a consultor to the archbishop from 1960 to 1978, the first chairman of the priests personnel board from 1968 to 1969, a member of the priests senate from 1969 to 1973 and a founding member of the "Cursillo" movement in the archdiocese. He established in Newark the "Casa do Colores" for the conducting of cursillos for men and women in both Spanish and English. He taught tribunal processes in the seminary of the Immaculate Conception from 1957 to 1958. He also taught a course on the history and value of the law of the church as affecting civil law in the United States at the Seton Hall Law School from 1955 to 1964. Again, he was president of the Eastern Conference of the Canon Law Society of America for a term in the late fifties and taught canon law in the Diaconate School of the archdiocese for the entire time the school was located in Newark. He was designated by Pius XII, as the apostolic visitator to the Franciscan Sisters of the Poor in 1958. He was also a trustee of St. Michael's Hospital in Newark for many years and a trustee and member of the board of directors of the Mount Carmel Guild from 1960 to 1973. He was president of the Newark Clergy Association at the time of the 300th anniversary of the founding of the city. He was moderator of the Catholic Forum from 1952 until 1973 and chaplain of Court Seton of the Catholic Daughters of America from 1965 until 1968.

Monsignor Coburn was present at the concluding sessions of the Second Vatican Council as an observer for the archdiocese. He tried over the years to implement the findings of the council in his parish work, particularly in the establishment of the Parish Council, which was of invaluable help in the administration of the parishes where he was assigned. Perhaps the most enjoyable assignments he fulfilled were the establishment of the September Club for senior citizens at St. Thomas the Apostle Parish, and the teaching of religion to the sixth grade pupils in St. Thomas Parish School, and the parish confraternity of christian doctrine classes.

For the past 5 plus years, Monsignor Coburn has been a resident at the rectory of the parish of St. Rose of Lima, Short Hills, NJ. He is the moderator of the Lifelighters Senior Club and is generally available when needed at the discretion of this kindly pastor and personal friend, Msgr. William P. Devine.

Mr. Speaker, as Msgr. Vincent P. Coburn celebrates the 50th anniversary of his ordination to the priesthood, I know that you and all of our colleagues here in the Congress will want to join me in extending our warmest greetings and felicitations for the excellence of his service to his faith, our Nation, and all of mankind. We do indeed salute an esteemed pastor, exemplary clergyman, and great American—Rev. Msgr. Vincent P. Coburn, J.C.D.

OPPOSITION TO MFN STATUS FOR CHINA

HON. TIM VALENTINE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. VALENTINE. Mr. Speaker, 2 years ago today the Chinese Government began a brutal crackdown on prodemocracy demonstrators in Beijing. As we remember the brave individual who refused to yield to a tank and the students who gave their lives in the peaceful expression of the democratic ideal, let us not forget our own country's current involvement with that nation.

As we examine our trading policies with China, we must remember the vital American industries that will be threatened by another extension of most-favored-nation status to China.

The textile industry in my State has been devastated by foreign competition. Our textile industry will never be able to compete with a system that uses forced prison labor to manufacture garments at below rockbottom prices.

I do not believe it is in our best interests to continue the demolition of the American textile industry while rewarding the repressive policies of the Chinese Government by an extension of most-favored-nation status, and I urge my colleagues to join me in opposition to this extension.

ONE MAN BEATS THE ODDS

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BILIRAKIS. Mr. Speaker, daily, Americans are confronted with the horrors of drug abuse. Every night, the evening news brings us fresh evidence of the destruction drugs brings to families and whole communities.

The Bush administration has rightfully committed America to fighting drugs in every way possible. This year, we will spend almost $12 billion to interdict drugs at our borders, to fight drug violence on our streets and to help those Americans who have fallen victim to drug addiction.

Mr. Speaker, the problems of drug abuse cannot be minimized. Once in awhile, however, the steady stream of bad news is interrupted by a glimmer of hope, evidence that despite the enormity of the problem, progress is being made and human lives are being turned around.

And to prove it, I bring to the attention of my colleagues the uplifting story of Jonathan Wade, a young man from my district who not only raised himself out of the quagmire of drug addiction but is doing the same for others as well.

At one time, Jonathan Wade led the high life, smoking cocaine every day and making money selling drugs. Then suddenly in 1984, his world came crashing down. He was arrested for the sale and possession of drugs. He lost his job and his family.

But instead of giving up, Jonathan Wade picked up his crumpled life and pieced it back together. He successfully completed a 28-day drug treatment program at Sun Coast Hospital and has been clean ever since. As commendable as quitting drugs was, however, Jonathan Wade didn't stop there.

He entered St. Petersburg Junior College in 1985 and graduated with a 3.32 grade point average. At the same time he was putting himself through school, Jonathan was also active in anti-drug activities in his community and was working to re-establish a strong relationship with his three sons.

He founded Operation Par, Parental Awareness and Responsibility, in 1984 and numerous other recovery support groups for people addicted to drugs and alcohol. Today, Jonathan Wade works 40 hours a week as an addiction counselor at Largo Correctional Center and 20 hours a week as a recruiter of minority students for St. Petersburg Junior College. He recently earned his second associate degree and plans to enter the University of South Florida in the fall to earn a master's degree in rehabilitation counseling.

Recently, Jonathan Wade was aptly recognized for his tremendous achievements. He was one of seven people in America to receive the Achievement Against the Odds Awards.

Mr. Speaker, Jonathan Wade has transformed his life. The son of an alcoholic, he has rejected drugs and alcohol and broken the cycle of addiction. Through his ordeal, he developed tremendous strength and faith in the future. Jonathan Wade believes in the power of education and every day, he brings that message to more and more young people.

What Jonathan Wade is today, versus what he used to be, is testimony to the rightness of our commitment to ridding America of the scourge of drugs. Jonathan Wade believes that America can kick the drug habit. He has proven it can be done.

Mr. Speaker, I can think of no one who is more deserving or representative of the spirit of the Achievement Against the Odds Award than Jonathan Wade.

LEGISLATION TO END IMPORTS INTO THE UNITED STATES OF WILD-CAUGHT EXOTIC BIRDS

HON. ANTHONY C. BEILENSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BEILENSON. Mr. Speaker, I am delighted today to join my good friend and colleague from Massachusetts, GERRY STUDDS, the chairman of the House Subcommittee on Fisheries and Wildlife Conservation, in introducing legislation to end imports into the United States of wild-caught exotic birds.

The international trade in macaws, amazons, cockatoos, toucans, African greys, and other exotic birds taken directly from their habitats in Latin America, Africa, and elsewhere to supply the demand for house pets is an appalling practice which, because it is largely unregulated, has resulted in devastating declines in populations of some of the world's most beautiful birds. Nearly one quarter of the world's 300 parrot species are at risk of extinction—some, such as the beautiful South American macaw, may already be beyond any hope of recovery. Others, such as the blue-fronted amazon, may soon be eliminated from large portions of their native habitats.

Each year the pet industry in the U.S. imports over 500,000 of the estimated 8 to 20 million birds taken from the wild each year, more than half of which belong to species listed as threatened under the Convention on International Trade in Endangered Species [CITES], the international treaty which governs wildlife trade.

Worse, the wild bird trade is characterized by an alarming degree of cruelty. Crammed into shipping crates with little air, food, water or freedom to move, millions of birds—up to one-half of all birds caught in the wild by some estimates—die of suffocation, dehydration, starvation or disease before leaving the country of origin. Of those birds which reach the United States, nearly one in six is either dead on arrival or dies while in quarantine as a result of inhumane conditions during transit. Shocking as these rates of mortality seem, they are an accepted cost of business for most bird traders.

Just as alarming is the extensive environmental destruction which often accompanies the taking of wild birds, as trees and other vegetation are destroyed to locate birds inhabiting tropical rain forests and other sensitive ecosystems. In addition, although parrots and other rain forest birds are known to play a principal role in the dispersal of seeds and the pollination of plants, little research has been done on the potential adverse effects of removing essential species from the rain forest ecosystem.

The true extent of the damage the bird trade has wrought on bird populations and their habitats is still unknown because many exporting countries lack the resources necessary to assess the impact of unregulated trade or to provide adequate protection for their wildlife. Over 100 countries have laws banning the export of wild exotic birds, yet unless consuming countries, such as the United States, agree to prohibit imports, these countries are powerless to stop the trade.

To address this crisis and help bring an end to this brutal trade, the gentleman from Massachusetts and I are introducing two bills which represent the culmination of nearly 3 years' study and discussion by the wildlife conservation and animal welfare communities, the pet industry, bird breeders, zoos and veterinarians. Though the two proposals are different in detail, they have a common goal: to prohibit imports of wild exotic birds for the pet industry.

In doing so, we hope to promote a viable, humane, and well-regulated captive-breeding industry, both in this country and abroad, which will meet the demand for house pets, discourage smuggling, and help ensure the survival of the most endangered species.

Mr. Speaker, the importation of wild birds is a cruel, inhumane, and environmentally destructive practice which must be stopped—before these birds are faced with extinction. I urge my colleagues to join us in supporting this worthy effort.

NORTH AMERICAN FREE TRADE AGREEMENT

HON. CRAIG A. WASHINGTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WASHINGTON. Mr. Speaker, I would like to thank all of my constituents that were in attendance at the Eighteenth Congressional District Town Hall Meeting on Trade. I was pleased to have the opportunity to discuss my views on the proposed North American Free Trade Agreement. Although foreign trade is important to our national economy, given our State's proximity to Mexico, it is especially significant here in Texas. Before I continue, however, allow me to give you some background on this proposal.

President Bush is very interested in expanding trade opportunities for American businesses. To that end, he would like to negotiate a free trade agreement between the United States, Canada, and Mexico. His goal is to create a huge North American free trade zone which would include 360 million consumers, with annual trade of $200 billion and economic output of $5.5 trillion. The trilateral negotiations between the United States, Mexico, and Canada are scheduled to get formally underway this summer, with the hope of completing an agreement by the end of the year.

FAST TRACK APPROVAL PROCESS

To that end, the President formally notified Congress on February 5, 1991 that he intends to use the so-called "Fast Track" approval process to secure Congressional approval of the proposed trade agreement. The "Fast Track" process is intended to streamline the regular approval process in the Congress. Once the implementing legislation is introduced, the fast track rules operate to require an up-or-down vote in the House and the Senate, without amendments, within 60 days.

WORLDWIDE TRADE AGREEMENTS STALLED

The President's effort to secure the North American agreement comes shortly after the world's trading nations failed to reach a worldwide agreement on trade issues. In fact, they recently admitted that they will miss the March 1, 1991 deadline for completing the Uruguay round of multilateral trade talks intended to continue the General Agreement on Tariffs and Trade, [GATT]. In light of this failure to reach a worldwide agreement, the President's efforts to secure a North American agreement is likely to fuel fears by other trading nations that the United States has abandoned the GATT process and is pursuing an alternative policy of promoting regional trading blocs instead.

CONCERNS ABOUT MEXICO

The proposed new trade agreement with Mexico is particularly controversial. Supporters of a United States-Mexico free trade agreement claim that it benefits both nations. They say that it would not only increase American exports to Mexico, it would help spur growth and economic development in Mexico and thereby reduce pressure for northward migration. Critics respond that the agreement would do more to increase United States imports from Mexico than exports to Mexico. As a result, it would bring about the export of American manufacturing jobs, rather than goods, south of the border.

My immediate concern centers on the interests of American workers as a whole. Under trade agreements already in place, tens of thousands of American workers have lost their jobs and tens of thousands more have seen employment opportunities vanish. Where are these jobs now? Certainly not in the United States. They're now in other countries like Mexico, or the nations of the Pacific rim, where wages are a fraction of those earned by workers in the United States. Foreign workers also do not have many of the rights of American workers, such as fair labor standards, nor do they have even the most basic workplace safety and health protections. While I do think that opportunities should be available for workers in other nations, I don't think those opportunities should come at the expense of working people here in the United States.

I am also very concerned about possible threats to the environment brought about by the treaty. While our country has a vast array of environmental laws to protect our air and water, those protections are considerably weaker—and in some cases nonexistent—in Mexico. For example, the majority of Mexican communities along the Texas border have sewage treatmemt systems which are woefully inadequate by American standards, and they significantly contribute to pollution of the Rio Grande River. Similarly, air pollution standards in Mexico are also lax, posing a health threat on both sides of the border. Moreover, the use of many toxic chemicals banned in the United States is legal in Mexico, and hazardous wastes are often casually disposed.

CAREFULLY CONSIDER FREE TRADE—REJECT FAST TRACK

A trade agreement may well benefit the United States and its neighbors. In light of the many complex issues to be resolved, however, congressional consideration of such an agreement warrants a great deal of thought and careful analysis. Members of Congress should study the many issues involved and retain their right to amend the agreement. Since

the fast-track process would reduce the time available for careful consideration and eliminate the possibility of amendments, I believe that Congress should reject fast track and use the ordinary, more deliberate approach.

My constituents in the Eighteenth Congressional District expressed concerns relating to tariffs, subsidies, the environment, economic development, and the labor force. I would like to state those concerns and remedies offered for each concern.

The Sierra Club felt that their main concern was the issue of tariffs. Tariffs are often utilized to shield industries that are not competitive and are a form of protectionism. This group was most concerned with tariffs that are utilized to advance a certain social goal. For instance, if the United States wants to save family farms, the United States would ensure that foreign competition would be equal to that of the United States. If the United States wants to advance that social goal, it would limit the entry of certain types of products that may cause harm to the environment. For example, the United States might limit the importation of certain endangered species, or some tropical woods. If all barriers to trade are lifted with the free trade agreement then the United States would not be able to use this form of protection for the environment. In that respect, the Sierra Club is concerned about the tariff issue and would like to see that issue addressed.

In addition to the tariff issue, there were concerns about subsidies. The Sierra Club wants to internalize the costs that pollution have on society so that the polluter pays for their harm to the environment. These can be applied in the form of subsidies. The Sierra Club can support subsidies which provide benefits for the public. These subsidies for the public benefit include, but are not limited to, subsidies to farmers to allow some of the farmland to fallow as wildlife habitat. These subsidies should be looked at differently when discussed in the context of the free trade agreement.

The concerns relating to the environment are critical because environmental hazards know no boundaries. An example of an environmental hazard that affects both countries is pesticide usage. Some pesticides are banned in the United States because they are hazardous to the health of people. However, these same pesticides are used in Mexico and could appear in our food if it is shipped from Mexico. The Houston Audubon Society expressed their concerns that pesticides allow cumulative damage to all species. Mexico's regulations are inadequate and would put the American farmer at a competitive disadvantage if he or she complied with American standards. The Houston Audubon Society also felt that the Bush administration had not adequately addressed these concerns in the public hearings held at the committee level. They felt that the request for an extension of fast track is an attempt to pass legislation not approved by Congress in the 1990 farm bill. Houston Audubon are supportive of fast track and free trade, but felt that their concerns should be addressed in the free trade agreement.

The free trade agreement and the extension of fast track authority also raised concerns about economic development. The mayor's office of the city of Houston sent out a message that we should recognize the importance of trade to the Houston economy. We have an opportunity to participate in an agreement that hopefully will provide long standing benefits. The city of Houston, as a local governmental entity expressed a desire to be a partner in trade with those involved.

The American and Mexican workers are a concern to all involved in the discussion. The needs of the American worker are of utmost importance. Concerns about job loss mean the most to the 18th Congressional District. Jobs are the first priority to most Americans. If jobs are lost, what happens to those individuals. Will they be protected? Will other jobs be provided for those individuals? If jobs move to Mexico this will not necessarily help the Mexican worker because of rampant exploitation in wage rates. There was data given by the AFL–CIO and the steelworkers that stated there would be an overwhelming job loss to America. However, the data given by those in favor of fast track showed an overwhelming gain in jobs to replace those lost.

At the conclusion of the town hall meeting the representative from the Texas Chamber of Commerce expressed the current status of this issue the best. He said that he had received a bootleg copy of the free trade agreement and wanted to share that copy with everyone. He held up a folder containing blank pages. Since the fast track authority has been extended, that is what we have to deal with at this time. Those blank pages give us an opportunity to let President Bush know that the 18th Congressional District is aware that there is not an agreement yet and we will stand up and have our issues addressed.

TIANANMEN SQUARE

HON. DICK SWETT

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. SWETT. Mr. Speaker, I rise today to commemorate a sad but important anniversary. Two years ago in Tiananmen Square, on a dark day for human freedom, government troops of the People's Republic of China ruthlessly and bloodily put an end to an historic movement toward democracy that had been sweeping that nation.

Government troops with armored personnel carriers and tanks entered the square and massacred hundreds of unarmed protesters. These Chinese citizens had come to Tiananmen Square to lodge their protest nonviolently. They did not call on their fellow countrymen to engage in violence. They simply asked for a chance to take part in shaping their country's destiny.

The Government did not stop its brutality there. It engaged in executions following the massacre and unleashed a wave of repression against prodemocracy activists across China and Tibet. Kangaroo courts meted out prison sentences ranging from 10 to 20 years, and these same courts continue to imprison these real freedom fighters.

On this 2-year anniversary, we cannot even be sure of the status of many of these victims of repression. The Government's cruelty is matched only by its secrecy. Take the case of Xiao Yuan, a staff member of Science and Technology Institute of the Central China Teachers' University in Wuhan. Xiao was arrested on July 12, 1989, and was accused of helping to conceal wanted dissident Wang Juntao. He was reportedly indicted in January 1990, but he still had not been tried by late 1990. His present legal status and whereabouts remain totally unknown.

Mr. Speaker, what kind of government is this that not only punishes people that work for peaceful change, but then tries to conceal its brutal repression from the rest of the world? The Chinese Government has gambled that the West will forget Tiananmen Square and the bloody events that followed. But the continuing clamor of our voices shows that we will not forget, and that we do care. We care about Xiao Yuan and his colleagues. We care about the fallen students. We care about those who cannot return. We care about those suffering today in the jail cells of China and Tibet.

Because we care, because we will not forget, we must insist on a higher standard than political expediency when making our judgment about the most favored nation status to the People's Republic of China; our policies must be consistent with our principles. We must send a clear signal to those who request our trade assistance.

Why does this administration reward China's continuing repression? Why does this administration reward a government that violates the human rights of its own people? For the sake of our own principles and values, and for the sake of the repressed victims of State-sponsored violence, we must not renew MFN for the butchers of Beijing.

Mr. Speaker, let us commit ourselves to ensuring that such tragic atrocities of Tiananmen Square are never forgotten. Let our collective memory become a clear deterrence to those leaders who make a mockery of democracy. We must be certain that those who have fallen did not die in vain. Let us never give up our struggle for the freedom of one-fifth of mankind.

THE 50TH ANNIVERSARY OF UKRAINIAN INDEPENDENCE

HON. LOUISE M. SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Ms. SLAUGHTER of New York. Mr. Speaker, as a member of the Honorary Committee of the National Observance of Ukrainian Independence, I am proud to join Ukrainian-Americans across the country in commemorating the 50th anniversary of the Act of Restoration of the Ukrainian Independent and Indivisible State on June 30.

Ukrainian independence was reborn in a difficult hour 50 years ago. That independence was short-lived, but its spirit has survived half a century of Soviet repression and it continues to buoy modern-day aspirations for freedom.

Joseph Stalin wanted Ukrainians to become Russians; but, despite his condemnation of

the Ukrainian Catholic Church and the mass imprisonment of Ukrainian nationalists, Stalin never succeeded in breaking the spirit of Ukraine and destroying its rich culture. Today, our commemoration of Ukrainian independence is as much a celebration of this rich culture and proud history as it is a prayer for the political future of Ukraine.

I am pleased to represent in Congress the more than 3,600 Ukrainian-Americans of greater Rochester, NY. Like Ukrainian-Americans across the country, this active and spirited community in upstate New York has dedicated itself to the preservation of the Ukrainian language, culture, and customs. They have also worked earnestly to provide relief to their Ukrainian brothers and sisters overseas who continue to suffer the devastation of Chernobyl and the repression of the Soviets. In Congress, I am proud to support the efforts of Ukrainian-Americans through my work with the Helsinki Commission and through my sponsorship of legislation supporting independence for Ukraine and all Soviet Republics which seek such status.

During the past 50 years the time for restored Ukrainian sovereignty has never been more right than it is today. As a new world order takes shape, friends of Ukraine here in the United States and around the globe are reminded of Ukraine's aspirations for freedom from Soviet control. We continue to pray and work for the realization of this just ideal.

IT'S TIME TO ALLOW TAIWAN TO JOIN THE GATT

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LAGOMARSINO. Mr. Speaker, less than 2 weeks ago this House engaged in lengthy debate over future American trade policy and objectives. Much focus was given to the benefits and importance of GATT. Knowing of my colleagues' interest in the subject, I would like to share the following commentary that appeared in the Los Angeles Times.

I recommend reading the last line first. The editorial addresses the question of Taiwan's application to join GATT, and states emphatically, "Keeping it out is silly." As one of the most successful trading nations in the world Taiwan has a right to sit with the other trading nations of the world and be a formal adherent to the rules of international trade established under GATT auspices.

Any issue with the mainland concerning who governs China has been avoided, as the application has been submitted under the name of "Customs Territory of Taiwan, Penghu, Kinmen and Matsu." The application does not purport to represent the mainland. The time to recognize economic realities and cast aside irrelevant political questions is now. Just as the commentary states, to do otherwise is silly.

[From the Los Angeles Times, Nov. 10, 1990]

WHY NOT TAIWAN NOW?

BEIJING SHOULD FINESSE ONE-CHINA ISSUE, DROP OPPOSITION TO GATT ENTRY

Imagine a world without Taiwan. Beijing would certainly like to, but that's hardly conceivable now. This booming island nation is among the largest and most successful traders in the world.

Even so, Taipei, still suffering from more than four decades of political isolation, faces the prospect of being shut out of the General Agreement on Tariffs and Trade—the key group of 100 nations that seeks to oversee world trade.

But economic isolation of Taipei makes no sense to anyone—except to its arch nemesis Beijing.

Beijing opposes Taiwan's application to become a member of GATT because of its "one-China" policy. How smart is that? After all, Beijing's own GATT application has been on hold since the Tian An Men Square massacre in June of 1989.

Beijing should somehow finesse the one-China issue. After all, Taiwan tried to do just that, exhibiting sensitivity to Beijing when it made its application in January, not as sovereign government but as the "Customs Territory of Taiwan, Penghu, Kinmen and Matsu," the islands off the Chinese mainland.

Where is the United States?

The State Department has expressed concerns about Taipei's bid, especially since Beijing has backed the U.S. position in the Persian Gulf and the effort for a peaceful solution in Cambodia. But the U.S. trade representative is encouraging GATT membership.

Economic isolation of Taiwan is, practically speaking, impossible. Taiwan is the 13th largest trading nation and the United States' fifth largest trading partner. Its foreign reserves of $60 billion are second only to Japan's. Taipei and Beijing both are members of the Asian Development Bank and Pacific Economic Cooperation Council. Although the two have no official ties, Beijing benefits from investment, tourism and capital from Taipei.

Taipei should be allowed to join GATT because as a member it would be obliged to follow trading rules established internationally. Keeping it out is silly.

H.R. 2535, THE PEPPER COMMISSION HEALTH CARE ACCESS AND REFORM ACT

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WAXMAN. Mr. Speaker, few problems facing this Nation are more urgent—or require more leadership—than the task of reforming our health care system. More than 33 million Americans have no protection against the costs of basic health services, and millions more are only a paycheck away from losing the coverage they have. And, for all Americans, the cost of health care is spiraling out of control. These conditions are deplorable, and require us to act, and to act quickly.

Last September, after a year of hearings and meetings, the Pepper Commission issued a landmark report setting forth a blueprint for reforms in this country's health care system. I supported the Commission's recommendations, and I am committed to advancing its objectives of making basic health care accessible to all Americans and restraining the growth in health care costs. Today I am proud to introduce comprehensive legislation to implement the Commission's recommendations. I am honored to be joining my colleague, Senator JAY ROCKEFELLER, the distinguished chairman of the Commission, who has introduced the companion bill in the Senate (S. 1177).

Mr. Speaker, I do not believe there is any disagreement here that our health care system is failing, or that things will get worse if nothing is done. The two-volume, 555-page Pepper Commission report provides ample documentation of these facts. We have tried partial solutions like expansions of Medicaid eligibility, and reform of Medicare payment methods. But, important as these incremental steps have been, our efforts have been undercut by the lack of a national policy assuring coverage for all and our failure to control health care costs.

It is clear to me that our existing public programs cannot continue to meet their obligations if current expenditure trends continue. Moreover, workers and their employers will increasingly be unable to find or afford basic health coverage, and providers will simply be overwhelmed by the cost of providing services to those who do not pay.

Unfortunately, the Bush administration seems content to sit back and watch our health care problems mount. Recently an administration official was quoted as saying that they're not neglecting this issue, they'd just rather have a good proposal than a quick one. This is, to say the least, a curious comment for an administration that's been in office for the last 2½ years, during which the problems in the health care system have worsened.

The proposal Senator ROCKEFELLER and I are sponsoring is hardly quick—it's taken months of study, consultation, and drafting. But it is good. It builds on the strengths of the existing system—and there are many—but it also corrects many major defects.

Under this bill, most Americans would continue to have insurance coverage provided through their employers, and their employers would have powerful new tools to control spiraling health insurance premiums. Private health plans would be prohibited from excluding persons from coverage or canceling existing coverage on the basis of individual health status. Insurance pricing practices in the small employer group market would also be subject to Federal standards based on community rating methods.

I want to emphasize that insurance reforms alone will not move us toward our goals. If we eliminate medical underwriting and require community rating, but we do not set Federal standards for basic benefits or require employers to provide coverage, the result—I fear—will be more uninsured persons, and higher costs for those continuing to purchase coverage.

Under my bill, Americans outside the work force would have access to health insurance through a public program which—like Medicare—would be run by the Federal Government and—unlike Medicaid—would not be tied to the welfare system. This program would serve those employees and family members whose employers choose to pay rather than offer private health insurance coverage, as well as those now eligible for Medicaid and those who are uninsured. Existing State payments for basic health services provided to

Medicaid eligibles—an estimated $14 billion—would be phased out over a 3-year period, easing the fiscal crunch that many States now find themselves in and freeing up State resources to pay for improvements in, and expansion of, nursing home and community-based care to elderly and disabled individuals.

In order to keep expenditures in both the public and private health plans manageable, the bill includes a number of cost control features recommended by the Pepper Commission, including incentives for managed care, cost-sharing for covered services, and promotion of clinical practice guidelines. I also have provided in my bill the opportunity for employers to elect the payment rates established by the public plan for basic services. These payment rates, which are based on Medicare payment rules, offer employers protection against unreasonable or unpredictable cost increases.

The bill would be financed on a pay-as-you-go basis. The public health insurance program would be paid for through employer and employee premiums and a surtax on personal and corporate income tax liability. The surtax would be set at the level necessary to generate the revenues necessary to meet the costs of the program not covered by employer and employee premiums. The public program cannot be paid for from premium income alone because of the need to subsidize low-income families and the likelihood that the plan will enroll many individuals with poor health status who cannot now obtain private coverage. The advantage of the surtax is that it is broad-based, moderately progressive, and able to keep pace with program spending over time.

This bill will cost money. There is simply no responsible way to give over 33 million uninsured Americans access to basic health care services without putting more resources into the system. I do not yet have CBO estimates, but the Pepper Commission estimated that its recommendations would, at full implementation, cost the Federal Government about $24 billion a year in 1990 dollars. This is obviously a major social policy commitment. But we have to remember that the longer we wait to solve the problem of the uninsured, the more it will cost. And the longer we wait to face up to the issue of controlling health care costs, the more our health care spending will increase. Inaction is an extremely costly option for patients, for employers, and for Federal, State, and local governments.

This bill is not perfect. It reflects the basic thrust of the Pepper Commission's solutions to the major health care access problems. In my view, it can and should be strengthened. One of its major shortcomings is the failure of the basic benefit package to include outpatient prescription drugs. Obviously, although drugs are central to the practice of modern medicine, their high cost makes it difficult for patients to comply with prescribed therapies, undermining the quality and effectiveness of the medical care they receive. Furthermore, millions of Americans with chronic diseases simply cannot afford the cost of their life-sustaining drugs. I intend to develop a proposal to add coverage for prescription drugs to the private and public plan basic benefit package. I believe it can be done without greatly increasing private premiums or public expenditures.

The Pepper Commission report also contained recommendations for addressing the long-term care crisis facing this country. I support these recommendations as well, and I intend this summer to introduce legislation implementing them. However, the bill I am introducing today speaks only to the issues of access and cost containment for basic health care services.

I am encouraged by the growing interest in these issues in Congress. In striking contrast to the administration, the Democratic leadership in both the House and the Senate is making serious efforts to forge a consensus within the party on the essential elements of a health care reform initiative. It is gratifying to those of us who served on the Pepper Commission to see many of our recommendations forming the basis for agreement among many of our colleagues.

I intend to begin holding hearings on the issue of health care reform in the Subcommittee on Health and the Environment this summer. I expect to take testimony from Members who have introduced other reform proposals so that we can better understand the differences among the bills and begin to develop a consensus on a common approach. I look forward to working with Senator ROCKEFELLER and my colleagues in the House to develop legislation that can be enacted in this Congress. What follows is a brief summary of the bill:

BRIEF SUMMARY OF THE PEPPER COMMISSION HEALTH CARE ACCESS AND REFORM ACT OF 1991

Overview: At full implementation, all Americans would have coverage for basic health services through one of the following: (1) private group health insurance offered by their employers; (2) a new, Federally-administered public health insurance program; (3) Medicare; or (4) qualified individual health insurance policies. Basic health services would include hospital, physician, diagnostic, preventive, and limited mental health services. With the exception of preventive services, these services would be subject to deductibles and coinsurance requirements, with an overall annual limit on cost-sharing of $3,000 per family. Private purchasers—employers, unions, health insurers, managed care plans—would be able to use the same payment rates for basic health services that Medicare and the new public program use. Health insurance products sold to firms with 100 or less employees would be subject to minimum standards designed to make group coverage accessible to employers. Low income persons would be eligible for subsidies that limit or eliminate cost-sharing obligations. Capital funds would be made available to expand primary care and public health delivery capacity. The bill would be financed on a pay-as-you-go basis, with funds for the public health insurance plan coming from a combination of employer and individual premiums and a surtax on personal and corporate income tax liability. These reforms would be phased in over 5 years.

Employer-based Coverage: By full implementation, all employers with 25 or more employees would be required to offer coverage for basic health care services to their full-time employees and dependents on a "play or pay" basis. Employers could meet this requirement by (1) purchasing private group health insurance (or self-insuring), or (2) paying a premium set at a fixed percent of payroll to enroll their employees and dependents in the public health insurance plan. The percent of payroll would be fixed by the Secretary of HHS to assure that employers do not have stronger incentives to enroll their employees in the public health insurance plan than to insure them privately. If the Secretary does not set the percent, the bill would set it at 7. Employers opting to purchase private group insurance coverage would be required to pay at least 80 percent of the premium; low-income employees could qualify for subsidies (paid by the public plan) for their share of premiums and deductibles.

Employers with fewer than 25 (but more than 4) employees would be subject to this "pay or play" requirement only if, by the end of the 4th year after enactment, less than a specified target percentage of their employees have no coverage for basic health services. Employers with fewer than 5 employees would be exempt from this requirement altogether; they and their employees could enroll in the public plan on an individual basis.

Public Health Insurance Plan: Beginning with the third year after enactment, all individuals who are not covered through their employers (or through an individual qualified health insurance policy) would be eligible to enroll in a public health insurance plan. The plan would offer coverage for the same package of basic health services (including parallel deductible and coinsurance requirements) that employers would be required to offer, plus early and periodic screening, diagnosis, and treatment (EPSDT) services for children. The Secretary would be directed to develop clinical practice guidelines with respect to these services to assure quality. The public plan would be administered by the Federal government using private fiscal agents to process claims. The program would have no ties to Medicaid or the welfare system. Low-income individuals enrolling in the public plan would also be eligible for premium and deductible subsidies related to income.

Medicare: The Medicare program would be left intact. Beneficiaries would be able to obtain Medigap supplemental coverage through the public health insurance plan. Coverage of preventive services would be expanded to include colorectal cancer screening. Low-income beneficiaries would be eligible for assistance with Medicare premiums, deductibles, and cost-sharing requirements under the public plan.

Medicaid: Current Medicaid beneficiaries would receive coverage for basic health services under either the new public health insurance plan or through their employers. Medicaid benefits that are not included in the basic health services package (e.g., prescription drugs, nursing home care) would continue to be offered through the current Medicaid program under existing rules. Current State spending for Medicaid coverage for the basic health services would be phased out entirely by full implementation.

Cost Containment: The basic health services package is subject to deductibles of $250 per individual, $500 per family. The public health insurance plan would pay for basic health services using Medicare payment rules. Private purchasers (health insurers, employers, labor-management funds, etc.) would, at their option, be able to use the public plan's payment rates in purchasing basic health services for their own enrollees. The bill would preempt State laws mandating the coverage of services other than those contained in the basic health services pack-

age, as well as State laws restricting the use of qualified managed care plans.

Small Group Insurance Reforms: States would be required, by the third year after enactment, to enforce minimum federal standards on all health insurance products marketed to employers. No qualified plan could deny or limit coverage of basic health services to any individual on the basis of health or risk status. The Secretary of HHS, in consultation with the Secretary of Labor, would apply minimum standards to self-insured employment-related plans. If a State failed to establish or maintain an acceptable regulatory program, the Secretary would be authorized to certify all health insurance products marketed to employers in the State. Qualified health plans offered to small employers (100 or fewer employees) would be required to offer at least a basic benefit plan, use community rating, guarantee issue and renewal of policies, and meet certain information disclosure requirements.

Financing: The costs of the public health insurance plan would be financed from three sources: (1) the premiums (set at a fixed percent of payroll) paid by those employers opting to enroll their employees in the public plan; (2) the premiums (set on a community-rated basis) paid by individuals enrolling in the public plan on a non-employment basis; and (3) the revenues from a surtax on personal and corporate income tax liability. The surtax would be set at a level necessary to generate the revenues needed to fund the public plan costs that are not covered by the employer and individual premiums. Funds from all three sources would be credited to a Public Health Insurance Trust Fund, from which benefits would be paid.

Primary Care and Public Health Delivery Capacity: The Secretary would be directed to spend, each year, between 0.5 and 1.0 percent of the amounts in the Public Health Insurance Trust Fund for construction and modernization of new public health and primary care delivery sites in underserved urban and rural areas. The Secretary would also be directed to report every five years on the impact of this bill on achieving the goals and objectives in Healthy People 2000.

Transition: The bill's requirements would be phased in over the first 5 years after enactment.

Year 1: Secretary of HHS develops regulations and guidelines; NAIC develops small group market health insurance reform standards.

Year 2: Medicaid coverage extended to all pregnant women and infants below 185 percent of poverty at 100% Federal expense. States must legislate small group market health insurance reforms [check].

Year 3: Public plan begins operation, enrollment available to all. Large employers (more than 100 employees) required to offer private coverage for basic health services to employees and families or to enroll them in public plan. State benefits mandates preempted for large employers. Carriers may not market unqualified health insurance products to employers. Private payors have option to use public plan payment rates in purchasing basic health services. Survey of coverage among employees of small firms (less than 25 but more than 4 employees) to determine percentage target for coverage of uninsured workers.

Year 4: Medium-size employers (more than 24 but less than 101 employees) required to offer private coverage for basic health services to employees and families or to enroll them in public plan. State benefits mandates preempted for medium-size employers. Small group market reforms effective. Coverage among employees of small firms re-surveyed to determine whether target for coverage of uninsured workers is met.

Year 5: All Americans required to have coverage for basic health services through (1) employer group health insurance, (2) public health insurance plan, or (3) individual qualified health insurance policy. If small employers do not meet target for coverage of uninsured workers, they are subject to same "pay or play" requirements as large and medium-size firms.

CONGRATULATIONS TO THE PITTSBURGH PENGUINS

HON. RICK SANTORUM

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. SANTORUM. Mr. Speaker, I rise today to congratulate the Pittsburgh Penguins for their recent victory in the Stanley Cup finals. As a longtime fan, I take great joy in this team's efforts and accomplishments.

One cannot fully appreciate the Penguins' accomplishments without understanding the history. Twenty-four long years ago, the Pittsburgh Penguins hockey club joined the NHL. The team, much like its namesake, was an awkward little creature that failed to fly for 23 years. Prior to that, the minor league hockey club, the Hornets, tormented hockey fans with their inept play. But last Saturday, when Mike Lang—the team's creative announcer—told fans that Elvis had just left the building, the Pens confirmed that they could soar to the pinnacle of the National Hockey League and become only the 10th franchise in modern history to win the cup.

Throughout the years the Pens have put on the ice some of the worst teams in NHL history. Oh, there were some bright spots along the way, thanks to the likes of Ken Schinkel, Syl Apps, Dave Burrows, and Rick Kehoe. But in a league in which almost everyone makes the playoffs, the Pens always found a way not to. In fact, they were in the playoffs fewer times than nearly any other team in the decade of the 1980's. The franchise hit rock bottom in 1983 when it managed to win only 18 of 80 games.

Ironically that humble season saved hockey in Pittsburgh. Following the season the Penguins drafted Mario Lemieux as the first pick in the first round of the NHL draft. With him the hopes of Pittsburgh hockey fans were immediately ignited. Mario carried the hopes that the Penguins would finally achieve the glory of Pittsburgh's Pirates and Steelers. Mario's magic made hockey nights in Pittsburgh exciting. Fans knew that on any given night they could witness Mario beat NHL goalies "like a rented mule." The fans came and cheered Lemieux, but the team never jelled.

This year the Pens hired "Badger" Bob Johnson, the first U.S. citizen to coach an NHL champion in more than 50 years. General Manager Craig Patrick, and super-scout Scotty Bowan, assembled one of the finest groups of men ever to take the ice. Proven winners such as, Paul Coffey, Bryan Trottier, Joey Mullin, Ron Francis, and Jiri Hrdina were contributors with Jaromir Jagr, Ulf Samuelson, Jim Pack, Paul Stanton along with scoring leaders "The Recchin' Ball," Mark Recchi, and "The R.T. Express," Kevin Stevens. They blended the experience of seasoned veterans with the youth and talent of spirited youngsters to bring Lord Stanley's Cup to the City of Pittsburgh.

The victory was especially sweet for those Penguins who gave so much to the team during the building years. Troy Loney, Bob Errey, Randy Hillier, Frank Pietrangelo, and Phil Bourque together endured some of the most difficult years of Penguins hockey.

This championship did not come easily. The team lost the first game in each of their four playoff series, including three home losses. In a way, this characterized the history of the Penguins; the Pens never seemed to like to do things the easy way. With exciting comebacks they finished strong, despite the injuries, the controversies, and the caliber of the competition. By winning the Cup, the Penguins showed the heart of true champions. With pride and poise they exemplified the character of the city. And in their play they returned the faith and enthusiasm of their fans.

The enthusiasm of Penguins fans is no small issue. The Igloo has sold out close to 90 percent of the time during the past several seasons. Pittsburgh fans love thier sports teams, and the players love their fans. Last year we witnessed the depth of sentiment for this team by the fans in the region. I am referring to the outpouring of concern and affection for goalie Tom Barrasso during his greatest time of need. Tom's daughter, Ashley had cancer and he was forced to leave the team for part of the season. The show of love and support for Tom and his family exemplified Pittsburgh's relationship with their sports heros. At the victory rally, when Tom said that he loves the Pittsburgh area, he joined a long list of athletes who have fallen in love with western Pennsylvania. Players from all sports and all parts of the country have chosen to make their homes in the Pittsburgh area even after having been traded to other teams.

Penguin players don't just live in Pittsburgh, they become part of Pittsburgh by getting involved with the people of our region. Even in the lean years the Penguins found a way to join with the community to help our charities. For example, the Penguins serve dinners at the annual Sixty-five Roses Dinner to raise money for cystic fibrosis. Tom Barrasso hosts golf outings for the Ashley Barrasso Foundation for cancer research. The Penguins also raise money for the Arthrities Foundation and the Pittsburgh Cancer Institute, not to mention their work for amateur hockey in the region. Acts like this have bonded team and community in the most special and enlightening of ways.

When the Penguins returned to Pittsburgh after the championship series, an estimated 30,000 fans were on hand to welcome them home. This number is impressive unto itself, but the team did not arrive in Pittsburgh until 3:30 in the morning. Receiving Pittsburgh sports champions at Greater Pitt Airport has become somewhat of a tradition in western Pennsylvania. The fans were there for the Pirates with their recent success and Steelers in their glory years, but they had never gathered in numbers approaching this.

Three days after the final victory, the city held a rally at Point State Park to honor the champs. The rally was at noon, but the crowd started to gather at daybreak. An estimated 80,000 people jammed into the park, standing with 85 degree heat and 80 percent humidity. At the airport and at the park there was what one commentator called, "an old-fashioned love-in." There were no riots, no looting, no stampeding crowds, just positive enthusiasm and honest respect for the hard work which brings success.

Now is the time to savor the victory for the players, the owners, the fans and the entire Pittsburgh area. For it will be only 5 months until Elvis returns to the building to the music of Jaws, the cries of "Ulf! Ulf! Ulf!" and the raising of the Stanley Cup banner to the ceiling of the Igloo. The glory of this season will fade into a pleasant memory, but the spirit that is Pittsburgh will continue to make this area truly some place special for years to come.

OUR HOPE IS "ACTING AMERICAN"

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. McEWEN. Mr. Speaker, I rise to bring to the attention of my colleagues this column from the Cincinnati Enquirer by Tony Lang. Now that Capitol Hill is focused on civil rights, Tony Lang reminds us of the proud American tradition of equal opportunity based on the individual rights guaranteed by the Constitution. He reminds us that groups do not have rights under the Constitution, and that all of us are guaranteed rights not because of our color, but because we are Americans.

I commend it to my colleagues.

At this point, please enter in the CONGRESSIONAL RECORD the attached column: "Our Hope is 'Acting American'".

OUR HOPE IS "ACTING AMERICAN"

(By Tony Lang)

God help us if the proposed 1991 Civil Rights Act ends up as just some legalistic language game, with the issues of de facto hiring quotas still left in doubt.

The entire rights movement has gotten so muddied lately, we got blacks advocating "separate but equal" schools and whites wondering: What ever happened to good old-fashioned civil-rights ideals such as "integration" and "equal opportunity"?

My own intellectual anchor in all this controversy over quotas, affirmative action and multiculturalism is that the U.S. Constitution guarantees individual rights—not group rights. But you should know pressure groups and ideologues attack even this ideal on the grounds that American individualism ultimately benefits "individuals" belonging to the dominant power group—meaning "white males."

SEPARATIST ILLUSION

Yes the separatist movement is largely about power and control, which is largely illusory since real power comes from such mundane things as schooling, competence, hard work and jobs. That's why the 1991 Civil Rights Act *could* be so important, but all the legal hiring guarantees in the world aren't going to much good if 40% to 60% of young black males keep dropping out of school first or mocking their more industrious classmates for "acting white."

We are all fortunate that industrious blacks like Gen. Colin Powell, Dr. William Cosby or the Rev. Martin Luther King were not unduly concerned about "acting white."

We need to get back to the unifying ideal of "acting American"—*e pluribus unum* and all that.

Much more vocal leadership is needed both from black spokesmen and from the White House on this *American* issue. The huge pool of unemployed black males is everybody's problem. It is first and foremost the problem of the individual unemployed black male. If he gets it implanted firmly in his head that studying hard in school and achieving is "acting white," he is doomed and no Civil Rights Act is going to save him.

Group hiring quotas are too easy a straw man to knock down in a country founded on individual rights. Okay, so group hiring quotas with rigidly set numbers based on percentages in the population seem un-American. The real question is: What are we going to do about all these unemployed or unemployable young men?

Somehow, we must get them trained and hired. Black leaders say: You cannot leave equal-opportunity hiring simply to the good faith of employers. You cannot count on them to act American and do the right thing. Approximate affirmative-action goals must be spelled out by law.

Employers with an obvious racial imbalance ought to be expressly seeking qualified blacks to hire. But if unable to find or attract any, employers certainly should not be leaving those positions empty and telling qualified whites they need not apply, as I'm told is occurring these days in some university departments.

Almost as sad as young black males sneering at school achievement as "acting white" is the disgrace of industrious black graduates being turned away from jobs or promotions after they have played the game the way they were told, studied hard, got a good education and asked nothing more than an equal opportunity to get hired. Studies suggest discrimination against black hires is still a significant problem in the U.S. workplace.

It is no consolation to a qualified unemployed black that other educated blacks seem to write their own ticket in some corporations and may even receive preferential treatment over whites in assignments or promotion. It is no consolation that educated Asians or Hispanics or women or even fat white males may also suffer hiring discrimination. It is no consolation that certain immigrants from much more impoverished circumstances may have less trouble getting hired or achieving.

AN EQUAL SHOT

It still comes down to that single qualified black individual who ought to have an equal shot at getting hired. It is a case-by-case question for the employer: Am I acting American? Hiring fairly? Without discrimination against skin color. Employers seldom hire groups. They hire individuals. Which is one more reason constitutionally protected individual rights—not group rights—are still every American's best hope.

A TRIBUTE TO ASHER HOWARD

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. DUNCAN. Mr. Speaker, Asher Howard, who served for 19 years as the county judge of Blount County, TN, was recently honored for his years of public service.

May 20 was declared as Asher Howard Day in Blount County. No one I can think of would be more deserving of such a tribute.

Judge Howard served on the Blount County Court—now commission—and served as the county executive.

He ran the county government like a business and ran it economically and efficiently.

But he also ran it with his heart and showed great compassion for his fellow man.

He knew that it is neither kind nor compassionate for a government to spend money it does not have or take even one penny more from the people than is absolutely necessary.

We need more men like Asher Howard in this Nation today.

He was one of my father's closest friends, and he has been a very good friend to me, too.

I hope that he enjoys his retirement years, and I want to wish him the best in the future.

When Judge Howard was honored for his years of community service, the Maryville-Alcoa Daily Times ran a news story and editorial which I would like to call to the attention of my colleagues.

MAKING A DIFFERENCE IN THE COUNTY

(By Adele McKenzie)

Few people have ever made the impact on Blount County that one transplanted Kentuckian, Asher Howard, made during his 26 years of public service.

"Judge Howard" as most think of him today, came to Blount County to work at the Aluminum Company of America and Blount County has been home ever since.

Under his guidance, Howard left office as Blount County judge (equivalent to current county executive office) with the county showing a net worth of $350 million and a bonded indebtedness of only $2.5 million. To top that, he also left the legacy of $7.25 million in the fund balance.

While county judge, Howard would proclaim, "Blount Countians get as much for their tax dollars as any taxpayers in the state."

He also said, "Blount County is run on a business-like basis, not on the basis of partisan politics."

Howard still talks about how members of the court, now called county commission, both Republican and Democrats, always voted what each thought was best for the county as a whole. "We had top quality on the county court and it showed in what we could do," he says.

"Blount County voters would not tolerate political blocs back then, they demanded a lot from their public officials, and they got it," says Howard.

It was under Howard's administration that the sheriff department moved to their merit system and began to retain trained officers rather than wholesale turnover of officers every two years, which was then the term of the sheriff.

Howard also brought the county into its computer operation. This followed five years

after he and others thought a $17,000 bookkeeping machine would answer most of the problems. When the machine became overloaded, Howard was ready to "go whole hog and get the best," as he puts it. He also introduced the county to the concept of a budget director.

Under Howard's leadership, the county's 1907 courthouse grew in size with one completed addition in 1957 and a second annex dedicated in 1979. The original courthouse also had extensive renovation as a result of the second annex.

Especially fitting was the planning for consolidation of the county's high schools that resulted in Everertt, Porter, Townsend and Walland being served by Heritage High School, and Lanier and Friendsville closing as high schools with the opening of William Blount.

Howard had taught math at Walland High School where he started the football program after World War II. Fred Sentell wanted him coaching at Townsend High School and Howard responded.

Concern over the schools was the catalyst that brought Howard into politics. He was riding to UT with Mack Davis, John Webb and Ralph Greaser and frequently the conversation turned to the deplorable condition of the school buildings.

Davis urged Howard, who had served in the Marine Corps, to run for county court. Davis went so far as to get the late Sam H. Dunn, who was an attorney, to prepare the qualifying petition and then secured the needed signatures of qualified voters to launch Howard's political career. He was elected a member of the Blount County Quarterly Court in 1948 and served until 1955 when he became Blount County Judge, a position he filled until 1974.

When Howard was a member of the county court and then county judge, there were 41 members of the court.

Land for Heritage was purchased and the school, as yet unnamed, was being designed when Howard left office by his own choice, deciding that he would not run again, a choice that his wife, Mildred "Lum" was especially happy when it was made.

Mrs. Howard, a Townsend native, was the daughter of Bruce Myers. Today, the Howards live next door to the Myers' homeplace. Growing up in a "sawmill town" Myers had taken his family to Virginia where he operated a sawmill and then to Path Fork, Ky., where Mildred and Asher met.

During Howard's administration, the size of the county court was reduced to 21, the size of the present county legislative body or county commission. "I petitioned for a body of nine, but I got 21" he says.

Howard had the vision that is today the Blount Industrial Development program. He secured a grant that enabled purchase of the Henry Lane Farm, which is now the major part of the Blount County Industrial Park.

"This is probably the best thing that I accomplished as county judge," Howard admits.

"I feel I left the county with positive change and that I gave the county court and the officeholders leadership," Howard says.

Howard made it a habit to make a daily visit in each office every day. This was his way of knowing what was going on and being a part of the county in all ways possible. It also enabled him to have a handle on the budget preparation.

Howard admits to some disappointments from his time in office. He tried desperately to make the county the first in the state with a countywide sewer system.

Another dream was to see the county with garbage pickup service. He spent a great deal of time working on both and later conceded that without metropolitan-type government, the sewer system would be virtually impossible. He initiated a plan to have a dumpster in most communities where residents would bring their garbage. This has now been replaced by private haulers in the county but many continue to discard garbage with little thought of others and the environment.

Today, he still regrets that he was unable to get zoning and planning in place.

BLOUNT HONORS ASHER HOWARD FOR 26 YEARS IN COUNTY SERVICE

Today is Asher Howard Day in Blount County. Many of his friends will gather at noon at the Airport Hilton to honor this Townsend resident who served 26 years as a member of the county court (commission) and/or as county judge (executive).

Retired since 1974, he lives on Asher Howard Road, just a block off Lamar Alexander Parkway in Townsend. He hasn't been idle during that time but has been active in organizations and has kept regularly in touch with his many friends throughout the county. In the last couple of years he has been bothered with leukemia, a form of cancer which stops the bone marrow from producing blood cells.

Asher will be 79 on July 23 but he gets around just the same, meeting regularly with a group of friends for breakfast and attending Alcoa Kiwanis Club's weekly meeting.

Born and reared in Pathfork, Ky., in Harlan County, Asher met his wife Mildred, known to her many friends as "Lum," when her family moved temporarily from Townsend, a sawmill center, to the farm on which Asher was raised in Kentucky to operate a sawmill. A number of Townsend residents were employed at the Kentucky operation. They were married June 26, 1936.

Asher completed two years at Union College at Barbourville, Ky., got a certificate and began teaching in Kentucky. In 1941 Asher was employed in ALCOA's high tension yard. He worked and went to school at U-T at a time when the company paid the tuition.

In 1946 he heeded the call of Blount County Schools Superintendent L. M. Ross to teach at Walland and revive a football program which had not existed since about 1930. He did that but his friend J. Fred Sentell, Townsend principal, talked him into taking over as football coach at Townsend in 1947.

Perhaps his best team included a passing attack with Dale Carnes throwing and Carl "Skeet" Myers catching. That team lost to a strong Everett team by only one point at Everett and caught the imagination of a lot of local fans.

Amos and Andy Trotter, who had the Buick dealership here, lured Asher into the automobile sales field. Asher sold four cars on one Saturday and was hooked on that profession for a while.

The former Marine was elected to the county court (commission) from Townsend in 1948 and served until 1955 when he was elected judge (executive). During the last five years on the court, he served as judge pro-tem. In the fall of 1954, Blount County Court elected Asher Howard, a Republican, judge to succeed the late George D. Roberts who had died while in office. However, there was a difference of opinion over who could name the successor to a judge and Gov. Frank Clement named Democrat Bill Register to the post. A court case placed Howard in office June 1, 1955, and he later was reelected until he decided to retire.

A 32nd Degree Mason and Shriner, he served on the Townsend Chamber board, and the Smoky Mountain Passion Play board, was a member of the Boy Scout Council, served on the boards of Chilhowee Nursing Home, Tennessee Air Pollution Board, was chairman of the State Community Development Board, and President of the Tennessee County Judges Association.

Here are some of the other things which occurred under his leadership:

The county began paying deputies who previously depended on fees for their services.

Abolished the three-member county highway commission and replaced it with a one-man superintendent.

Bought many rights-of-way in order to widen county roads.

Established and maintained a good sized unappropriated balance in the budget, enabling the county to have a better cash flow, minimize its bonded indebtedness, and frequently build county buildings with taxes over a two-year period.

The first county planning commission was established, abolished because of public opposition, and then reestablished.

Insisted that what is now U.S. 321 from Maryville southwest toward Lenoir City had a four-lane right-of-way, delaying the project until the state approved the wider right-of-way. (Loudon County and area chambers of commerce are trying to get the road widened to four lanes from the county line to the Fort Loudoun Bridge.)

Began Blount's strong efforts at industrial development.

About 1970, Asher tried to "sell" the state on building a major road along the approximate route followed by the Lamar Alexander Parkway from Circle Drive on West Broadway to the Maryville College entrance on Walland Highway. Asher got the state commissioner of transportation here and walked the route with him. Later they flew the route.

Asher's dedication to public service and his interest in the welfare of the entire county have been outstanding. It is a very appropriate time for the county to pay a long overdue tribute. Have a great day Asher!

PENNSYLVANIA STUDENTS CONDUCT VOTER REGISTRATION DRIVES

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GEKAS. Mr. Speaker, I rise today to pay tribute to the 25 students in Mr. Robert McCloskey's ninth grade civics class at Central Dauphin East Junior High School in suburban Harrisburg, PA. As part of their class project, these students went out to their neighborhoods and were determined to get people to register to vote.

Through their determined efforts, these students were able to sign up 71 people to vote. In past years, Mr. McCloskey's classes have registered more than 2,000 area citizens to vote. I am so glad to see these energetic young people learn first-hand about the procedures that allow Americans to exercise the all-important right to vote.

It is my hope that this useful exercise will foster greater interest in how government works among our young people, and that they will take an active role in civic affairs in the years ahead.

Mr. Speaker, I ask all of my colleagues to join me in paying tribute to Mr. McCloskey and his fine students for their efforts in promoting greater public awareness and involvement in our Nation's democratic process.

THANK YOU WEST VIRGINIA BUSINESSES FOR THANKING OUR TROOPS

HON. BOB WISE

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WISE. Mr. Speaker, I rise today to offer my sincere thanks to the American men and women of Operations Desert Shield and Desert Storm. But I know I am certainly not alone in my gratitude.

We all have heard hundreds of speeches in this Chamber and across the country expressing our country's gratitude and support for the job our troops did during the victory in the Persian Gulf.

But today, I would like to add an additional expression of appreciation—this one to more than 400 business owners and operators throughout West Virginia who have been taking part in what is known as Desert Storm Discount. This program provided a way for the State's business community to say "thank-you" to the men, women, and families of Operation Desert Storm. Today I wish to say "thank-you" to the businesses which participated.

A few months ago I asked the West Virginia National Guard, the West Virginia Chamber of Commerce, the local chapter of the Employers Supported Guard and Reserve, and the West Virginia Retailers Association to join me in organizing the Desert Storm Discount. The response was enthusiastic and contagious.

Our goal was to get businesses to offer discounts on goods and services to people who were activated for Operation Desert Shield and Operation Desert Storm and their dependents. My office had been receiving dozens of calls from people who faced financial uncertainty because their husbands, wives, fathers, or mothers had been activated as part of our Nation's response to the Persian Gulf crisis.

Once the war was won and the troops began coming home, our hope was that businesses would make it easier for those families to make the purchases which they had to put off during the war, to get loan from a bank, and to enjoy a meal, an evening out, or a getaway trip with a loved one who had been gone.

Retailers, restaurants, bowling alleys, supermarkets, pharmacies, dry cleaners, travel agencies, barber and beauty shops, banks, car dealerships and service shops, a whitewater rafting outlet, a resort hotel, and most every other kind of business participated.

Each of them agreed to offer a discount of between 5 and 30 percent off goods and services for a 2-week period which ended last Saturday. But even though the designated period is officially over, some businesses are continuing to offer discounts as their way of saying "thank you" to the troops.

So today I say " thank you" to them—all 406 of them. They made the Desert Storm Discount program a success and provided an additional "welcome home" for the men and women who answered their country's call. So Mr. Speaker, I would like to call the attention of the Congress to the businesses which made the Desert Storm Discount program a success.

In Berkeley County:
Berkeley Carpet and Ceramic—Inwood.
First Look Photo—Martinsburg.
J.C. Penney's—Martinsburg.
People's National Bank—Martinsburg (3 locations).
Ponderosa—Martinsburg.
Rolane Factories Store—Martinsburg.
Shoney's—Martinsburg.
Uniglobe Preferred Travel—Martinsburg.
In Cabell County:
American Telephone—Huntington.
Amsbury's Factory Outlet—Huntington.
Bazaar—Huntington.
Beldens Jewelers—Barboursville.
C.J. Reuschlein—Huntington.
Chilli Willi's—Huntington.
Foard Harwood Shoes—Barboursville.
Foard Harwood Shoes—Huntington.
Foodland—Barboursville.
Foodland—Chesapeake, OH.
Foodland—Huntington (4 locations).
Foodland—Lesage.
Foodland—Milton.
Foodland—South Point, OH.
J.C. Penney's—Barboursville.
K-Mart—Chesapeake, OH.
Master's Tuxedo—Barboursville (2 locations).
Master's Tuxedo—Huntington.
Mattress Warehouse—Barboursville.
One Hour Martinizing—Huntington.
Rax Roast Beef—Huntington (2 locations).
Shaw's Jewelers—Barboursville.
Shoney's—Huntington (3 locations).
Stationers—Huntington.
Stone and Thomas—(Barboursville).
Stone and Thomas—(Huntington).
Stride Rite Bootery—Barboursville.
In Fayette County:
Dr. Carl Hansen—Fayetteville.
J.C. Penney's—Mt. Hope.
Lilly's Crown Jewelers—Mt. Hope.
Mountain River Tours—Hico.
Rax Roast Beef—Oak Hill.
In Greenbrier County:
Shoney's—Lewisburg.
Stone and Thomas—Lewisburg.
In Hancock County:
Rax Roast Beef—Weirton.
Stone and Thomas—Weirton.
United National Bank—Weirton.
In Harrison County:
Arby's—Bridgeport.
Betsy's Inc./DBA Stride Rite Shoes—Clarksburg.
Bob Evan's Restaurant—Bridgeport.
Camelot Music—Bridgeport.
Chaplan Jewelers—Clarksburg.
Chik-fil-A—Bridgeport.
Corn Dog—Bridgeport.
Disc Jockey—Bridgeport.
Foto 1—Bridgeport.
Head Hunters—Bridgeport.
Health Connections—Bridgeport.
Holiday Hair Fashions—Bridgeport.
J.C. Penney—Bridgeport.
J.D. Bentley—Bridgeport.
Jack's Friendly Furniture—Clarksburg.
Kids Only—Clarksburg.
Monfried Optical—Bridgeport.
Mrs. Powell's Cinnamon Rolls—Bridgeport.
Peanut Shack—Bridgeport.
Pearle Vision—Bridgeport.
Ponderosa—Bridgeport.
Rax Roast Beef—Bridgeport.
Sara Regina's Bridal & Floral—Clarksburg.
Shoney's—Bridgeport.
Sterling Optical—Bridgeport.
Stone and Thomas—Bridgeport.
Stone and Thomas—Clarksburg.
Video World—Clarksburg.
Wendy's—Bridgeport.
In Jackson County:
Rax Roast Beef—Ripley.
Shoney's—Ripley.
Tetrick Showcase Jewelry—Ravenswood.
Tetrick Showcase Jewelery—Ripley.
In Jefferson County:
J.C. Penney's—Charles Town.
Stuck & Alger Pharmacy, Inc.—Charles Town.
In Kanawha County:
Allen Lucas Nissan—Charleston.
Ames—Charleston.
Ashmore Optical—Charleston.
Bazaar—Charleston.
Boll Furniture—Charleston.
Boulevard Recreation Center—Charleston.
Candy Factory—Charleston.
CBM Computer Center—Charleston.
Cellular One—Charleston.
Charleston Department Store—Charleston.
Charleston Deli—Charleston.
Charleston School of Beauty—Charleston.
Collector's Choice—Charleston.
Contemporary Galleries—Charleston.
Currey's Bike Shop—Nitro.
Deb Shops (Kanawha Mall)—Charleston.
Delfine's—Charleston.
Disc Jockey—Charleston.
Dudley's—Charleston.
Elegant Impressions—Charleston.
Galperin Jewelry—Charleston.
Gene's Fine Jewelry—Charleston.
Goldfarb Electric Supply Company—Charleston.
Grayfields—Charleston.
Herbert Music Company—Charleston.
Intimate Moments—Charleston.
J.C. Penney's—Charleston.
Jackie Z's—Charleston.
Joe Holland Chevrolet—Charleston.
Jones Business Machines—Charleston.
Kelly's Mens Shop—Charleston.
Kentucky Fried Chicken—Charleston.
Kip's Discount—Charleston.
Lee Eyewear (Quincy Mall)—Belle.
Life Stride Shoes—Charleston.
Lighter Than Air—Charleston.
Lilly's Keepsake Diamond Center (Kanawha Mall)—Charleston.
Lilly's Keepsake Diamond Center (Town Center)—Charleston.
Lowe's (Quincy Mall)—Belle.
Lowe's—Charleston.
Mark Christopher Carpets—Charleston.
Master's Tuxedo—Charleston (2 locations).
Master's Tuxedo—Nitro.
Mattress Warehouse—Kanawha City.
Mattress Warehouse—South Charleston.
Medical Center Pharmacy—Charleston.
Merle Norman—Charleston.
Merrill Photo Supply—Charleston.
Minute Man Press—Charleston.
Nature's Furniture, Inc.—Charleston.
One Valley Bank—Charleston.
Payless Shoes (Kanawha Mall)—Charleston.
Photo One—Charleston.
Pied Piper—Charleston.
Property Protection Company—Charleston.
Rax Roast Beef—Charleston.

Rax Roast Beef—South Charleston.
Regis—Charleston.
Sears and Roebuck—Charleston.
Sherwin Williams—Charleston
Shoney's—Charleston.
Shoney's—Cross Lanes.
Shoney's—Dunbar.
Shoney's—Kanawha City.
Shoney's—South Charleston.
Shoney's—St. Albans.
Silk 'n Memories—Charleston.
Skeffington's—Charleston.
Smorgasbord—Charleston.
Sodaro's Electronics—Charleston.
Sport Mart—Charleston.
Sports Card Connection—Charleston.
Stamper's Jewelers—Charleston.
Stateside Imports (Kanawha Mall)—Charleston.
Stone and Thomas—Charleston (2 location).
SVI Pharmacy—Charleston.
The Computer Doctor—Charleston.
Tolley's Bible Bookstore—Charleston.
Value City Furniture—St. Albans.
Venture Lanes—St. Albans.
Vogue Dress Shop—Charleston.
Waldenbooks (Kanawha Mall)—Charleston.
In Lewis County:
J.C. Penney's—Weston.
Rax Roast Beef—Weston.
TCI of West Virginia—Weston.
79 Speedway—Weston.
In Logan County:
Ira A. Watson, Company (Watson's)—Logan.
Lilly's Crown Jewelers—Logan.
Shoney's—Logan.
TCI of West Virginia—Logan.
In Marion County:
Crowley's Hallmark—Fairmont.
Friendly Furniture—Fairmont.
Hot Sam Pretzels—Fairmont.
Leed's Candies—Fairmont.
Rax Roast Beef—Fairmont.
Ray's Jewelers Inc.—Fairmont.
Rider Pharmacy—Fairmont.
Shoney's—Fairmont.
Stone and Thomas—Fairmont.
Zasloff's Jewelry Palace—Fairmont.
In Marshall County:
Allen's Bootery—Moundsville.
Blake's Kiddie Korral and Attic—Moundsville.
Budget Interiors—Moundsville.
Dr. W.M. Isminger—Moundsville.
Fay's Jewelry—Moundsville.
Grand Vue Park—Moundsville.
Josabeth, Inc.—Moundsville.
Joseph's Trophy Case—McMechen.
Lightners Plumbing and Heating—Moundsville.
Rax Roast Beef—Moundsville.
Rich's Quick Print—Moundsville.
Tire America—Moundsville.
United National Bank—Moundsville.
Weusbauer's Flowers—Moundsville.
Young's Cafeteria—Glendale.
In Mason County:
Fruth Pharmacy—Pt. Pleasant.
Shoney's—Pt. Pleasant.
In Mercer County:
Blacor Steel—Bluefield.
Bluefield College Bookstore—Bluefield.
Cole Motor Company—Bluefield.
Colonial Jewelers—Bluefield.
Dr. Assaad Mounzer, MD—Bluefield.
First Community Bank—Bluefield.
Flower's Baking Company—Bluefield.
H & M Shoe Stores—Bluefield.
H. Lynden Graham, CPA—Bluefield.
J.C. Penney's—Bluefield.
Kammer Furniture/Kammer Security—Bluefield.
Larry Douglas—Bluefield.
Lilly's Crown Jewelers—Bluefield.
Magic Mobile Homes—Bluefield.
Mercer Health Center—Bluefield.
Mountaineer Bowling Lanes—Bluefield.
Ms. and His—Bluefield.
Mullins Travel—Bluefield.
New Graham Pharmacy—Bluefield.
One Valley Bank—Princeton.
Physical and Occupational Therapy Services, Inc.—Bluefield.
Royal Jewelers—Bluefield.
Shoney's—Bluefield.
Shoney's—Princeton.
Southern Office Supply—Bluefield.
Southside Professional Pharmacy—Bluefield.
Stone and Thomas—Bluefield.
The Wellness Center—Bluefield.
Tomchin Furniture—Bluefield.
Tomchin Furniture—Princeton.
Willis Chiropractic—Bluefield.
In Mingo County:
J.C. Penney's—Williamson.
In Monongalia County:
Boston Beanery—Morgantown (2 locations).
Camelot Music—Morgantown.
Dr. Dominic Raymond, Dentist—Morgantown.
Eyecare Center—Morgantown.
Elderbiermann—Morgantown.
Freshen's Yogurt—Morgantown.
Gordon Jewelers—Morgantown.
Harold Weiss Jewelers—Morgantown.
Hero Hut—Morgantown.
Hot Stuff—Morgantown.
I Can't Believe It's Yogurt—Morgantown.
J.C. Penney's—Morgantown.
Kay Jewelers—Morgantown.
Kobe of Japan—Morgantown.
Last Word—Morgantown.
Lilly's Crown Jewelers—Morgantown.
Living Quarters—Morgantown.
Monfried Optical—Morgantown.
Morgantown Phone Center—Morgantown.
Musselman Jewelers—Morgantown.
One Valley Bank—Morgantown.
Payless Shoes—Morgantown.
Photo Express—Morgantown.
Rax Roast Beef—Morgantown.
Regis Hair Salon—Morgantown.
Repairs Plus—Morgantown.
Rugby's Biestro—Morgantown.
Sbarro's—Morgantown.
Sears and Roebuck—Morgantown.
Shoney's—Morgantown.
Sport Mart—Morgantown.
Stone and Thomas—Morgantown.
Things Remembered—Morgantown.
Universal Jewelry—Morgantown.
Victory Ford—Morgantown.
Video World—Morgantown.
Wendy's—Morgantown.
In Nicholas County:
Nicholas Printing, Inc.—Summersville.
Rax Roast Beef—Summersville.
In Ohio County:
Capital Music Hall—Wheeling.
Crone's—Wheeling.
Doc William's Country Store—Wheeling.
Posin's Jewelers—Wheeling.
Rax Roast Beef—Wheeling.
Rich's Quick Print—Wheeling.
Stone and Thomas—Wheeling.
Stone's Terrace Shop—Wheeling.
TCI of West Virginia—Wheeling.
Tire America—Wheeling.
In Putnam County:
19th Hole Tavern—Poca.
Country Expressions—Hurricane.
Master's Tuxedo—Scott's Depot.
Mattress Warehouse—Winfield.
McKerr's Fashions—Hurricane.
Rax Roast Beef—Hurricane.
Shoney's—Winfield.
In Raleigh County:
Beckley Welding Supply—Beckley.
Lilly's Crown Jewelers—Beckley (2 locations).
Shoney's—Beckley.
Stone and Thomas—Beckley.
In Randolph County:
Shoney's—Elkins.
Stone and Thomas—Elkins.
In Summers County:
New River Scenic Whitewater Tours—Hinton.
In Tucker County:
Mountaintop Realty (Canaan Valley)—Davis.
Timberline Resort—Davis.
In Upshur County:
Stone and Thomas—Buchannon.
In Wetzel County:
AAA Mobile Homes, Inc.—New Martinsville.
Adena Industries—New Martinsville.
AHA Mobile Homes—New Martinsville.
Barth's Florist—New Martinsville.
Bee Electric—New Martinsville.
Lilly's Crown Jewelers—New Martinsville.
Mason's Clothiers—New Martinsville.
Neville Olds Cadillac Buick Jeep Eagle—New Martinsville.
Rax Roast Beef—New Martinsville.
TCI of West Virginia—New Martinsville.
In Wood County:
J.C. Penney's—Parkersburg.
Master's Tuxedo—Parkersburg.
Mattress Warehouse—Marietta, OH.
Mattress Warehouse—Parkersburg.
Model Carpet—Vienna.
Obermeyer Florist—Parkersburg.
Pat's Upholstery and Factory Outlet—Parkersburg.
Rax Roast Beef—Parkersburg (2 locations).
Shoney's—Parkersburg (2 locations).
Sid's Furniture Mart—Parkersburg.
Stables Motor Lodge—Parkersburg.
Stone and Thomas—Vienna.
TCI of West Virginia—Parkersburg.
Wharton Cadillac Olds—Parkersburg.
YMCA—Parkersburg.
In Wyoming County:
Tomchin Furniture—Mullins.
Statewide chains:
Kentucky Fried Chicken—Statewide (34 locations).
Lowes—Statewide (21 locations).
K-Mart—Statewide corporate owned—(17 locations).

IN HONOR OF CALVIN H. WHEATLEY

HON. RON de LUGO

OF VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. DE LUGO. Mr. Speaker, I rise to honor a most distinguished Virgin Islander, Calvin H. Wheatley. I can say without fear of contradiction that there is no man with more experience in the operations of the executive branch of the Virgin Islands Government than Calvin. He has worked alongside eight Virgin Island Governors, both appointed and elected, in capacities up to executive assistant. His sense of continuity, his understanding of government operations, his ability to get the job done, is unequaled. It is precisely because of these qualities that Calvin is called back into government service again and again, to serve with

continuing excellence the people of his native Virgin Islands.

Through the years, Calvin has also been closely involved in the banking industry. As an officer for Citibank, he left to manage the People's Bank, an effort to bring banking and banking services to a broader cross-section of the Virgin Islands community. He eventually rose to the position of president before returning to Citibank to manage its offices on St. Croix and St. Thomas.

Calvin has been extremely active in community service. As district chairman, president, and a member of the executive board of the Boy Scouts of America in the Virgin Islands, he has been essential to the development of the strong foundation which makes it the excellent organization it is today. He has also served on the Virgin Islands board of directors of the Girl Scouts of America, on the board of the United Way of St. Thomas-St. John, as an officer of the St. Thomas-St. John Chamber of Commerce, on the board of the Police Athletic League, and as chairman of the board of the Virgin Islands Government Employees Retirement System.

Calvin has been honored many times for his service to the people of the Virgin Islands, receiving the Boy Scouts' Distinguished Citizen Award and Silver Beaver Award, the American Legion Award of Merit, the Wilbur LaMotta Community Service Award, the Business and Professional Womens' Club Community Service Award, and the 1984 St. Thomas Rotary Man of the Year Award. He is also an inductee in the Virgin Islands Sports Hall of Fame.

On June 10, 1991, Calvin will be installed as the new civilian aide to the Secretary of the Army for the Virgin Islands. In this capacity, he will serve as the military's liaison to the territory, maintaining the strong link forged many years ago between Virgin Islands civilians and U.S. military forces.

Mr. Speaker, Calvin Wheatley is an outstanding Virgin Islander, a gentleman of the highest regard, a man who has been an important player in the historic events that shaped the Virgin Islands for the past almost 50 years.

No one deserves more than Calvin recognition for his many and continuing contributions to the Virgin Islands and her people.

TRIBUTE TO JIMMY HERMAN

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. MILLER of California. Mr. Speaker, I rise to pay tribute to one of the outstanding leaders of the labor movement in this country and a very good personal friend of mine, Jimmy Herman.

Jimmy is retiring this year after nearly 40 years in service with the International Longshoremen's and Warehousemen's Union, one of the great labor organizations of our Nation and a leading force for progressive labor policies on the west coast. No one played a greater role in shaping the courageous agenda of that organization than Jimmy Herman.

Born in Newark, NJ, Jimmy Herman joined his first trade union at the age of 17, the National Union of Marine Cooks and Stewards.

After serving in a number of positions, Jimmy moved to San Francisco where his negotiating skills made him an outstanding union representative. His roles as a west coast union leader included presidency of ILWU Local 34, service as a member of the Pacific Coast longshore negotiating committee and ILWU representative to many trade union conferences.

Since 1977, Jimmy has served as the president of the ILWU and is generally recognized as one of the leading voices in America for a strong, honest union movement, one that is committed not only to its members' well-being but to international peace and justice. Jimmy's work as president reaffirms the highest tenets of the union movement and the spirit of labor brotherhood, and we have all benefited by his wise leadership over the years.

I have worked with Jimmy and the ILWU on many occasions, and I would like to mention just two. He was a leading force in support of the Longshore and Harbor Workers' Compensation Amendments of 1984, which I helped write as chairman of the Subcommittee on Labor Standards. We made historic strides forward in the area of workers' compensation in that law, especially in the area of aiding those injured due to exposure to asbestos and other occupationally related diseases and disabilities.

Jimmy also was a major force within the antiwar movement during the many struggles of the 1980's concerning Central America and the shortsighted and harmful role this Nation played in Nicaragua and El Salvador. Jimmy not only challenged the predominant political views in the Nation but also fought many in the labor movement who did not share his wise view of these destructive policies. And in the end, I think Jimmy's analysis was borne out by the facts and by history.

Jimmy has also donated substantial amounts of his free time and his energy to a number of charitable community organizations, serving on the board of directors for both St. Anthony's Kitchen and the outstanding Delancey Street Foundation's rehabilitation program.

Jimmy Herman's numerous contributions to labor organizations, to peace, to international understanding and cooperation and to his community mark his active life as one that has benefited men and women not only in San Francisco and the west coast but throughout the world.

On the occasion of his retirement, I am proud to join my colleagues in honoring this great American who, I am delighted to say, has also been a close friend and colleague for many years. I wish him well, many years of happiness and continued productivity.

THE PRESIDENTIAL ELECTION CAMPAIGN FUND PROTECTION ACT

HON. AL SWIFT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. SWIFT. Mr. Speaker, I am introducing today the Presidential Election Campaign Fund Protection Act, a bill to correct certain technical oversights in the original public funding legislation and make the process more efficient for both Presidential candidates and the Federal Election Commission.

The Presidential election funding system was established by Congress in the early 1970's as one of the key reforms to increase public confidence in Government following the incredibly corrupt fund-raising practices that were uncovered in the Watergate scandal.

The public, and Congress, were outraged to discover that millions of unregulated dollars not subject to disclosure requirements were poured into the 1972 election, often with strings attached—like the appointment of an ambassadorship or other high Government office. Almost every conceivable form of corruption resulting from the mix of private money with public policy was exposed during the Watergate revelations.

The immediate result of this scandal was broad campaign reform legislation, with the Presidential Election Campaign Fund being an integral part of those reforms.

The fund seeks to minimize the impact of private moneys by providing for the public financing of Presidential primary and general elections through the voluntary income tax checkoff. This program has worked extremely well since its inception, with 49 of the 50 major-party candidates who have run for the Presidency since 1976 participating in the program. During the 1988 election, however, large sums of undisclosed private money crept back into the process through the so-called soft money loophole. To maintain the integrity of the Presidential funding system, Congress must pass, prior to the 1992 election, legislation to shut off this potentially corrupting funding source.

The bill I am introducing today deals with the immediate problem of fund solvency. The Presidential public funding law, as enacted, contained a structural flaw that guaranteed that the fund would eventually run out of money. The problem is that the original legislation authorizing the $1 checkoff made no provision for periodic adjustments in the amount of the checkoff to allow for inflation. At the same time, however, on the other side of the ledger, campaign spending limits were indexed for inflation and have been rising steadily. As a result, the FEC now projects that the fund may face a shortfall during 1992 and will definitely be in the red by 1996.

As you know, Mr. Speaker, the fund's income is derived entirely from the $1 checkoff on the Federal income tax return. From 1976 through 1981, over 25 percent of the income tax returns were checked for the fund. This percentage has slowly declined over the past 9 years to a figure now just below 20 percent. The dropoff in taxpayer participation has, of course, meant a decline in fund income.

There have been many guesses as to why the participation rate has declined, so the Federal Election Commission researched this problem and discovered, not surprisingly, that an overwhelming majority of taxpayers knows very little about the goals of the program, how the fund is used, or why it was created. The FEC has now embarked on a modest education program, aimed not only at the general public but also at professional tax preparers who are now responsible for almost 50 percent of all returns and apparently fail to ask their clients whether they wish to participate.

While an education program is obviously desirable, the critical issue is the imbalance between the payout rate and the declining real value of the checkoff amount. The fact is, a dollar checked off in 1973 is worth only 36 cents today. My bill increases the checkoff amount to $3 and indexes it for future inflation. Even with slight fluctuations in participation, the $3 rate will provide adequate funds for 1996 and the index factor should take care of future demands. The FEC has so testified and all the projections support them.

This legislation makes two other important funding adjustments. First, it reorders the payout priorities of the fund so that general election candidates receive first payment followed by primary candidates and the parties are last. This is the obvious order of preference and I believe everyone is agreed on it.

The bill will also require the Treasury Department to take estimated receipts into account when calculating cash on hand. This is a standard accounting device to handle the possibility of a temporary cash flow problem during early 1992 primaries.

So I believe these technical changes will shore up the receipt end of the fund and ensure the intent of the original act.

My bill also deals with three other concerns which have arisen over the past 14 years of implementation. The first is simply another recognition of the 165 percent inflation factor and increases the matching fund eligibility threshold from $5,000 in each of 20 States to $12,500 in each of 20 States. This should not be any particular additional burden to a national candidate.

A second concern has to do with convicted felons being eligible for matching funds. My bill would prohibit candidates convicted of public funding process felonies from receiving fund payments.

Finally, the bill repeals the State-by-State spending limits for Presidential elections. This requirement has proven to be an enormous expense and headache for everyone without appreciably improving the selection process. Something like 60 percent of all the FEC audit time is allocated to this one area. Repeal will save everyone money without doing any harm to the integrity of the system.

Opponents to the Presidential Election Campaign Fund have attacked it because only 20 percent check off, claiming the remaining 80 percent are opposed to the fund. The only legitimate research indicates that most of the 80 percent is either not aware of the fund or doesn't understand it, so there is no validity in the opposition argument. Some have claimed that the moneys could be better spent on other programs, but that can be said of any line item, and I think that opponents would be hard pressed to argue that a restoration of public trust in their Presidency took a back seat to any other program.

The fund is also attacked because it is public financing, and a tortured effort is made to confuse the fund with possible public funding proposals for congressional elections. As mentioned earlier, the fund was explicitly created through public funding to avoid a repeat of the corruption of 1972.

And that, of course, raises the basic question which all opponents to the fund must answer. If you don't like the fund, what's your alternative? Are you willing to go before the American people and say you want to return to the days of black bags and grocery sacks full of illicit contributions? Are you anxious to put the White House up to the highest bidder? How short do you think the American public's memory really is?

The Presidential Election Campaign Fund has succeeded in restoring a sense of public confidence in the Presidential selection process. It is a very small price to pay for public trust, because without that trust no other Federal program can succeed. The Protection Act legislation is essential to the continued integrity of the fund and the Presidential election process.

THE 65 MPH SPEED LIMIT

HON. PAT ROBERTS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. ROBERTS. Mr. Speaker, today I am introducing legislation to allow States the authority to adjust—when determined safe—the speed limit on rural roads to 65 mph. The bill is similar to legislation I introduced in the 101st Congress.

As the House and Senate continue to formulate the reauthorization of the blueprint of our national highway policy, in the Surface Transportation Act, I believe discussion of the remaining restrictions of the 55-mph speed limit should be addressed. Congress has previously deemed that States could independently determine the speed limit on interstate highways up to 65 mph. However, that action left previous restrictions on States' authority to increase the speed limit on all other roadways.

If adopted, my legislation would specifically allow Governors the right to raise the speed limit to 65 mph on all roadways without the penalty of losing Federal highway improvement funds. Currently, States face millions of dollars in fines, up to 10 percent of their State's allocation of their Federal highway funds, if they set speed limits above 55 mph on roadways that are not part of the Interstate Highway System.

Mr. Speaker, State governments are better able to evaluate the safety and traveling needs of their residents, not Congress or Washington bureaucrats. State transportation specialists are more familiar with local roadways and are responsible for their care and maintenance.

Many complaints have been heard throughout rural America regarding the mandatory 55-mph speed ceiling Congress has imposed on rural roads. I urge my colleagues to allow States to address the questions raised by these parties by supporting my legislation.

THE DILEMMA OF BUDGET RESTRAINTS VERSUS SCIENTIFIC INQUIRY

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. McMILLEN of Maryland. Mr. Speaker, nobody refutes the fact that, in a world of limitless fiscal resources, we would all like to forge ahead on a science project of the importance of the superconducting super collider. The potential for life-enhancing discoveries from the SSC is extraordinary. The SSC will help us to unravel the mysteries of the atom, and to better understand the makeup of matter. This, in turn, will provide us with insight into the origins of the universe, and will assist us in our efforts to harness energy forces for the benefit of mankind.

But in reality, budget constraints must be respected. Further, we need to proceed at a pace that our pocketbooks can handle, understanding all along that there are present-day demands that require our attention—housing, environmental protection, and veterans' care, just to name a few. While I voted on Wednesday, May 29, against the Eckart-Wolpe-Slattery amendment to eliminate all SSC funds for fiscal year 1992, I agree in principle that we need to moderate the pace at which we move on this extraordinarily complex engineering project. For budgetary reasons, had it come up for consideration, I would have voted for the Eckart amendment, which would have trimmed only fiscal year 1992 construction funds from the general science budget, but allowed research and development funds to continue. Without a viable program still underway, international partners have no incentive to continue with their participation—they could easily walk away from the project, effectively bringing the SSC to a permanent halt.

Mr. Speaker, if the space station debate has taught us anything, it is that we must proceed deliberately on engineering projects of this magnitude—we need to set milestones where we evaluate our progress and reevaluate the validity of our final goals. In particular, we need to assess, at various points in time, the level of international participation and overall cost projections. This will ensure that our science dollars are being well spent and that the American taxpayer is getting the best value for his tax dollar.

SPRINGFIELD INDIANS SHAKE, RATTLE, AND ROLL TO ANOTHER CALDER CUP TITLE

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. NEAL of Massachusetts. Mr. Speaker, it is with extreme pleasure that I share with you

the news of the Springfield Indians winning the Calder Cup Trophy for the second straight year. The "Tribe" has now won a total of seven championships in their 48 years in the American Hockey League.

What is more remarkable than beating their arch rivals, the Rochester Americans, in the finals for a second straight year, is that only two players remained from last year's team. With a new affiliation with the Hartford Whalers, the Indians inherited a team that won a total of only 11 games last year. Not only was this a new team, it was also the youngest team in the league. This fact did not deter their superb coach, Jimmy Rodgers, or their general manager, Bruce Landon. Their never say die attitude was never more evident when down three games to one they rallied to beat Fredericton in the opening round of the playoffs. It continued when the Indians rallied from a two-game deficit to beat Rochester in front of a packed house at the Springfield Civic Center.

Springfield has always had a proud tradition of great hockey throughout its years in the American Hockey League. As a charter member of the AHL, Springfield has entertained thousands of hockey fans in western Massachusetts. I am confident that we will be rewarded with more great moments in the future.

Mr. Speaker, Springfield, MA, has always been recognized as the birthplace of basketball. With continued success from the Springfield Indians we might be also known as the permanent resting place of the Calder Cup.

TRIBUTE TO TIMOTHY S. CAREY

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. FISH. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to a county legislator from my district and a good friend, Timothy S. Carey.

On Sunday, June 9, 1991, Tim will be honored by the Westchester Irish Committee for his dedication and work on behalf of a number of issues of concern to the Irish community. I cannot think of anyone more deserving of this praise. As a cochairman of the ad hoc congressional Committee for Irish Affairs, I have been particularly grateful for his sponsorship of resolutions in the Westchester County Legislature in support of the MacBride principles, Joe Doherty and Sean Mackin.

Besides being one of the founders of the Westchester Irish Committee and an original member of the Northern Westchester Division of the Irish Immigration Reform Movement, Tim Carey has a long history of involvement in political and government affairs. A successful political consultant, he is a contributing author of "Finishing First: A Campaign Manual," and a lecturer on electoral and governmental politics.

Tim Carey is an outstanding public servant and member of the Westchester community. Because of his efforts on behalf, not only of the Irish-American community, but of all of his constituents, I am proud to have the opportunity to bring Tim to your attention today.

A TRIBUTE TO HEATHER J. CROWSHAW

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. MACHTLEY. Mr. Speaker, it is my distinct pleasure to congratulate Heather J. Crowshaw, of East Providence, RI, this year's recipient of the Congressman Ronald K. Machtley Academic and Leadership Excellence Award for East Providence Senior High School in East Providence, RI.

This award is presented to the student, chosen by East Providence High School, who demonstrates a mature blend of academic achievement, community involvement, and leadership qualities.

Heather J. Crowshaw has more than fulfilled this criteria. She is ranked first in a class of 364 students. She has maintained an extraordinary GPA of 93.83.

I commend Heather J. Crowshaw for her outstanding achievements and wish her all the best in her future endeavors.

TENTH ANNIVERSARY OF NEWTON ACTION FOR NUCLEAR DISARMAMENT

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. FRANK of Massachusetts. Mr. Speaker, I want to congratulate the members of Newton Action for Nuclear Disarmament on their 10th anniversary this Sunday, June 9. I regret very much that I will not be able to attend the birthday—especially since it will be held one block from my home in Newton. But I know that my friends in NAND will be warmly and duly praised by Mayor Ted Mann, who will be equal to this occasion as he is to all others.

The members of NAND have been models of effective and informed citizen action. For 10 years they have fought for a world and an America in which peace and justice prevail. Even those who disagree with some or all of NAND's positions recognize the genuineness of their commitment and the selflessness of their work. And I personally have found my association with them to be extraordinarily beneficial to me and my work. Currently, I am working with them in our effort to give the American people the benefit of the reductions in the military budget to which we are entitled, and from which our society would benefit enormously. I am delighted to be able to be working with this excellent organization in this important cause.

CONGRATULATIONS TO TED WIATR

HON. GLENN POSHARD

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. POSHARD. Mr. Speaker, it is my honor to rise before my colleagues in the U.S. House of Representatives and congratulate Ted Wiatr, a young man from my district from whom I expect to hear great things in the future.

Ted recently competed in the National Geography Bee here in Washington as the Illinois State champion. He and 57 other young people from the United States and its territories matched wits in an event designed to increase our understanding of the world around us.

The National Geographic Society estimates 5 million students took part in the initial round at 38,000 schools. Ted won the Illinois championship by competing against 103 students from much larger schools in major metropolitan areas. But under the guidance of instructor Ron Snyder, this eighth grade student from St. John's Lutheran School in Red Bud, IL, won the State title and earned the right to come to Washington. Although he invested a great deal of hard work to get this far, Ted also credits his success to his classmates who helped him prepare, and to his parents, who were with him every step of the way.

A recent test of high school seniors found only a little better than half of them could find their way around a map of the world, with only half of them understanding the purpose of the Panama Canal. In times like these it is encouraging to know there are some students who are interested in the world around them, and are excited to learn about the fascinating people and places out there. John Wiatr, Ted's father, tells me he used to pull out a road atlas on family trips and Ted would eagerly absorb its details. That is the kind of intellectual curiosity our schools and communities should encourage, and as someone who started in public service as a classroom teacher, I believe this geography bee is a good idea.

I am always pleased when someone from southern Illinois represents our area so well, and that is certainly the case with Ted Wiatr. Ted will enter high school this fall, and although it's probably a little early to decide these kinds of things, I am encouraged to know he expresses an interest in being a teacher himself.

On behalf of the people of southern Illinois I congratulate Ted on his achievements and wish him the best in the future.

A TRIBUTE TO RON AUSTIN

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. GREEN of New York. Mr. Speaker, I rise today to pay tribute to a man whose boundless generosity and selfless dedication to troubled youths has distinguished him as a philanthropist of the highest grade.

In 1971, when Mr. Ron Austin created the SPARK program at Julia Richman High School—a public high school in my district—he opened a channel through which teenagers would unburden themselves of problems that most of us have never confronted and most likely never will.

The SPARK program gives young people who feel alone and secluded due to the enormity of their problems the opportunity to discuss their feelings and experiences with other youths in similar situations. Such predicaments might include having drug-addicted parents or being addicts themselves, being physically and sexually assaulted by a parent or a parent's boyfriend or girlfriend, pregnancy, and homelessness. Talking about these circumstances, often for the first time, gives a teenager the support and acceptance that is essential to coming to deal with his or her problems.

Mr. Austin's understanding, respect, and admiration for these students has enabled him to communicate successfully with them at a time when communication with most adults in their lives is severely strained. But to say that Mr. Austin's communications skills are the root to his success would be saying too little. When the youths in the SPARK program talk about Mr. Austin, they speak about one of the few adults who genuinely means it when he says he loves them. And clearly, from the amount of devotion shown to Mr. Austin, he is loved by them.

The SPARK program has proven to be much more than a class. Those who participate in SPARK have become a family. Sometimes they lean on each other and at other times they support each other. When they speak about the love they have for one another, they express themselves with words and revelations not often made by those so young. Although most of them are teenagers, experience has made them older than their years.

Beyond the personal level, there is no doubt SPARK has been a scholastic triumph. Attendance and grades improve as students become members of SPARK, and their talents are given a chance to rise above the debris of emotional trauma.

I commend these students for their incredible strength in facing their problems and trying to overcome them. Mr. Austin said, "My respect and admiration for the resilience and resourcefulness of the young people that I work with is boundless."

I should like to offer my respect and admiration to Mr. Austin by encouraging all my colleagues to commend him for making great things possible for those whose lives have been filled with only the bad.

KILDEE HONORS PAGES

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. KILDEE. Mr. Speaker, I would like to take this opportunity to express my personal gratitude to all of the pages for their faithful service in the House of Representatives. Their tenure here has been extremely exciting. They were present during the President's State of the Union Address and also during his speech at the end of Operation Desert Storm. In addition, they have seen President Chamorro of Nicaragua and Queen Elizabeth II.

I would also like to commend these dedicated and hard working young people as they will soon be leaving to complete their high school education. They are: Warren C. Aceron, Kara A. Adamson, Alejandro V. Aguirre, Elizabeth J. Ambrose, Kenneth E. Archer, Anne K. Barkis, Scott A. Beal, Roger L. Beckett, Wendy M. Bianchini, Angela M. Biga, Michelle N. Billig, Julie L. Bolkin, Rachel D. Borak, Edward K. Brooks, Whitney A. Campbell, Suzann L. Corrigan, Misti H. Coy. Lauren E. Creamer, Teri E. Cross, Michelle H. Custer, Allison H. Davis, Timothy B. Duffy, Jennifer A. Dukarski, Donald W. Dyer, Jr., Randall A. Fine, Kevin J. Gentner, James R. Geraci, J. Brian Gomillion, Vikram D. Gopal, Any J. Graveman, Stacey T. Gutenkunst, Ann C. Guthmiller, Sarah A. Holt, John A. Hosinski, Duane A. Humeyestewa, Sam P. Jacks, Karen M. Keller, Jennifer M. Kersey, Andrew S. Kosegi, Sarah P. Leonard, Samuel E. Lisman, Alfonso Martel, Vicki D. McAvoy, Rebecca K. McKee, Camilla B. Messing, Nicholas K. Mitsis, Hilary K. Munger, Gilmer L. Murdock, III, Amanda C. Murphy, John L. Noppenberg, III, R. Russell Orben, III, Lori C. Palmer, Austin R. Perez, Nathan M. Powers, Amanda J. Prince, Guy A. Raz, David I. Rappaport, James S. Sager, Michelle M. Semple, Christina M. Sinck, Suzanna L. Smith, Rachelle L. Snowdon, Melissa J. Stevenson, Walter B. Stilwell, IV, M. Paige Williams and Joshua M. Zeitz.

The service of these pages is integral to the effective operation of the House of Representatives. These individuals with their diverse backgrounds, represent what is good about our country. Common denominators of this group are their academic achievements and the courage they have demonstrated in venturing so far from the security of their homes. Through this experience they have witnessed a new culture, made new friends, and learned the details of how this Government works.

As we all know, much is required of those who do become congressional pages. Along with being immersed in a new environment, the pages must possess the maturity to balance competing demands for their time and energy. In addition, they must have the dedication to work long hours and the ability to interact with people at a personal level. I am sure they will consider this to be one of the most valuable and exciting times in their lives, and that with this experience they will continue to lead successful and productive lives. Mr. Speaker, as Chairman of the Page Board, I ask my colleagues to join me in honoring this group of distinguished young Americans. They will certainly be missed.

THE 1991 AMERICAN COMPETITIVENESS ACT

HON. TOM CAMPBELL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. CAMPBELL of California. Mr. Speaker, not long ago, America was universally considered the world's strongest economic power. Now we are one of several. America has become dependent on foreign capital to finance its trade and budget deficits. Our performance standards no longer are recognized as the world's best. No more does the "Made in the U.S.A." label guarantee the highest quality around.

Many have pointed the blame for this slide toward the American worker and manager. I disagree. America's ingenuity and ability to produce quality goods are second to none.

What badly needs improvement is government. Right now, government penalizes Americans for doing the very things we must do to compete—investing in the future, researching and developing new products, working together to solve common problems.

We can reverse America's competitive slide, but we must first admit that we ourselves have been part of the problem. Government must stop punishing individuals for being daring and creative.

Today I am introducing a bill, the 1991 American Competitiveness Act, to unharness the engine of American private enterprise. I am pleased to be joined in introducing this eight-point plan by the distinguished minority whip, Mr. GINGRICH; the chairman of the Republican Conference and my California colleague, Mr. LEWIS; and the chairman of the House Republican Task Force on Competitiveness, Mr. DELAY.

The American Competitiveness Act consists of the following components:

COMPONENTS OF THE AMERICAN COMPETITIVENESS ACT

1. MAKING THE R&D TAX CREDIT PERMANENT

Our competitiveness sprouts from our ability to create, develop, and market new products. But under current law, the tax credit for research and development expenses is not permanent; it must be renewed by Congress every year. And virtually every year, the R&D tax credit is held hostage until the waning days of the fiscal year before it is finally renewed. Companies cannot plan for the future with any certainty because they do not know whether the R&D credit will still exist the following year.

The American Competitiveness Act would make the R&D credit permanent. It will assure our firms of the beneficial tax consequences of long-range R&D investments.

2. CAPITAL GAINS TAX RELIEF FOR LONG-TERM INVESTMENTS

Investment capital is crucial to our long-term competitiveness. It is the fuel that allows existing businesses to expand and entrepreneurs to put their new ideas in action. Unfortunately, our capital gains tax is higher than that of nearly all our major trading partners. Most capital gains in the United States are taxed at 31 percent. Japan averages a five percent rate. Germany imposes no capital gains tax at all on assets held for more than 6 months.

A permanent cut in the capital gains rate is an essential step toward making our country more competitive. The American Competitiveness Act creates a tax exclusion varying from a low of 50 percent for assets held for two years to a high of 100 percent for assets held for five years. The plan, thus, encourages the long term holding of assets.

3. ENCOURAGING INVESTMENT IN START-UP COMPANIES

The American Competitiveness Act creates a special incentive for investing in start-up companies through a 50 percent exclusion for capital gains derived from initial stock offerings that are held for two years. This provision will reward the founders of start-ups—the engineers, risk-takers, and investors who give up the security of working for established companies for the challenge of creating our future Fortune 500 firms.

4. ELIMINATING THE TAX INCENTIVE FOR TAKEOVERS

Current tax law favors debt over equity. Interest paid on corporate debt is tax-deductible, but dividends paid to shareholders are not. This distinction creates a built-in tax incentive for increasing a company's debt—which is at the heart of a leverage buyout.

By eliminating takeovers driven by tax considerations, we will allow takeovers to proceed on the merits, and thereby enable our firms to do a better job of focusing on productive, long-range planning. The American Competitiveness Act makes dividends deductible and eliminates this unhealthy bias.

5. BRINGING OUR LABOR LAWS INTO HARMONY WITH TODAY'S WORKPLACE

The essential elements of our labor laws were written more than fifty years ago. There has not been a comprehensive overhaul since.

The labor-management relationship has changed dramatically in that time period. The Depression-era assumption of antagonism has given way to cooperation and mutual education. Yet some aspects of our labor laws inhibit progress, most notably, section 8(a)(2) of the Labor Management Relations Act. Concern over sham unions created a rather stringent prohibition on employers working directly with employees on matters of working conditions.

The American Competitiveness Act would reform 8(a)(2) to enable all firms and unions to work together to achieve common goals.

6. REMOVING UNREASONABLE RESTRICTIONS ON PENSION FUND MANAGERS

The Employee Retirement Income Security Act (ERISA) places excessive restrictions on pension fund managers by forcing them to accept a stock purchase offer if the offer price is above the market price. This is a bad rule. While a given offer price may be attractive, there often are many other issues that managers must take into consideration before they agree to a transaction. Pension fund managers should be permitted the flexibility to make decisions that will guarantee both the short and long term interests of their firms.

The American Competitiveness Act would give managers the ability to take factors other than price into consideration when they evaluate purchase offers.

7. PROTECTING INTELLECTUAL PROPERTY RIGHTS

Investors are understandably hesitant to risk their money in new products and technologies when there exists a significant danger their ideas will be pirated in another country. While section 337 of our trade law provides some protection to our firms, it is cumbersome; markets can be lost during the time it takes to prosecute a case.

The American Competitiveness Act corrects section 337 by making it easier to exclude goods that violate our intellectual property laws.

8. ENHANCING THE BUSINESS-EDUCATION PARTNERSHIP

Only by cooperating will business and educators be able to train workers to meet the challenges of the next century. Toward this end, the American Competitiveness Act contains a tax incentive for companies to lend their employees to schools and colleges to assist in teaching students and preparing course materials.

Mr. Speaker, we can prevent America's competitive slide, but to do so will require admitting to ourselves that we have been part of the problem. Government must stop punishing individuals for being daring and creative. It must stop working against the people it is supposed to be helping.

I urge my colleague to work with me to enact the 1991 American Competitiveness Act.

A TRIBUTE TO ANTHONY J. PERAICA

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LIPINSKI. Mr. Speaker, today I rise to pay tribute to Mr. Anthony J. Peraica, who has recently been named Business Person of the Quarter by the Garfield Ridge Chamber of Commerce in Illinois.

Born in Trogir, Yugoslavia in 1957, Mr. Peraica immigrated to the United States in 1970. He has a bachelor's degree in political science from the University of Illinois and was admitted to the Illinois Bar in 1984 after graduating from John Marshall Law School in 1983. Currently, Mr. Peraica heads a six-person law firm in Chicago.

The Garfield Ridge Chamber of Commerce has bestowed this high honor upon Mr. Peraica because of the active role he plays in his community. As vice chairman of the Peck Elementary Local School Council and a board member of the Boy Scouts of America, he has had a very positive influence on the youth in his neighborhood. Mr. Peraica is also involved with organizations which benefit the community as a whole. He is a loyal member of the Garfield Ridge Chamber of Commerce and as such takes the time to attend meetings, plans community programs, and coordinates festivities.

I would like to thank Mr. Peraica for his time and dedication, and I ask my colleagues to join me in congratulating him on this outstanding achievement. He is an asset to the community and a role model for all.

HONORING GOSPEL SINGER CASSIETTA GEORGE

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. DIXON. Mr. Speaker, I rise today for the purpose of joining the Christian and black gospel community as it celebrates 48 years of gospel music by Cassietta George in a national tribute to be held at Praises of Zion Baptist Church in Los Angeles, CA.

A native of Memphis, TN, Ms. George began her gospel music career at the tender age of 4, first singing at her father's church. Before long, she would ascend the stage participating in school concerts and at various community events in and around Memphis, inspiring people throughout the area, even in Mississippi and Arkansas.

In 1953, Ms. George became a member of the world famous Caravans, which then featured such renowned gospel artists as Albertina Walker, Louise McDonald-Ross, the late Rev. James Cleveland and John Erin Davis. Later, that group would feature the talent of other great gospel artists such as Inez Andrews, Shirley Caesar, Delores Washington, Dorothy Norwood, the late Bessie Griffin, and Josephine Howard.

After leaving the Caravans, Ms. George moved to Los Angeles, embarking on a successful solo recording career during which she has recorded more than 15 albums and written over 80 songs which have been recorded by her and other gospel artists. She is most noted for her remarkable solo recording of "Walk Around Heaven" which has endured as a standard over the years.

Ms. George has performed throughout the Nation from Robin Dell Park in Philadelphia to Carnegie Hall. She also has the rare distinction of having performed with the Los Angeles Symphony Orchestra under the direction of the great Zubin Mehta and has two Grammy nominations to her credit.

Mr. Speaker, it gives me great pleasure to be able to add my voice to those which have showered deserved praise over this wonderfully talented gospel artist over the last five decades. Please join me then in paying tribute to a lady who for 48 years has contributed so much to America by spreading a message of love, and by inspiring millions of people both here and abroad with her music. Cassietta George is indeed a treasure and I sincerely wish her, her family and her admirers only the best of all things in the years to come.

SOVIET PERFORMANCE AND FUTURE WAIVERS OF JACKSON-VANIK

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. HOYER. Mr. Speaker, yesterday President Bush announced his intention to grant the Soviet Union an additional 1-year waiver of the Jackson-Vanik amendment to the 1974

Trade Act. This amendment links United States-Soviet trade to human rights by denying nonmarket countries most-favored-nation [MFN] trading status until they permit substantive and sustained emigration. On December 29, 1990, President Bush notified Speaker Foley that he was waiving the Jackson-Vanik restriction against the Soviet Union for 6 months. Six months have passed and the President has once again certified that the Soviets are living up to their commitments by allowing record numbers of Soviet citizens to emigrate.

Mr. Speaker, I do not intend to oppose a waiver. The Soviets, especially during the past 2 years, have made considerable progress in their emigration practices. In 1989, according to statistics provided by the National Conference on Soviet Jewry, Jewish emigration was 71,217. That number more than doubled to 186,815 in 1990 and through the end of May 1991 those emigrating had already reached 73,000. The numbers for Germans are just as encouraging. In 1990, more than 148,000 ethnic Germans arrived in the Federal Republic of Germany, up by 60 percent from 98,134 in 1989. The Soviets have indicated that between 440,000–460,000 citizens left the Soviet Union during 1990. And the numbers for this year indicate that this emerging trend will continue.

Recently, on May 20, 1991, the Supreme Soviet, after several lengthy delays, passed in principle a new law on exit and entry from the Soviet Union. The legislation represents a significant improvement over existing Soviet law. However, several sections fall short of internationally recognized standards, including those of the conference on security and cooperation in Europe, on freedom of movement issues. In addition, the law will not even go into effect until January 1993. Since the waiver authority of Jackson-Vanik is now for 1 year, it is imperative that the Soviets continue to perform in the emigration sphere.

As Chairman of the Helsinki Commission, I have long urged the Soviets to implement those commitments they have undertaken within the Conference on Security and Cooperation in Europe.

It is for this reason, that I, along with Senator DECONCINI, the Cochairman of the Helsinki Commission, am introducing a sense of the Congress resolution that asks the President to consider certain "performance" factors before providing a waiver in 1992 of the Jackson-Vanik amendment. This resolution would basically see to it that the Soviets are living up to their commitments in implementing their recently passed emigration legislation.

The resolution would ask the President to consider the following objectives before providing in 1992 a waiver of the Jackson-Vanik trade restrictions.

First, all individuals who, for at least 5 years, have been refused permission to emigrate from the Soviet Union, are given permission to emigrate.

Second, restrictions on freedom of movement, including those pertaining to secrecy are not being abused or applied in an arbitrary manner.

Third, a fair, impartial, and effective administrative or judicial appeals process exists for those who have been denied permission to emigrate.

Fourth, the Government of the Soviet Union is ensuring that its laws, regulations, practices, and policies conform with their commitments under its international obligations, including the relevant provisions of the Helsinki Final Act and all conference on security and cooperation in Europe commitments.

I urge my colleagues to review this resolution and join me in supporting it.

Mr. Speaker, I cannot complete my thoughts on the President's decision to extend waiver authority at this time without noting that an official investigation of the bloody events in Vilnius in January has been released and concludes that the deaths were caused "not by shots from troops or by being run over by tanks, but by shots from Lithuanian fighters and other causes."

This report is not only incredible, it is insulting and outrageous. The findings have no relation to fact. Mr. Speaker, the investigation is a cover-up and I regret that the Soviet Government cannot come to terms with the freely elected governments of the Baltic States. It has released Eastern Europe from its grip—it is time to do so with other States that have never sought to be part of the Soviet Union.

A TRIBUTE TO FRANK SAIN

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. BILBRAY. Mr. Speaker, I rise today to recognize a distinguished member of the Las Vegas community. On July 1, 1991, after dedicating 10 years to the Las Vegas Convention and Visitors Authority as executive director, Frank Sain will be retiring.

Mr. Sain's contributions to Las Vegas' growth in the tourism industry have been widespread throughout his career. If you will, please imagine the number of annual visitors to Las Vegas doubling within the past decade. Last year itself saw 20.3 million visitors to this city. As a result, Clark County's gaming revenues have increased from $1.6 billion to an incredible $4 billion.

Las Vegas would not have been able to accommodate the phenomenal growth without the vision of Frank Sain. During the last 10 years, the Las Vegas Convention Center has undergone $100 million in expansion and renovation projects. Acting as executive director, Mr. Sain orchestrated the opening of international offices which have helped to significantly increase the number of foreign visitors to Clark County each year.

It is not enough to say that Frank Sain's presence within the Las Vegas Convention and Visitors Authority will be missed. But rather his departure will be felt throughout the Las Vegas community. I know that my fellow Members of Congress will join with me in thanking Frank Sain for his dedication to bettering Las Vegas and in wishing him well in his future.

INTRODUCTION OF THE ETHICS IN HOME MEDICAL EQUIPMENT ACT OF 1991

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. CARDIN. Mr. Speaker, today I am introducing legislation that will put an end to much of the fraud and abuse in the home medical equipment industry. While home medical equipment is a vital component of our Nation's health care system, in recent years some unscrupulous medical equipment suppliers have cheated the Medicare Program out of millions of tax dollars. My legislation attempts to prevent these abuses from occuring in the future so that our scarce Federal resources can be devoted exclusively to providing needed medical care to our Nation's senior and disabled citizens.

The abusive practices in the home medical equipment industry have been well documented by a variety of sources. Special recognition should be given to Senators COHEN and SASSER, Representative BRIAN DONNELLY, the General Accouting Office and the Inspector General at the Department of Health and Human Services for their efforts to bring to light a wide range of fraud and abuse in home medical equipment. In addition, NAMES and other representatives of the legitimate home medical equipment industry have been strong proponents of reform. I appreciate their assistance in drafting this legislation and their ongoing interest in cleaning up the industry. My legislation attempts to address many, but not all, of the problems these parties have revealed.

The home medical equipment industry is one of the few major health provider or supplier categories in Medicare that is not subject to governmentally recognized standards of practice, health and safety. The ease with which businesses may be created and begin billing Medicare for home medical equipment is an invitation for abuse to fly-by-night operations. My bill would require the Secretary to establish certifications standards to assure patient safety and the availability of high quality covered items for suppliers of covered items, ostomy bags and supplies related to ostomy care. Within 3 years any supplier that has not been certified under these criteria will not be eligible for reimbursement from Medicare. By making quality of service a requirement for entry into this industry a great deal of the abuses we have seen can be prevented.

Because significant differences in reimbursement levels and coverage policies continue to exist between carriers, some companies have engaged in the practice of forum shopping. This consists of suppliers shopping around to locate their business operations, or their billing operations, in areas serviced by a carrier that pays more and has a more liberal coverage policy. My legislation would require suppliers to bill the carrier having jurisdiction over the geographic area of the residence of the patient to whom the item is furnished. This is a simple, clear rule which will put an end to the abuse of forum shopping. I would urge the Congress and the Health Care Financing Ad-

ministration to explore this issue further. I can think of no reason for Medicare coverage policy for home medical equipment to differ from one region of the country to another.

The third major reform in this legislation is a prohibition on physicians referring a patient for a covered item to a home medical equipment company in which the physician or an immediate family member has (a) an ownership or investment interest in the provider, or (b) other compensation arrangements with the provider. This prohibition is the same as the prohibition enacted in OBRA 1989 regarding physician referral to clinical laboratories. Under Medicare law, the physician is the gatekeeper to the DME benefit. The integrity of the physician's responsibilities both to the Medicare Program and to the patient must be maintained.

The bill includes several provisions which are consistent with the passage of last year's antihassle legislation. The bill modifies the prohibition on suppliers filling out certificates of medical necessity so that this prohibition will be targeted to the list of potentially overused items. Last year's oxygen retesting language is amended to make it consistent with the new uniform certification of medical necessity form drafted by the Health Care Financing Administration. In addition, an up front purchase option is provided in instances where an item is needed for longer than the rental period more than 75 percent of the time or where the patient has a condition, recognized by the Secretary, that will warrant long-term use of the equipment. An exception is provided for the mandatory submission of claims for inexpensive items of less than $50.

Finally, the bill has two provisions aimed at easing the blow of the over $2 billion in cuts mandated in last year's reconciliation legislation. Prior to last year Medicare paid 10 percent of the purchase price of a capped rental item for up to 15 months. OBRA 1990 cut this reimbursement by reducing payment from months 4 through 15 to 7.5 percent—for a possible total of 120 percent. Many suppliers have complained that this change will be very difficult to incorporate into their billing practices. My legislation would simply restore monthly payment to 10 percent per month, while limiting the number of months of payment to 12—again, for a possible total of 120 percent.

The bill also provides that during the 2-year transition to national price limits no item may be reduced by more than 15 percent per year. At the end of the transition, all items would still be subject to the national limits. This provision is consistent with the protection provided to physician fees during the transition to the resource based relative value scale. It was an appropriate policy for physician payment reform, and is, I believe, appropriate for home medical equipment.

Both the monthly capped rental and the limitation on annual payment reductions provisions involve expenditures above the Medicare baseline and therefore are subject to the PAYGO requirements of last year's budget agreement. Although at this time I do not have a funding proposal to cover these costs, I fully intend to comply with the spirit and the letter of the PAYGO requirements as they apply to this legislation.

TRIBUTE TO REV. DR. VINCENT D. BECKETT

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. WELDON. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to Rev. Dr. Vincent D. Beckett who will be celebrating his 100th birthday June 6, 1991.

Rev. Dr. Vincent Beckett has been an integral part of the Woodland Avenue Presbyterian Church for over 70 years. His congregation has been blessed by his servitude and dedication to Our Lord Jesus Christ. I am indeed pleased to pay tribute to this man of God on this joyous occasion.

May I add, Mr. Speaker, that Rev. Dr. Beckett has faithfully served our community with the fortitude and conviction that it so deeply needs. We are proud of his accomplishments and honored to celebrate his 100th birthday.

Mr. Speaker, I ask that we all take a moment to offer our praise and extend best wishes to Rev. Dr. Vincent D. Beckett as he celebrates this momentous occasion with his family and many friends.

THE THEODORE R. GIBSON MEMORIAL FUND

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, the Theodore R. Gibson Fund is a nonprofit organization in Coconut Grove, FL, that is dedicated to fostering unity among different ethnic groups and to the establishment of charitable, educational, religious, health, scientific, and cultural programs that will benefit all people regardless of their ethnic background.

For the first time, the charity will honor worthy representatives of various ethnic communities in Dade County who have made significant contributions to unity and harmony among south Florida's multiethnic community. These honorees and their spouses are The Hon. and Mrs. Maurice Ferre, Mr. and Mrs. Garth Reeves, and Mr. and Mrs. David Lawrence. Through their efforts, cooperation between Dade County's many ethnic groups is now underway.

The Gibson Memorial Fund has made great strides in its attempts to eradicate numerous problems. Its efforts include programs geared toward caring for the needy, early childhood development, educational enhancement, employment opportunities, health care for the underprivileged, cooperation with other charities, neighborhood improvement, and civil rights. Its board of directors include Mrs. Thelma V.A. Gibson, president; Mr. Frank J. Cobo, first vice president; Mrs. Verneka S. Silva, second vice president; Ms. Sondra Wallace, secretary; Commissioner of Miami J.L. Plummer, treasurer; Rabbi Herbert M. Baumgard; Mr. T. Willard Fair; Mr. Wilfredo "Willy" Gort; former mayor of Miami Mr. David T. Kennedy; Ms. Esterlene Lewis; Mr. Gene Marks; Mr. Vernon Philip; Mrs. Carmetta Russell; Mr. Harry L. Russell; Mr. Gonzales T. "Guy" Sanchez; Mr. Robert Wilder; and Commissioner of Dade County Sherman S. Winn.

The Theodore R. Gibson Memorial Fund and its honorees deserve the utmost distinction in their efforts to promote unity and harmony in south Florida.

HONORING DR. JOEL KAHN

HON. CHARLES LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 4, 1991

Mr. LUKEN. Mr. Speaker, I rise today to congratulate Dr. Joel Kahn of Cincinnati, OH, on being named National Multiple Sclerosis Society's Father of the Year. This award honors Dr. Kahn for his ability to be an exceptional father despite the handicap that multiple sclerosis has given him.

The honor recognizes a father who has multiple sclerosis for his outstanding parenting in light of the limitations imposed by chronic illness. Dr. Kahn was diagnosed with MS in 1976. By 1980 he decided he could no longer walk and maintain the stamina necessary for all his daily responsibilities, so he adapted to an electric scooter. In naming him the winner, judges were impressed by his concern for educating children.

Dr. Kahn is an active member in the community. He volunteers with Everybody Counts, an educational program designed to convey to school students just how special people are, regardless of their particular strengths or limitations. Dr. Kahn wants these children to see beyond a person's disability and see the total person. Dr. Kahn is also a member of a Cincinnati community task force. He took part in an extensive study examining long-range computer needs in the local school system.

Dr. Kahn doesn't think of himself as disabled. He plays kickball, baseball, and goes bowling with his 6-year-old son. He also made the switch from mechanical engineering to industrial engineering at Proctor & Gamble where he works. As his mobility problems increased he felt that they prevented him from carrying out his duties as a mechanical engineer, so he changed his career to industrial engineering. He received his Ph.D. in industrial engineering in 1986 and today is the director of his local industrial engineering society and serves as an adjunct professor of engineering at the University of Cincinnati.

Dr. Joel Kahn should be considered a hero. He has made considerable contributions to both the youths and the school system of his community. The support and dependability he has provided are immeasurable by numbers or words. I would like to express both my appreciation and admiration for his accomplishments. I am proud to have a person like Joel Kahn in my district. He is an inspiration to us all.